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The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2002 VAC Supplement includes final regulations published through *Virginia Register* Volume 18, Issue 11, dated February 11, 2002). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 2. Agriculture			
2 VAC 5-400-10	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-20	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-30	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-50	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-80	Amended	18:21 VA.R. 2768	8/1/02
2 VAC 5-400-90	Added	18:21 VA.R. 2768	8/1/02
2 VAC 5-610-10 through 2 VAC 5-610-80	Amended	18:21 VA.R. 2768	8/1/02
Title 3. Alcoholic Beverages			
3 VAC 5-20-10	Amended	18:23 VA.R. 3094	8/28/02
3 VAC 5-20-60	Amended	18:23 VA.R. 3095	8/28/02
3 VAC 5-30-60	Amended	18:23 VA.R. 3095	8/28/02
3 VAC 5-50-170	Amended	18:23 VA.R. 3096	8/28/02
3 VAC 5-60-80	Amended	18:23 VA.R. 3096	8/28/02
3 VAC 5-70-20	Amended	18:23 VA.R. 3097	8/28/02
3 VAC 5-70-90	Amended	18:23 VA.R. 3097	8/28/02
Title 4. Conservation and Natural Resources			
4 VAC 5-35-10 through 4 VAC 5-35-50	Repealed	18:14 VA.R. 1800	4/25/02
4 VAC 5-36-10 through 4 VAC 5-36-210	Added	18:14 VA.R. 1800-1827	4/25/02
4 VAC 15-380-60 emer	Repealed	18:23 VA.R. 3102	7/1/02-6/30/03
4 VAC 15-380-120 emer	Added	18:23 VA.R. 3102	7/1/02-6/30/03
4 VAC 20-252-150	Amended	18:21 VA.R.	5/29/02-6/27/02
4 VAC 20-252-150	Amended	18:22 VA.R. 2927	6/19/02
4 VAC 20-270-30	Amended	18:14 VA.R. 1827	3/5/02
4 VAC 20-270-40	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-55	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-270-56	Added	18:14 VA.R. 1828	3/5/02
4 VAC 20-430-50	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-430-60	Amended	18:18 VA.R. 2287	5/1/02
4 VAC 20-560-20	Erratum	18:14 VA.R. 1911	--
4 VAC 20-560-20 emer	Amended	18:14 VA.R. 1904	3/4/02-3/31/02
4 VAC 20-560-20	Amended	18:16 VA.R. 2054	4/1/02
4 VAC 20-560-50 emer	Amended	18:14 VA.R. 1905	3/4/02-3/31/02
4 VAC 20-560-50	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 20-620-20	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-40	Amended	18:12 VA.R. 1646	1/31/02
4 VAC 20-620-50	Amended	18:14 VA.R. 1828	3/5/02
4 VAC 20-620-50	Amended	18:21 VA.R.	6/1/02-6/30/02
4 VAC 20-620-50	Amended	18:22 VA.R. 2927	6/19/02
4 VAC 20-620-60	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-620-60	Erratum	18:21 VA.R. 2846	--
4 VAC 20-620-60	Amended	18:21 VA.R.	6/1/02-6/30/02
4 VAC 20-620-60	Amended	18:22 VA.R. 2928	6/19/02
4 VAC 20-620-70	Amended	18:14 VA.R. 1829	3/5/02
4 VAC 20-620-70	Amended	18:21 VA.R.	6/1/02-6/30/02

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4 VAC 20-620-70	Amended	18:22 VA.R. 2928	6/19/02
4 VAC 20-670-30 emer	Amended	18:22 VA.R. 2935	6/20/02-7/20/02
4 VAC 20-720-47 emer	Added	18:12 VA.R. 1697	2/1/02-2/28/02
4 VAC 20-752-10	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-752-20	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-752-20 emer	Amended	18:24 VA.R. 3300	7/15/02-8/14/02
4 VAC 20-752-30	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-910-45	Amended	18:21 VA.R. 2769	6/1/02
4 VAC 20-910-45	Erratum	18:21 VA.R. 2846	--
4 VAC 20-950-30	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-40	Amended	18:14 VA.R. 1829	3/4/02
4 VAC 20-950-45	Amended	18:12 VA.R. 1647	1/31/02
4 VAC 20-950-45	Amended	18:14 VA.R. 1830	3/4/02
4 VAC 20-950-45	Amended	18:16 VA.R. 2055	4/1/02
4 VAC 50-20-30	Amended	18:14 VA.R. 1831	7/1/02
4 VAC 50-20-50	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-50	Erratum	18:17 VA.R. 2183	--
4 VAC 50-20-70	Amended	18:14 VA.R. 1832	7/1/02
4 VAC 50-20-120	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-220	Amended	18:14 VA.R. 1834	7/1/02
4 VAC 50-20-320	Amended	18:14 VA.R. 1835	7/1/02
Title 6. Criminal Justice and Corrections			
6 VAC 15-40-10	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-40	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-90 through 6 VAC 15-40-130	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-150	Amended	18:20 VA.R. 2584	7/17/02
6 VAC 15-40-155	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-160	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-280	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-290	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-360 through 6 VAC 15-40-390	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-393	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-395	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-400	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-410	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-450	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-460	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-470	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-490	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-520	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-540 through 6 VAC 15-40-580	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-620	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-640 through 6 VAC 15-40-670	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-690	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-740	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-800 through 6 VAC 15-40-830	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-833	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-835	Added	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-840	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-870	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-900	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-910	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-920	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-940 through 6 VAC 15-40-970	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1020	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1030	Amended	18:20 VA.R. 2583	7/17/02

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6 VAC 15-40-1040	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1070	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1080	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1100	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1110	Repealed	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1130	Repealed	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1190	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1193	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1195	Added	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1200	Amended	18:20 VA.R. 2585	7/17/02
6 VAC 15-40-1330	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 15-40-1350	Amended	18:20 VA.R. 2583	7/17/02
6 VAC 20-171-10	Amended	18:15 VA.R. 1955	5/10/02
6 VAC 20-171-50	Amended	18:15 VA.R. 1957	5/10/02
6 VAC 20-171-120	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-200	Amended	18:15 VA.R. 1958	5/10/02
6 VAC 20-171-220	Amended	18:15 VA.R. 1959	5/10/02
6 VAC 20-171-230	Amended	18:15 VA.R. 1960	5/10/02
6 VAC 20-171-240	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-250	Amended	18:15 VA.R. 1961	5/10/02
6 VAC 20-171-260	Amended	18:15 VA.R. 1962	5/10/02
6 VAC 20-171-280	Amended	18:15 VA.R. 1963	5/10/02
6 VAC 20-171-310	Amended	18:15 VA.R. 1964	5/10/02
6 VAC 20-171-320	Amended	18:15 VA.R. 1964	5/10/02
6 VAC 20-171-330	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-340	Amended	18:15 VA.R. 1965	5/10/02
6 VAC 20-171-350	Amended	18:15 VA.R. 1966	5/10/02
6 VAC 20-171-350	Erratum	18:20 VA.R. 2680	--
6 VAC 20-171-445	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-450	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-480	Amended	18:15 VA.R. 1968	5/10/02
6 VAC 20-171-520	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-530	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 20-171-540	Amended	18:15 VA.R. 1969	5/10/02
6 VAC 35-150-10	Amended	18:24 VA.R. 3284	10/1/02
6 VAC 35-150-35	Added	18:24 VA.R. 3285	10/1/02
6 VAC 35-150-55	Amended	18:24 VA.R. 3285	10/1/02
6 VAC 35-150-70 through 6 VAC 35-150-165	Amended	18:24 VA.R. 3285-3286	10/1/02
6 VAC 35-150-170	Repealed	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-175	Amended	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-180	Amended	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-190	Amended	18:24 VA.R. 3286	10/1/02
6 VAC 35-150-200 through 6 VAC 35-150-350	Amended	18:24 VA.R. 3286-3288	10/1/02
6 VAC 35-150-360	Repealed	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-370 through 6 VAC 35-150-420	Amended	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-427	Added	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-430	Amended	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-435	Amended	18:24 VA.R. 3288	10/1/02
6 VAC 35-150-440	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-450	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-460	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-490 through 6 VAC 35-150-540	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-620 through 6 VAC 35-150-650	Amended	18:24 VA.R. 3289	10/1/02
6 VAC 35-150-670 through 6 VAC 35-150-720	Amended	18:24 VA.R. 3289	10/1/02
Title 8. Education			
8 VAC 20-21-10	Amended	18:12 VA.R. 1648	3/28/02

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-21-40	Amended	18:12 VA.R. 1649	3/28/02
8 VAC 20-21-50	Amended	18:12 VA.R. 1650	3/28/02
8 VAC 20-21-90	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-100	Amended	18:12 VA.R. 1651	3/28/02
8 VAC 20-21-120	Amended	18:12 VA.R. 1652	3/28/02
8 VAC 20-21-170	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-590	Amended	18:12 VA.R. 1653	3/28/02
8 VAC 20-21-660	Amended	18:12 VA.R. 1655	3/28/02
8 VAC 20-21-680	Amended	18:12 VA.R. 1656	3/28/02
8 VAC 20-80-30	Amended	18:12 VA.R. 1657	3/27/02
8 VAC 20-80-40	Amended	18:12 VA.R. 1660	3/27/02
8 VAC 20-80-54	Amended	18:12 VA.R. 1661	3/27/02
8 VAC 20-80-56	Amended	18:12 VA.R. 1664	3/27/02
8 VAC 20-80-60	Amended	18:12 VA.R. 1666	3/27/02
8 VAC 20-80-66	Amended	18:12 VA.R. 1668	3/27/02
8 VAC 20-80-70	Amended	18:12 VA.R. 1671	3/27/02
8 VAC 20-80-76	Amended	18:12 VA.R. 1676	3/27/02
8 VAC 20-630-10 through 8 VAC 20-630-70	Added	18:12 VA.R. 1683-1684	3/28/02
8 VAC 40-70-10 through 8 VAC 40-70-50	Amended	18:21 VA.R. 2770-2773	7/1/02
8 VAC 40-120-10 through 8 VAC 40-120-50	Amended	18:21 VA.R. 2774-2778	7/31/02
8 VAC 40-120-55	Added	18:21 VA.R. 2778	7/31/02
8 VAC 40-120-60 through 8 VAC 40-120-140	Amended	18:21 VA.R. 2778-2787	7/31/02
8 VAC 40-120-190	Amended	18:21 VA.R. 2787	7/31/02
8 VAC 40-120-210 through 8 VAC 40-120-230	Amended	18:21 VA.R. 2787-2788	7/31/02
8 VAC 40-120-250	Amended	18:21 VA.R. 2788	7/31/02
8 VAC 40-120-270	Amended	18:21 VA.R. 2788	7/31/02
8 VAC 40-120-280	Amended	18:21 VA.R. 2788	7/31/02
8 VAC 40-130-10	Amended	18:21 VA.R. 2789	7/1/02
8 VAC 40-130-25	Added	18:21 VA.R. 2790	7/1/02
8 VAC 40-130-30	Amended	18:21 VA.R. 2790	7/1/02
8 VAC 40-130-50	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-70	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-90	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-100	Repealed	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-120	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-130	Amended	18:21 VA.R. 2791	7/1/02
8 VAC 40-130-140	Repealed	18:21 VA.R. 2792	7/1/02
8 VAC 40-130-150 through 8 VAC 40-130-180	Amended	18:21 VA.R. 2792	7/1/02
8 VAC 40-130-200	Amended	18:21 VA.R. 2792	7/1/02
8 VAC 40-130-220	Amended	18:21 VA.R. 2793	7/1/02
Title 9. Environment			
9 VAC 5-10-10	Amended	18:21 VA.R. 2793	8/1/02
9 VAC 5-10-20	Amended	18:21 VA.R. 2794	8/1/02
9 VAC 5-20-180	Amended	18:21 VA.R. 2800	8/1/02
9 VAC 5-40-10	Amended	18:21 VA.R. 2802	8/1/02
9 VAC 5-40-20	Amended	18:21 VA.R. 2803	8/1/02
9 VAC 5-40-30	Amended	18:21 VA.R. 2807	8/1/02
9 VAC 5-40-40	Amended	18:21 VA.R. 2808	8/1/02
9 VAC 5-40-50	Amended	18:21 VA.R. 2809	8/1/02
9 VAC 5-40-160 through 9 VAC 5-40-230	Repealed	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-50-10	Amended	18:21 VA.R. 2810	8/1/02
9 VAC 5-50-20	Amended	18:21 VA.R. 2810	8/1/02
9 VAC 5-50-30	Amended	18:21 VA.R. 2813	8/1/02
9 VAC 5-50-40	Amended	18:21 VA.R. 2814	8/1/02
9 VAC 5-50-50	Amended	18:21 VA.R. 2815	8/1/02
9 VAC 5-50-160 through 9 VAC 5-50-230	Repealed	18:14 VA.R. 1840-1844	5/1/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-50-240	Amended	18:20 VA.R. 2586	9/1/02
9 VAC 5-50-250	Amended	18:20 VA.R. 2586	9/1/02
9 VAC 5-50-260	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-50-320	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-50-390	Amended	18:20 VA.R. 2587	9/1/02
9 VAC 5-60-10	Amended	18:21 VA.R. 2816	8/1/02
9 VAC 5-60-20	Amended	18:21 VA.R. 2816	8/1/02
9 VAC 5-60-30	Amended	18:21 VA.R. 2817	8/1/02
9 VAC 5-60-200 through 9 VAC 5-60-270	Added	18:14 VA.R. 1836-1840	5/1/02
9 VAC 5-60-200	Erratum	18:17 VA.R. 2183	--
9 VAC 5-60-300 through 9 VAC 5-60-370	Added	18:14 VA.R. 1840-1844	5/1/02
9 VAC 5-60-300	Erratum	18:17 VA.R. 2183	--
9 VAC 5-80-10	Repealed	18:20 VA.R. 2587	9/1/02
9 VAC 5-80-11	Repealed	18:20 VA.R. 2608	9/1/02
9 VAC 5-80-1100 through 9 VAC 5-80-1320	Added	18:20 VA.R. 2587-2612	9/1/02
9 VAC 5-80-1250	Erratum	18:23 VA.R. 3136	--
9 VAC 5-80-2000 through 9 VAC 5-80-2090	Amended	18:14 VA.R. 1845-1852	5/1/02
9 VAC 5-80-2100	Repealed	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2110	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2120	Amended	18:14 VA.R. 1852	5/1/02
9 VAC 5-80-2150	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2160	Repealed	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2180	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2190	Amended	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2200	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2210	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2220	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2230	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-80-2240	Added	18:14 VA.R. 1853	5/1/02
9 VAC 5-91-20	Amended	18:20 VA.R. 2613	10/1/02
9 VAC 5-91-30	Amended	18:20 VA.R. 2619	10/1/02
9 VAC 5-91-41	Repealed	18:20 VA.R. 2621	10/1/02
9 VAC 5-91-50	Amended	18:20 VA.R. 2621	10/1/02
9 VAC 5-91-70	Amended	18:20 VA.R. 2622	10/1/02
9 VAC 5-91-120	Amended	18:20 VA.R. 2622	10/1/02
9 VAC 5-91-160 through 9 VAC 5-91-230	Amended	18:20 VA.R. 2622-2623	10/1/02
9 VAC 5-91-260	Amended	18:20 VA.R. 2623	10/1/02
9 VAC 5-91-270	Amended	18:20 VA.R. 2623	10/1/02
9 VAC 5-91-290 through 9 VAC 5-91-340	Amended	18:20 VA.R. 2623-2625	10/1/02
9 VAC 5-91-360	Amended	18:20 VA.R. 2625	10/1/02
9 VAC 5-91-370	Amended	18:20 VA.R. 2625	10/1/02
9 VAC 5-91-380	Amended	18:20 VA.R. 2626	10/1/02
9 VAC 5-91-410 through 9 VAC 5-91-450	Amended	18:20 VA.R. 2626-2636	10/1/02
9 VAC 5-91-460	Repealed	18:20 VA.R. 2636	10/1/02
9 VAC 5-91-470	Repealed	18:20 VA.R. 2636	10/1/02
9 VAC 5-91-480 through 9 VAC 5-91-620	Amended	18:20 VA.R. 2636-2639	10/1/02
9 VAC 5-91-650 through 9 VAC 5-91-720	Amended	18:20 VA.R. 2639-2641	10/1/02
9 VAC 5-91-680	Erratum	18:23 VA.R. 3136	--
9 VAC 5-91-740	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-750	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-770	Repealed	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-780	Repealed	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-790	Amended	18:20 VA.R. 2641	10/1/02
9 VAC 5-91-800	Amended	18:20 VA.R. 2642	10/1/02
9 VAC 5-140-10 through 9 VAC 5-140-940	Added	18:20 VA.R. 2654-2657	7/17/02
9 VAC 5-140-20	Erratum	18:22 VA.R. 2953	--

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-60	Erratum	18:22 VA.R. 2953	--
9 VAC 5-140-430	Erratum	18:22 VA.R. 2953	--
9 VAC 5-140-860	Erratum	18:22 VA.R. 2953	--
9 VAC 5-140-870	Erratum	18:22 VA.R. 2953	--
9 VAC 10-20-40	Erratum	18:13 VA.R. 1763	--
9 VAC 10-20-130	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-181	Erratum	18:13 VA.R. 1764	--
9 VAC 10-20-191	Erratum	18:13 VA.R. 1764	--
9 VAC 20-60	Erratum	18:12 VA.R. 1714	--
9 VAC 20-60-1285	Amended	18:21 VA.R.	7/1/02-6/30/03
Appendix 3.1 of 9 VAC 20-90	Amended	18:21 VA.R.	7/1/02-6/30/03
9 VAC 20-120-10	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-20	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-40 through 9 VAC 20-120-100	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-120	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-130	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-150 through 9 VAC 20-120-180	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-200 through 9 VAC 20-120-310	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-330	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-340	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-360	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-370	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-380	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-390	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-410 through 9 VAC 20-120-480	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-500	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-530	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-540	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-560	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-590	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-640	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-680 through 9 VAC 20-120-760	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-770 through 9 VAC 20-120-800	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-810	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-835	Added	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-840	Amended	18:18 VA.R. 2287	6/19/02
9 VAC 20-120-880	Amended	18:18 VA.R. 2287	6/19/02
Appendix 10.1	Repealed	18:18 VA.R. 2287	6/19/02
Appendix 10.4	Repealed	18:18 VA.R. 2287	6/19/02
9 VAC 20-160-10 through 9 VAC 20-160-40	Amended	18:18 VA.R. 2288-2290	7/1/02
9 VAC 20-160-50	Repealed	18:18 VA.R. 2290	7/1/02
9 VAC 20-160-60 through 9 VAC 20-160-120	Amended	18:18 VA.R. 2290-2292	7/1/02
9 VAC 20-160-130	Repealed	18:18 VA.R. 2292	7/1/02
9 VAC 25-20-110	Amended	18:21 VA.R.	7/1/02-6/30/03
9 VAC 25-20-120	Amended	18:21 VA.R.	7/1/02-6/30/03
9 VAC 25-20-130	Amended	18:21 VA.R.	7/1/02-6/30/03
9 VAC 25-60	Repealed	18:20 VA.R. 2657	7/17/02
9 VAC 25-194-10	Amended	18:19 VA.R. 2452	10/15/02
9 VAC 25-194-40 through 9 VAC 25-194-70	Amended	18:19 VA.R. 2452	10/15/02
9 VAC 25-194-80	Repealed	18:19 VA.R. 2452	10/15/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-260-5	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-50	Amended	17:16 VA.R. 2381	6/5/02**
9 VAC 25-260-55	Added	17:16 VA.R. 2381	6/5/02**
9 VAC 25-260-140	Amended	18:24 VA.R. 3289	*
9 VAC 25-260-155	Amended	18:24 VA.R. 3289	*
9 VAC 25-260-160	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-170	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-310	Amended	18:20 VA.R. 2659	*
9 VAC 25-260-390	Amended	18:20 VA.R. 2661	*
Title 10. Finance and Financial Institutions			
10 VAC 5-160-50	Added	18:19 VA.R. 2453	5/15/02
10 VAC 5-200-10 through 10 VAC 5-200-80	Added	18:24 VA.R. 3296-3299	7/22/02
Title 11. Gaming			
11 VAC 10-20-260 through 11 VAC 10-20-310	Amended	18:20 VA.R. 2661-2664	5/22/02
11 VAC 10-20-330	Amended	18:20 VA.R. 2664	5/22/02
11 VAC 10-20-340	Amended	18:20 VA.R. 2671	5/22/02
11 VAC 10-100-80	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-100	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-110	Repealed	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-140	Repealed	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-150	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-150	Erratum	18:23 VA.R. 3136	--
11 VAC 10-100-151	Added	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-152	Added	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-170	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-100-190	Amended	18:23 VA.R. 3097	7/1/02
11 VAC 10-110-10	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-20	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-40	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-60	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-80	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-90	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-150	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-110-180	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-20	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-40	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-50	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-80	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-90	Repealed	18:23 VA.R. 3098	7/1/02
11 VAC 10-120-100	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-130-10	Amended	18:20 VA.R. 2672	5/22/02
11 VAC 10-130-20	Amended	18:20 VA.R. 2673	5/22/02
11 VAC 10-130-51	Amended	18:20 VA.R. 2674	5/22/02
11 VAC 10-130-52	Added	18:20 VA.R. 2674	5/22/02
11 VAC 10-130-60	Amended	18:20 VA.R. 2674	5/22/02
11 VAC 10-140-10	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-30	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-40	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-60	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-130	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-140	Amended	18:23 VA.R. 3098	7/1/02

* 30 days after notice in the *Virginia Register* of EPA approval.

** Notice of effective date published in 18:17 VA.R. 2174

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11 VAC 10-140-170	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-180	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-140-310	Amended	18:23 VA.R. 3098	7/1/02
11 VAC 10-150-130	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-150-130	Erratum	18:23 VA.R. 3136	--
11 VAC 10-150-140	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-150-190	Added	18:23 VA.R. 3099	7/1/02
11 VAC 10-150-200	Added	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-10	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-20	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-90	Repealed	18:23 VA.R. 3099	7/1/02
11 VAC 10-160-120 through 11 VAC 10-160-150	Amended	18:23 VA.R. 3099	7/1/02
11 VAC 10-180-10	Amended	18:19 VA.R. 2453	5/10/02
11 VAC 10-180-20	Amended	18:19 VA.R. 2454	5/10/02
11 VAC 10-180-40 through 11 VAC 10-180-90	Amended	18:19 VA.R. 2455-2462	5/10/02
11 VAC 10-180-60	Erratum	18:20 VA.R. 2681	--
Title 12. Health			
12 VAC 5-65	Repealed	18:12 VA.R. 1685	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Added	18:12 VA.R. 1685-1688	3/27/02
12 VAC 5-66-10 through 12 VAC 5-66-80	Erratum	18:13 VA.R. 1764	--
12 VAC 5-120-10 through 12 VAC 5-120-90	Added	18:16 VA.R. 2057-2058	5/22/02
12 VAC 5-475-10 through 12 VAC 5-475-90	Added	18:12 VA.R. 1691	3/27/02
12 VAC 5-520-10	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-20	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-30	Erratum	18:18 VA.R. 2369	--
12 VAC 5-520-40 through 12 VAC 5-520-70	Repealed	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-80	Amended	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-90 through 12 VAC 5-520-120	Repealed	18:15 VA.R. 1969	5/8/02
12 VAC 5-520-130 through 12 VAC 5-520-210	Added	18:15 VA.R. 1969	5/8/02
12 VAC 5-590-10	Amended	18:19 VA.R. 2462	7/3/02
12 VAC 5-590-370	Amended	18:19 VA.R. 2468	7/3/02
12 VAC 5-590-370	Erratum	18:22 VA.R. 2953	--
12 VAC 5-590-410	Amended	18:19 VA.R. 2474	7/3/02
12 VAC 5-590-420	Amended	18:19 VA.R. 2477	7/3/02
12 VAC 5-590-420	Erratum	18:22 VA.R. 2954	--
12 VAC 5-590-440	Amended	18:19 VA.R. 2490	7/3/02
12 VAC 5-590-500	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-530	Amended	18:19 VA.R. 2496	7/3/02
12 VAC 5-590-540	Amended	18:19 VA.R. 2502	7/3/02
12 VAC 5-590-550	Amended	18:19 VA.R. 2504	7/3/02
12 VAC 5-590 Appendix B	Amended	18:19 VA.R. 2505	7/3/02
12 VAC 5-590 Appendix F	Amended	18:19 VA.R. 2506	7/3/02
12 VAC 5-615-10 through 12 VAC 5-615-470	Added	18:18 VA.R. 2293-2300	7/1/02
12 VAC 30-40-220	Amended	18:18 VA.R. 2304	7/1/02
12 VAC 30-40-280	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-280	Amended	18:23 VA.R. 3099	9/1/02
12 VAC 30-40-290	Amended	18:18 VA.R. 2307	7/1/02
12 VAC 30-40-345	Amended	18:18 VA.R. 2308	7/1/02
12 VAC 30-50-190	Amended	18:18 VA.R. 2309	7/1/02
12 VAC 30-50-210	Amended	18:18 VA.R. 2310	7/1/02
12 VAC 30-60-300	Amended	18:18 VA.R. 2312	6/20/02
12 VAC 30-60-303	Added	18:18 VA.R. 2313	6/20/02
12 VAC 30-60-307	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-312	Added	18:18 VA.R. 2315	6/20/02
12 VAC 30-60-316	Added	18:18 VA.R. 2316	6/20/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-60-318	Added	18:18 VA.R. 2316	6/20/02
12 VAC 30-70-221 emer	Amended	18:22 VA.R. 2936	7/1/02-6/30/03
12 VAC 30-70-281 emer	Amended	18:22 VA.R. 2938	7/1/02-6/30/03
12 VAC 30-70-351 emer	Amended	18:22 VA.R. 2939	7/1/02-6/30/03
12 VAC 30-80-20	Amended	18:21 VA.R. 2818	8/1/02
12 VAC 30-80-20 emer	Amended	18:22 VA.R. 2939	7/1/02-6/30/03
12 VAC 30-80-25	Added	18:21 VA.R. 2820	8/1/02
12 VAC 30-80-40 emer	Amended	18:22 VA.R. 2941	7/1/02-6/30/03
12 VAC 30-90-10	Amended	18:18 VA.R. 2319	7/1/02
12 VAC 30-90-20	Amended	18:18 VA.R. 2320	7/1/02
12 VAC 30-90-38	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-40	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-41	Amended	18:18 VA.R. 2321	7/1/02
12 VAC 30-90-41.1 emer	Added	18:23 VA.R. 3103	7/1/02-6/30/03
12 VAC 30-90-60	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-271	Amended	18:18 VA.R. 2324	7/1/02
12 VAC 30-90-272	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-280	Amended	18:18 VA.R. 2325	7/1/02
12 VAC 30-90-300	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-301	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-302	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-303	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-304	Repealed	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-305	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-306	Added	18:18 VA.R. 2327	7/1/02
12 VAC 30-90-306	Erratum	18:20 VA.R. 2681	--
12 VAC 30-90-307	Added	18:18 VA.R. 2328	7/1/02
12 VAC 30-110-720	Amended	18:21 VA.R. 2821	8/1/02
12 VAC 30-110-741	Amended	18:21 VA.R. 2823	8/1/02
12 VAC 30-110-831	Added	18:21 VA.R. 2823	8/1/02
12 VAC 30-120-10 emer	Amended	18:12 VA.R. 1698	2/1/02-1/31/03
12 VAC 30-120-40 emer	Amended	18:12 VA.R. 1699	2/1/02-1/31/03
12 VAC 30-120-50 emer	Amended	18:12 VA.R. 1701	2/1/02-1/31/03
12 VAC 30-120-55 emer	Added	18:12 VA.R. 1702	2/1/02-1/31/03
12 VAC 30-120-60 emer	Amended	18:12 VA.R. 1704	2/1/02-1/31/03
12 VAC 30-141-90	Erratum	18:18 VA.R. 2369	--
12 VAC 30-150-10 through 12 VAC 30-150-100	Added	18:17 VA.R. 2174	6/6/02
12 VAC 30-150	Erratum	18:18 VA.R. 2370	--
12 VAC 35-20	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-102	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-105-10 through 12 VAC 35-105-1410	Added	18:18 VA.R. 2331-2365	9/19/02
12 VAC 35-140	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-150	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-160	Repealed	18:12 VA.R. 1691	3/27/02
12 VAC 35-170	Repealed	18:18 VA.R. 2330	9/19/02
12 VAC 35-200-10	Amended	18:16 VA.R. 2059	5/22/02
12 VAC 35-200-20	Amended	18:16 VA.R. 2060	5/22/02
12 VAC 35-200-30	Amended	18:16 VA.R. 2061	5/22/02
Title 13. Housing			
13 VAC 5-51-11	Amended	18:22 VA.R. 2928	8/15/02
13 VAC 5-51-180	Amended	18:22 VA.R. 2929	8/15/02
13 VAC 5-51-181	Amended	18:22 VA.R. 2929	8/15/02
13 VAC 5-51-182	Amended	18:22 VA.R. 2930	8/15/02
Title 14. Insurance			
14 VAC 5-70-10 through 14 VAC 5-70-40	Amended	18:22 VA.R. 2931-2932	7/1/02
14 VAC 5-70-80	Amended	18:22 VA.R. 2932	7/1/02

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-70-130	Amended	18:22 VA.R. 2933	7/1/02
14 VAC 5-80-160 through 14 VAC 5-80-190	Repealed	18:14 VA.R. 1896	3/31/02
14 VAC 5-140-20 through 14 VAC 5-140-90	Amended	18:21 VA.R. 2824	7/1/02
14 VAC 5-390-20	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-30	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-390-40	Amended	18:12 VA.R. 1692	2/1/02
14 VAC 5-395-20	Amended	18:21 VA.R. 2825	6/3/02
14 VAC 5-395-30 through 14 VAC 5-395-60	Amended	18:21 VA.R. 2825	6/3/02
Title 18. Professional and Occupational Licensing			
18 VAC 41-20-10 through 18 VAC 41-20-280 emer	Added	18:23 VA.R. 3103-3113	7/2/02-7/1/03
18 VAC 45-10-10	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-20	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-30	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-50	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 45-10-90	Amended	18:19 VA.R. 2508	7/8/02
18 VAC 60-20-10 emer	Amended	18:24 VA.R. 3301	7/19/02-7/18/03
18 VAC 60-20-90 emer	Amended	18:24 VA.R. 3303	7/19/02-7/18/03
18 VAC 60-20-106 emer	Added	18:24 VA.R. 3303	7/19/02-7/18/03
18 VAC 60-20-200 emer	Amended	18:24 VA.R. 3302	7/19/02-7/18/03
18 VAC 60-20-210 emer	Amended	18:24 VA.R. 3302	7/19/02-7/18/03
18 VAC 60-20-220 emer	Amended	18:24 VA.R. 3302	7/19/02-7/18/03
18 VAC 85-20-225 emer	Added	18:24 VA.R. 3307	7/19/02-7/18/03
18 VAC 85-20-280 emer	Amended	18:22 VA.R. 2943	6/19/02-6/18/03
18 VAC 85-20-285 emer	Added	18:22 VA.R. 2944	6/19/02-6/18/03
18 VAC 85-20-290 emer	Amended	18:22 VA.R. 2944	6/19/02-6/18/03
18 VAC 85-20-300 emer	Amended	18:22 VA.R. 2944	6/19/02-6/18/03
18 VAC 85-40-55 emer	Added	18:24 VA.R. 3307	7/19/02-7/18/03
18 VAC 85-50-10 emer	Amended	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-35	Added	18:21 VA.R. 2826	7/31/02
18 VAC 85-50-40 emer	Amended	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-56	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 85-50-59 emer	Added	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-101 emer	Amended	18:24 VA.R. 3309	7/19/02-7/18/03
18 VAC 85-50-110 emer	Amended	18:24 VA.R. 3310	7/19/02-7/18/03
18 VAC 85-50-115	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 85-50-115 emer	Amended	18:24 VA.R. 3310	7/19/02-7/18/03
18 VAC 85-50-170	Repealed	18:21 VA.R. 2826	7/31/02
18 VAC 85-80-65 emer	Added	18:24 VA.R. 3307	7/19/02-7/18/03
18 VAC 85-101-145 emer	Added	18:24 VA.R. 3308	7/19/02-7/18/03
18 VAC 85-110-145 emer	Added	18:24 VA.R. 3308	7/19/02-7/18/03
18 VAC 85-120-85 emer	Added	18:24 VA.R. 3308	7/19/02-7/18/03
18 VAC 90-20-200	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 90-20-210	Amended	18:21 VA.R. 2826	7/31/02
18 VAC 90-20-271 emer	Added	18:24 VA.R. 3311	7/19/02-7/18/03
18 VAC 90-30-20	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-100	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-105	Added	18:15 VA.R. 1970	5/8/02
18 VAC 90-30-220	Amended	18:15 VA.R. 1970	5/8/02
18 VAC 90-40-20	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-50	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-55	Added	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-60	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 90-40-130	Amended	18:15 VA.R. 1977	5/8/02
18 VAC 105-20-75 emer	Added	18:24 VA.R. 3311	7/19/02-7/18/03
18 VAC 110-20-20	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-75 emer	Added	18:24 VA.R. 3312	7/19/02-7/18/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-20-240 emer	Amended	18:24 VA.R. 3314	7/19/02-7/18/03
18 VAC 110-20-255 emer	Added	18:24 VA.R. 3315	7/19/02-7/18/03
18 VAC 110-20-270	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-275 emer	Added	18:24 VA.R. 3315	7/19/02-7/18/03
18 VAC 110-20-280	Amended	18:12 VA.R. 1693	3/27/02
18 VAC 110-20-285	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 110-20-320 emer	Amended	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-400 emer	Amended	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-430	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 110-20-430 emer	Repealed	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-530 emer	Amended	18:24 VA.R. 3316	7/19/02-7/18/03
18 VAC 110-20-730 emer	Added	18:24 VA.R. 3317	7/19/02-7/18/03
18 VAC 125-10-10	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-20	Amended	18:12 VA.R. 1694	3/27/02
18 VAC 125-10-30	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-40	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-60	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-70	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-80	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-10-100	Amended	18:12 VA.R. 1695	3/27/02
18 VAC 125-30 (Forms)	Amended	18:15 VA.R. 1985	--
18 VAC 125-30-10 through 18 VAC 125-30-50	Amended	18:13 VA.R. 1753-1754	4/10/02
18 VAC 125-30-60	Repealed	18:13 VA.R. 1754	4/10/02
18 VAC 125-30-80	Amended	18:13 VA.R. 1755	4/10/02
18 VAC 125-30-90	Amended	18:13 VA.R. 1755	4/10/02
18 VAC 150-20-135 emer	Added	18:24 VA.R. 3320	7/19/02-7/18/03
Title 20. Public Utilities and Telecommunications			
20 VAC 5-300-90	Amended	18:21 VA.R. 2832	6/7/02
20 VAC 5-312-90	Erratum	18:23 VA.R. 3136	--
20 VAC 5-423-10 through 20 VAC 5-423-90	Added	18:14 VA.R. 1899-1902	3/6/02
Title 22. Social Services			
22 VAC 15-10-10	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-30	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-40	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-50	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-60	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 15-10-70	Amended	18:14 VA.R. 1902	5/1/02
22 VAC 40-41-10	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-20	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-40	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-50	Amended	18:12 VA.R. 1696	4/1/02
22 VAC 40-41-55	Added	18:12 VA.R. 1696	4/1/02
22 VAC 40-685-10 emer	Added	18:24 VA.R. 3320	9/1/02-8/31/03
22 VAC 40-685-20 emer	Added	18:24 VA.R. 3321	9/1/02-8/31/03
22 VAC 40-685-30 emer	Added	18:24 VA.R. 3321	9/1/02-8/31/03
22 VAC 40-690 (Forms)	Amended	18:22 VA.R. 2945	--
22 VAC 40-880-10	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-30	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-60	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-80	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-110	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-120	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-130	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-170	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-190	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-200 through 22 VAC 40-880-300	Amended	18:14 VA.R. 1903	4/24/02

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-880-270	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-290	Erratum	18:17 VA.R. 2183	--
22 VAC 40-880-320	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-330	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-340	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-360	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-380	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-385	Added	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-410	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-430	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-440	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-480 through 22 VAC 40-880-520	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-550	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-560	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-650	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-670	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-680	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-700	Amended	18:14 VA.R. 1903	4/24/02
22 VAC 40-880-720	Added	18:14 VA.R. 1903	4/24/02
22 VAC 40-910-10 through 22 VAC 40-910-100 emer	Added	18:24 VA.R. 3322-3325	9/1/02-8/31/03
Title 24. Transportation and Motor Vehicles			
24 VAC 15-100	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-110	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-120	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-130	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-140	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-150	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-160	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-170	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-180	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-190	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-200	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 15-210	Repealed	18:22 VA.R. 2933	6/26/02
24 VAC 30-550-10	Amended	18:23 VA.R. 3100	7/2/02

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Pesticide Control Board intends to consider amending regulations entitled: **2 VAC 20-30. Rules and Regulations Governing the Pesticide Fees Charged By the Department of Agriculture and Consumer Services Under the Virginia Pesticide Control Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amendments relating to pesticide fees charged. The agency invites comment on whether there should be an advisor.

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

Statutory Authority: §§ 3.1-249.30, 3.1-249.35, 3.1-249.36, 3.1-249.47, and 3.1-249.55 of the Code of Virginia.

Public comments may be submitted until October 14, 2002.

Contact: Marvin A. Lawson, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, or e-mail mlawson@vdacs.state.va.us.

VA.R. Doc. No. R02-298; Filed July 23, 2002, 1:28 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Pesticide Control Board intends to consider amending regulations entitled: **2 VAC 20-40. Rules and Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Department of Agriculture and Consumer Services Operating Under the Authority of the Virginia Pesticide Control Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including making the regulation up to date and consistent with statute. The agency invites comment on whether there should be an advisor.

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

Statutory Authority: §§ 3.1-249.30, 3.1-249.46, 3.1-249.49, and 3.1-249.50 of the Code of Virginia.

Public comments may be submitted until October 14, 2002.

Contact: Marvin A. Lawson, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, Richmond, VA 23219, telephone (804) 371-6558, FAX (804) 371-8598, or e-mail mlawson@vdacs.state.va.us.

VA.R. Doc. No. R02-299; Filed July 23, 2002, 1:28 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-10. Public Participation Guidelines.** The purpose of the proposed action is to amend the Department of Mines, Minerals and Energy's Public Participation Guidelines. This regulation states how the department, the Board of Coal Mining Examiners, the Board of Mineral Mining Examiners and the Virginia Gas and Oil Board will (i) respond to petitions for rulemaking; (ii) maintain a regulatory mailing list; (iii) notify and include interested persons in the regulatory development process; and (iv) comply with the requirements for adopting regulations under the Administrative Process Act.

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

Statutory Authority: §§ 2.2-4007, 45.1-161.3, 45.1-361.15, 45.1-161.28, and 45.1-161.292:19 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail saw@mme.state.va.us.

VA.R. Doc. No. R02-293; Filed July 19, 2002, 3:39 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-20. Board of Coal Mining Examiners Certification Requirements.** The purpose of the proposed action is to amend and update the regulation to be consistent with federal requirements and current industry practices. These regulations help to ensure that there are knowledgeable and qualified miners employed to perform specialized tasks required to mine coal in the coal mining industry. The amended subject matter will improve current instructor requirements. It will also amend miner application and examination requirements, certification requirements necessary of miners, operators and engineers in specific positions, reciprocity between states, continuing education, certification renewals, and first aid requirements of miners employed at underground and surface coal mines.

Notices of Intended Regulatory Action

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

Statutory Authority: §§ 45.1-161.28, 45.1-161.29, 45.1-161.34, and 45.1-161.35 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail saw@mme.state.va.us.

VA.R. Doc. No. R02-266; Filed July 18, 2002, 3:54 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider amending regulations entitled: **4 VAC 25-35. Certification Requirements for Mineral Miners.** The purpose of the proposed action is to amend and update the regulations to be consistent with federal requirements and current industry practices. These regulations help to ensure that there are knowledgeable and qualified miners employed in the mineral mining industry. The amended subject matter will improve current mineral mining application and examination requirements, certification requirements necessary of miners in specific positions, reciprocity between states, certification renewals, and first aid requirements of miners employed at underground and surface mineral mines.

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

Statutory Authority: § 45.1-161.46 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237 or e-mail saw@mme.state.va.us.

VA.R. Doc. No. R02-267; Filed July 18, 2002, 3:56 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to consider promulgating regulations entitled: **4 VAC 25-125. Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities.** The purpose of the proposed action is to develop regulations that will serve to protect mine workers from potential health and safety hazards through the implementation of equipment use procedures and by controlling the use of heavy equipment around coal and material stockpiles and bulk storage and handling facilities located at coal mine facilities that use underlying coal feeders.

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

Statutory Authority: §§ 45.1-161.3, 45.1-106, 45.1-161.107, and 45.1-254 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

Contact: Stephen A. Walz, Regulatory Coordinator, Department of Mines, Minerals and Energy, 202 N. Ninth St., 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3211, FAX (804) 692-3237, or e-mail saw@mme.state.va.us.

VA.R. Doc. No. R02-268; Filed July 18, 2002, 3:55 p.m.

TITLE 8. EDUCATION

BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to consider amending regulations entitled: **8 VAC 20-350. Regulations Governing the Operation of Proprietary Schools and the Issuing of Agent Permits.** The purpose of the proposed action is to amend the current regulation to remove the language dealing with proprietary schools for the disabled. New regulations specific to proprietary schools for students with disabilities will be promulgated as 8 VAC 20-670. The current action also proposes to (i) revise the regulations for proprietary schools to make them current and responsive to the needs of the schools; (ii) bring them into compliance with the Code of Virginia; and (iii) remove excess regulatory language not required in the Code of Virginia.

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

Statutory Authority: § 22.1-321 of the Code of Virginia.

Public comments may be submitted until September 2, 2002.

Contact: Robert Sine, Specialist, Proprietary School Programs, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2848, FAX (804) 225-2524 or e-mail rsine@mail.vak12ed.edu.

VA.R. Doc. No. R02-251; Filed July 8, 2002, 10:58 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to consider promulgating regulations entitled: **8 VAC 20-670. Regulations Governing the Operation of Private Day Schools for Students with Disabilities.** The purpose of the proposed action is to give clear, orderly requirements for the establishment and conduct of such schools. There have been several changes in the Code of Virginia and in applicable standards that need to be updated in the regulations. There are inconsistencies that need to be addressed including academic standards, behavior management and the elimination of fees for such schools.

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

Statutory Authority: § 22.1-321 of the Code of Virginia.

Public comments may be submitted until September 2, 2002.

Notices of Intended Regulatory Action

Contact: Carolyn Hodgins, Specialist, Private Day School Programs, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-4551, FAX (804) 225-2524 or e-mail chodgins@mail.vak12ed.edu.

VA.R. Doc. No. R02-252; Filed July 8, 2002, 10:58 a.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40. Existing Stationary Sources.** Section 111(d) of the Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to establish procedures under which states submit plans to control certain existing sources of certain pollutants. EPA implemented § 111(d) by promulgating Subpart B of 40 CFR Part 60, which establishes procedures and requirements for adoption and submittal of state plans for control of "designated pollutants" from "designated facilities." Designated pollutants are pollutants that are not included on a list published under § 108(a) of the Clean Air Act (National Ambient Air Quality Standards) or § 112(b)(1)(A) (hazardous air pollutants), but for which standards of performance for new sources have been established under § 111(b). A designated facility is an existing facility that emits a designated pollutant and that would be subject to a standard of performance for that pollutant if the existing facility were new. (See 18:24 VA.R. 3178-3180 August 12, 2002, for more detailed information.)

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act, 40 CFR Parts 51 and 60.

Public comments may be submitted until September 11, 2002.

Contact: Karen G. Sabasteanski, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, or e-mail kgsabastea@deq.state.va.us.

VA.R. Doc. No. R02-294; Filed July 22, 2002, 2:28 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-40. Existing Stationary Sources.** The purpose of the proposed action is to achieve the necessary VOC emissions reductions to stay within the budget limit in order to safeguard federal approval of transportation projects in Northern Virginia. (See 18:24 VA.R. 3180-3183 August 12, 2002, for more detailed information.)

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act, 40 CFR Parts 51 and 60.

Public comments may be submitted until September 11, 2002.

Contact: Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, or e-mail krsands@deq.state.va.us.

VA.R. Doc. No. R02-295; Filed July 22, 2002, 2:28 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **9 VAC 5-230. Regulation for On-Road Heavy-Duty Diesel Engines.** The purpose of the proposed action is to establish testing and certification procedures for manufacturers of on-road heavy-duty diesel engines sold in Virginia. This action is being taken pursuant to Virginia's gubernatorial commitment to the other states of the Ozone Transport Commission for the Northeast United States. (See 18:24 VA.R. 3183-3186 August 12, 2002, for more detailed information.)

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110, 111, 123, 129, 171, 172 and 182 of the Clean Air Act, 40 CFR Parts 51 and 60.

Public comments may be submitted until September 11, 2002.

Contact: Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, or e-mail krsands@deq.state.va.us.

VA.R. Doc. No. R02-296; Filed July 22, 2002, 2:28 p.m.

STATE WATER CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-91. Facility and Aboveground Storage Tank (AST) Regulations.** The purpose of this regulation is to: (i) establish requirements for registration of facilities and individual petroleum aboveground storage tanks (AST) located within the Commonwealth; (ii) develop standards and procedures to prevent pollution from new and existing ASTs; and (iii) provide requirements for the development of facility oil discharge contingency plans for facilities with an aggregate capacity of 25,000 gallons or greater of oil.

Substance: The amendments will conform the regulation to changes in state law, clarify applicability of the regulation and clarify certain aspects of implementation of the regulation. For

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example the definition of storage capacity would be amended to clarify that the regulation does not apply to containers and references to the local building official would be amended to conform to the language used in the 1996 edition of the Uniform Statewide Building Code.

Purpose: The primary goal for amending this regulation is to improve clarity and make the requirements more easily understandable by the individuals and entities affected and to bring applicable portions of the regulation into conformity with related laws and regulations.

Need: This regulation continues to protect public health and safety by implementation of measures to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks as well as to prevent and mitigate the effects of catastrophic oil spills. There are no potential issues that may need to be addressed as a result of the proposed amendments to the regulation.

Alternatives: Based on current statutes, there are no alternatives to this regulation that are less burdensome. DEQ will evaluate legislative amendments to further lessen the administrative requirements of this regulation on the regulated community.

Public Participation: The board is seeking comments on the intended regulatory action, including the costs and benefits of the alternatives stated in this notice or other alternatives and the impact on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period and should be sent to Sam Lillard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, phone (804) 698-4276, fax (804) 698-4266, or email slillard@deq.state.va.us.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

Participatory Approach: The board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

Statutory Authority: §§ 62.1-44.15, 62.1-44.34:15, 62.1-44.35:15.1, 62.1-44.34:19.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m., October 9, 2002.

Contact: Sam Lillard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4276, FAX (804) 698-4266, or e-mail slillard@deq.state.va.us.

VA.R. Doc. No. R02-307; Filed July 30, 2002, 8:29 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-580**.

Underground Storage Tanks: Technical Standards and Corrective Action Requirements. The purpose of the proposed action is to amend the regulation in response to a periodic review. At a minimum the amendments will incorporate changes in the law and clarify that UST systems that missed the deadline for upgrade must be closed in accordance with the requirements of the regulation.

Purpose: The purpose of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation (UST Technical Regulation) are to reduce the number of releases from Underground Storage Tanks, increase the ability to quickly detect and minimize contamination resulting from these releases, and ensure adequate cleanup of releases. The goals for the amended regulation remain the same as the goals for the present regulation. The regulation needs to be amended to incorporate changes in the law made since the regulation was written.

Need: The UST Technical Regulation continues to be needed to protect human health and the environment. The regulation needs to be amended, however, to incorporate changes in the law. The amendment of the regulation will help the regulated community to better understand the regulation and also enable DEQ to more effectively enforce the requirements of the regulation.

Substance: Possible amendments to the regulation include (i) adding provisions requiring those UST systems that were not upgraded by the December 1998 deadline to be closed in accordance with the regulation; (ii) adding a provision that would allow the board to require an owner to submit a notification form to report current tank information; (iii) clarifying and conforming the regulation to state and federal laws and regulations; and (iv) other changes determined to be necessary in response to public participation activities.

Alternatives: Underground Storage Tank Regulations exist at the federal level as well as within the Commonwealth. One alternative that Virginia has is to repeal its UST Technical Regulation and rely on the federal UST regulation. This alternative is not recommended. Placing the program and regulation back at the federal level will result in delays for tank owners and persons wishing to clean up releases. These delays will likely result in increased costs to the regulated community and increased damages to Virginia's environment.

A second alternative is to leave the UST Technical Regulation as it presently exists. This option is not recommended. Several Virginia laws have been modified since the UST Technical Regulation was promulgated. Conflicts between the regulation and current laws create confusion, increase staff time explaining the discrepancies to the regulated community, and may hinder enforcement actions.

A third alternative is to amend the UST Technical Regulation to incorporate statutory changes that have been made since the regulation was promulgated. This alternative is recommended as the least burdensome to the citizens of the Commonwealth. Virginia's UST program and regulation are intended to meet the needs of the citizens of the Commonwealth of Virginia. Amending the regulation will reduce confusion caused by discrepancies between the

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regulation and current Virginia Laws. Amending the regulation also will allow DEQ to more effectively enforce the regulation, thereby, reducing risks to human health and the environment posed by leaking underground storage tanks.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period on October 9, 2002. Comments should be sent to Fred K. Cunningham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, (804) 698-4285, fax (804) 698-4266, or email fkcunningh@deq.state.va.us.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

Participatory Approach: The board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

Statutory Authority: §§ 62-1.44.15 and 62.1-44.34:8-9 of the Code of Virginia and 40 CFR Parts 280 and 281.

Public comments may be submitted until 5 p.m., October 9, 2002.

Contact: Fred Cunningham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4285, FAX (804) 698-4266 or e-mail fkcunningh@deq.state.va.us.

VA.R. Doc. No. R02-308; Filed July 30, 2002, 8:28 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements.** The purpose of the proposed action is to propose administrative changes, to incorporate ways to reduce the cost of compliance with the existing requirements and such other amendments necessary in response to public comment.

Purpose: According to the Virginia Petroleum UST Financial Responsibility Requirements (9 VAC 25-590), owners/operators of regulated petroleum USTs must demonstrate that they have the financial resources available to pay for the costs of cleanups and third party lawsuits in the event of a release from a regulated tank. As part of the proposed regulatory action, the department is exploring alternative methods for achieving compliance with the UST financial responsibility requirements while continuing to meet the goals of the financial responsibility regulations. Specifically, the department is investigating ways to reduce

the cost of compliance with the regulation by proposing modified compliance requirements that are no less stringent than the existing requirements, but may be more cost effective to secure. The department will also propose administrative changes to the regulation which do not affect the regulatory requirements. In addition to the changes proposed by the Department of Environmental Quality, the department will also solicit public input during the review and consider alternatives presented by the regulated community which also meet the goals of the regulation.

Need: The main purpose of pursuing a regulatory amendment to the Virginia Petroleum Storage Tank Financial Responsibility Requirements is to identify less burdensome and less intrusive alternatives for achieving compliance with the regulation. While the current regulation does provide significant relief to owners/operators regarding financial responsibility demonstration through the Virginia Petroleum Storage Tank Fund, some of the compliance mechanisms available to owners/operators have become less feasible given the rising costs associated with establishing the mechanisms.

The department is exploring other ways to comply with the regulatory requirements while continuing to meet the goals of the regulation and protect the health, safety or welfare of citizens. The proposed regulatory action will be an amendment to the existing UST financial responsibility regulations. The specific and measurable goals of the regulation are to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish procedures and requirements for owners/operators to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Through the regulatory development process, the department will explore alternative methods for achieving compliance with the UST financial responsibility regulations while continuing to meet the goals of the financial responsibility regulation. Specifically, the department is investigating ways to reduce the cost of compliance with the regulation by proposing modified compliance requirements in an effort to reduce the costs associated with securing some of the allowable mechanisms. The department will also propose administrative changes to the regulation that do not affect the regulatory requirements, and will solicit public input during the review and consider alternatives presented by the regulated community that also meet the goals of the regulation.

Once the department identifies suitable alternatives to include in the proposed amendments, the department must seek approval from the U.S. Environmental Protection Agency in order to maintain state supremacy in operating the Petroleum UST financial responsibility program.

Substance: The department is exploring alternative methods for achieving compliance with the UST financial responsibility requirements while continuing to meet the goals of the financial responsibility regulations. Specifically, the department is investigating ways to reduce the cost of compliance with the regulation by proposing modified

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compliance requirements. This will, in effect, reduce the costs associated with achieving and maintaining compliance with the regulation. The department will also propose administrative changes to the regulation that will clarify existing requirements within the regulation. In addition to the proposed changes, the department will also solicit public input during the review and consider alternatives presented by the regulated community that also meet the goals of the regulation.

Alternatives: The department will research current industry practices to identify alternative methods for achieving compliance with the UST financial responsibility requirements. The department will also solicit public input during the review process and consider alternatives presented by the regulated community that also meet the goals of the regulation. To date, the only alternative the department has considered fully has been elimination of the entire regulation. The department has determined, however, that the UST financial responsibility regulations have been developed under the specific statutory direction of the Virginia Code and, therefore, must remain intact.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

Participatory Approach: The board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

Statutory Authority: § 62.1-44.15 and 62.1-44.34:12 of the Code of Virginia and 40 CFR Part 280.

Public comments may be submitted until 5 p.m., October 9, 2002.

Contact: Cara L. Kail, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4053, FAX (804) 698-4327 or e-mail: clkail@deq.state.va.us.

VA.R. Doc. No. R02-309; Filed July 30, 2002, 8:27 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-40. Eligibility Conditions and Requirements.** The purpose of the proposed action is to simplify Medicaid eligibility requirements for counting income for aged, blind, and disabled individuals and by conforming methods for counting certain resources of Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs) and Qualified Individuals (Qis) with the methods for counting the resources of other Medicaid aged, blind, and disabled recipients. Current Medicaid policy requires that the value of in-kind support and maintenance be counted as income in determining the financial eligibility of individuals under the Aged, Blind, or Disabled Categorically Needy and Medically Needy groups. This regulatory change would eliminate the difficulty in and subjective nature of determining the fair market value of in-kind support and maintenance for all aged, blind, and disabled covered groups with the exception of the special income level group for institutionalized individuals, simplifying and more accurately assessing the financial eligibility criteria for such groups. In addition, the methods for counting specific types of real and personal property differ depending on the covered group for which the aged, blind, or disabled individual qualifies. This regulatory action proposes to remove this disparity. Also, the regulatory amendments will clarify exemptions for the former home of an institutionalized recipient, household goods and personal effects, and cemetery plots. Additionally, the regulations will clarify that financial eligibility can be met anytime during a month if resources are within the applicable limits on any day in such month.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Patricia Sykes, Manager, Policy Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23239, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail psykes@dmass.state.va.us.

VA.R. Doc. No. R02-262; Filed July 11, 2002, 12:02 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services, and 12 VAC 30-80. Methods and Standards for Establishing Payment**

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Rates; Other Types of Care. The purpose of this regulatory action is to retain the Medicare methodology for reimbursing for outpatient hospital services in effect prior to August 1, 2000. This methodology provided for a 10% reduction in capital costs and a 5.8% reduction in operating costs. This action will also provide appropriate reimbursement for direct graduate medical education costs to those hospitals that operate such programs.

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

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

Public comments may be submitted until August 28, 2002, to Peterson Epps, Manager, Division of Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23239, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vsimmons@dmas.state.va.us.

VA.R. Doc. No. R02-229; Filed June 26, 2002, 2:46 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Services; 12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care; and 12 VAC 30-90, Methods and Standards for Establishing Payment Rates for Long-Term Care.** The purpose of the proposed action is to conform to changes in the appropriation act. Items 325 CC, 325 DD and 325 RR of the 2002 Acts of Assembly (Chapter 899) authorized the Department of Medical Assistance Services to increase reimbursement for government-owned public nursing homes, hospital and clinics consistent with the maximum amount allowed under federal laws and regulations. Federal regulations (42 CFR 447.272 and 42 CFR 477.321) allow aggregate payments for government-owned or operated hospitals, nursing homes, intermediate care facilities for the mentally retarded (ICFs-MR) or clinics up to 100% of a reasonable estimate of the amount that would be paid by Medicare. For periods prior to May 16, 2002, federal regulations allow aggregate payments for nonstate-owned or operated hospitals up to 150% of a reasonable estimate of the amount that would be paid by Medicare.

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

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

Public comments may be submitted until September 25, 2002.

Contact: William Lessard, Reimbursement Analyst, Division of Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300,

Richmond, VA 23219, telephone (804) 786-4593 or FAX (804) 786-1680.

VA.R. Doc. No. R02-317; Filed July 30, 2002, 12:26 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of this action is to revise the estimated acquisition cost used by the agency (the Average Wholesale Price) to discount it by 10.25% and to redefine the Virginia Maximum Allowable Cost. Both of these changes respond to legislative mandates contained in the appropriation act.

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

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; Chapter 899 of the 2002 Acts of Assembly.

Public comments may be submitted until September 25, 2002.

Contact: William Lessard, Reimbursement Analyst, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4593 or FAX (804) 786-1680.

VA.R. Doc. No. R02-230; Filed June 26, 2002, 2:48 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to comply with Chapter 899 of the 2002 Acts of Assembly, Item 325 EE to reimburse state academic health systems and academic health systems that operate under a state authority for services provided by affiliated physician groups based on the lesser of billed charges or the Medicare fee schedule.

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

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

Public comments may be submitted until September 25, 2002.

Contact: William Lessard, Reimbursement Analyst, Division of Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4593 or FAX (804) 786-1680.

VA.R. Doc. No. R02-318; Filed July 30, 2002, 12:21 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance

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Services intends to consider amending regulations entitled: **12 VAC 30-90. Methods and Standards for Establishing Payment Rates; Long-Term Care.** The purpose of this action is to revise the formula used to reimburse nursing facilities for indirect costs.

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

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

Public comments may be submitted until August 28, 2002.

Contact: William Reid, Financial and Auditing Services Practitioner III, 600 E. Broad St., Suite 500, Richmond, VA 23219, telephone (804) 786-5379, FAX (804) 786-0729 or e-mail breid@dmas.state.va.us.

VA.R. Doc. No. R02-236; Filed July 1, 2002, 4:21 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider promulgating regulations entitled: **12 VAC 30-141. Family Access to Medical Insurance Security Plan.** The purpose of the proposed action is to promulgate permanent regulations for the FAMIS program. While all areas of the FAMIS program and the existing emergency regulations will be subject to review, the department will focus its review on covered services, copayment policies, and policies for quality assurance reimbursement. Further, the department will focus on developing permanent regulations following its review, as well as regulations that would increase access to the FAMIS program for citizens of the Commonwealth, improve outreach and simplify the application process. This action is taken as a result of the need to adopt permanent regulations to replace the emergency regulations currently in place.

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

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

Public comments may be submitted until September 25, 2002.

Contact: Cynthia B. Jones, Deputy Director, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4626 or FAX (804) 376-1680.

VA.R. Doc. No. R02-319; Filed July 30, 2002, 12:30 p.m.

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

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Mental Health, Mental Retardation and Substance Abuse Services intends to consider amending regulations entitled: **12 VAC 35-105. Rules and Regulations for the Licensing of Providers of**

Mental Health, Mental Retardation and Substance Abuse Services. The purpose of the proposed action is to incorporate licensing provisions for licensed day support, crisis stabilization, and in-home support services funded through the Individual and Family Developmental Disabilities (IFDDS) Waiver.

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

Statutory Authority: §§ 37.1-10, 37.1-179 and 51.5-14.1 of the Code of Virginia.

Public comments may be submitted until September 26, 2002.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885 or FAX (804) 692-0066.

VA.R. Doc. No. R02-322; Filed August 2, 2002, 10 a.m.

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to consider promulgating regulations entitled: **16 VAC 25-145. Safety Standards for Fall Protection in Steel Erection, Construction Industry.** The purpose of the proposed action is to establish in regulation the current VOSH administrative policy regarding fall protection for steel erection workers from falls at or above 10 feet.

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

Statutory Authority: § 40.1-22 of the Code of Virginia.

Public comments may be submitted until September 12, 2002.

Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418 or e-mail rlc@doli.state.va.us.

VA.R. Doc. No. R02-257; Filed July 11, 2002, 2:39 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board for Barbers and Cosmetology intends to consider promulgating regulations entitled: **18 VAC 41-40. Wax Technician Regulations.** The purpose of the proposed action is to promulgate regulations governing the licensure and practice of waxing as directed by 2002 Acts of Assembly, Chapter 797.

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

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

Public comments may be submitted until September 25, 2002.

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

VA.R. Doc. No. R02-326; Filed August 7, 2002, 11:25 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board for Barbers and Cosmetology intends to consider promulgating regulations entitled: **18 VAC 41-50. Tattooing and Body-Piercing Regulations.** The purpose of the proposed action is to promulgate regulations governing the licensure and practice of tattooing and body-piercing as directed by 2002 Acts of Assembly, Chapter 869.

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

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

Public comments may be submitted until September 25, 2002.

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

VA.R. Doc. No. R02-327; Filed August 7, 2002, 11:25 a.m.

BOARD FOR GEOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending regulations entitled: **18 VAC 70-20. Rules and Regulations for the Virginia Board for Geology.** The purpose of the proposed action is to make clarifying changes, review renewal and reinstatement requirements and review fees.

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

Statutory Authority: §§ 54.1-201 and 54.1-1402 of the Code of Virginia

Public comments may be submitted until September 11, 2002.

Contact: Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, or e-mail oneal@dpor.state.va.us.

VA.R. Doc. No. R02-265; Filed July 18, 2002, 11:46 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to consider adopting regulations entitled: **18 VAC 76-20. Regulations Governing the Prescription Monitoring Program.** The purpose of the proposed action is to promulgate regulations for implementation of the prescription monitoring program as mandated in Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia. The proposed regulatory action will establish rules for granting waivers of the reporting requirements and additional exemptions for dispensing of covered substances, for reporting of additional nonclinical information, and for setting the format and schedule for reporting. Rules are also necessary for the director's disclosure of reported information to ensure that confidentiality is maintained and that any disclosure is in accordance with the restrictions set forth in law.

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

Statutory Authority: Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until August 14, 2002.

Contact: Robert Nebiker, Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9919, FAX (804) 662-9114 or e-mail robert.nebiker@dhp.state.va.us.

VA.R. Doc. No. R02-226; Filed June 26, 2002, 9:26 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to consider adopting regulations entitled: **18 VAC 76-30. Regulations Governing the Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to establish public participation guidelines in accordance with the Administrative Process Act.

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

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

Notices of Intended Regulatory Action

Public comments may be submitted until September 11, 2002.

Contact: Robert Nebiker, Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9919, FAX (804) 662-9114 or e-mail robert.nebiker@dhp.state.va.us.

VA.R. Doc. No. R02-261; Filed July 11, 2002, 3:38 p.m.

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to consider amending regulations entitled: **18 VAC 60-20. Virginia Board of Dentistry Regulations.** The purpose of the proposed action is to amend regulations for an out-of-state practitioner to be licensed to volunteer services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. The proposed amendments will also expand the use of temporary permits to allow eligible graduates to serve as clinicians in public and charitable dental clinics. The board is replacing emergency regulations currently in effect.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.state.va.us.

VA.R. Doc. No. R02-281; Filed July 19, 2002, 10:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to consider amending regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to amend regulations to implement provisions of Chapter 170 of the 2002 Acts of Assembly, permitting certain practices of a dental hygienist to be performed under general supervision. The enactment clause requires the board to adopt regulations within 280 days, which authorizes the adoption of emergency regulations, and it is the board's intent to replace those regulations with permanent regulations.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.state.va.us.

VA.R. Doc. No. R02-279; Filed July 19, 2002, 10:46 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic.** The purpose of the proposed action is to promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-282; Filed July 19, 2002, 10:45 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-40. Regulations Governing the Practice of Respiratory Care.** The purpose of the proposed action is to promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

Notices of Intended Regulatory Action

VA.R. Doc. No. R02-283; Filed July 19, 2002, 10:45 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-50. Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute. The board also intends to amend the regulations to implement provisions related to the supervision of a physician assistant and the protocol between the assistant and the physician. In accordance with the statute, the regulations provide for continuous supervision but do not require the physical presence of the physician. Enactment clauses in both chapters required the board to adopt emergency regulations, and it is the board's intent to replace those regulations with permanent regulations.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-284; Filed July 19, 2002, 10:45 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-80. Regulations Governing the Practice of Occupational Therapy.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-285; Filed July 19, 2002, 10:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-101. Regulations Governing the Practice of Radiologic Technology.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-286; Filed July 19, 2002, 10:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-287; Filed July 19, 2002, 10:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled: **18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers.** The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to

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volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2901 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Dr. William Harp, Executive Director, Board of Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9512 or e-mail william.harp@dhp.state.va.us.

VA.R. Doc. No. R02-288; Filed July 19, 2002, 10:46 a.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to consider amending regulations entitled: **18 VAC 90-20. Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or e-mail nancy.durrett@dhp.state.va.us.

VA.R. Doc. No. R02-289; Filed July 19, 2002, 10:45 a.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled: **18 VAC 105-20. Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth

the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3202 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.state.va.us.

VA.R. Doc. No. R02-290; Filed July 19, 2002, 10:46 a.m.

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to facilitate current pharmacy practice by providing more appropriate methods of practice and eliminating unnecessary barriers to best care and efficiencies in practice. The amendments implement the changes in requirements for pharmacy practice to allow chart orders for hospice or home infusion, to permit different methods of keeping dispensing records and to allow for delivery of prescription drugs to alternative sites. The amendments will also expand the availability of drugs to indigent patients by allowing a nursing home to donate unused drugs or a physician to dispense donated drugs provided basis requirements for security, storage, labeling and recordkeeping have been observed to protect the safety, integrity and efficacy of the drugs.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scotti.russell@dhp.state.va.us.

VA.R. Doc. No. R02-280; Filed July 19, 2002, 10:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth

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the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3301 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9943 or e-mail scotti.russell@dhp.state.va.us.

VA.R. Doc. No. R02-291; Filed July 19, 2002, 10:46 a.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-20. Regulations Governing the Practice of Counseling.** The purpose of the proposed action is to develop continuing competency requirements for licensure renewal of professional counselors, marriage and family therapists, and licensed substance abuse treatment practitioners.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Ben Foster, Deputy Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.state.va.us.

VA.R. Doc. No. R02-259; Filed July 11, 2002, 3:38 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-50. Regulations Governing the Practice of Marriage and Family Therapy.** The purpose of the proposed action is to develop continuing competency requirements for licensure renewal of professional counselors, marriage and family therapists, and licensed substance abuse treatment practitioners.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Ben Foster, Deputy Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230-1717,

telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.state.va.us.

VA.R. Doc. No. R02-260; Filed July 11, 2002, 3:38 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled: **18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Professionals.** The purpose of the proposed action is to develop continuing competency requirements for licensure renewal of professional counselors, marriage and family therapists, and licensed substance abuse treatment practitioners.

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

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

Public comments may be submitted until September 11, 2002.

Contact: Ben Foster, Deputy Executive Director, Board of Counseling, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-7250 or e-mail ben.foster@dhp.state.va.us.

VA.R. Doc. No. R02-258; Filed July 11, 2002, 3:38 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Professional Soil Scientists and Wetland Professionals intends to consider promulgating regulations entitled: **18 VAC 145-30. Wetland Delineators Certification Regulations.** The purpose of the proposed action is to promulgate regulations to implement a regulatory program for wetland professionals in accordance with Chapter 784 of the 2002 Acts of Assembly.

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

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

Public comments may be submitted until September 12, 2002.

Contact: Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, or e-mail oneal@dpor.state.va.us.

VA.R. Doc. No. R02-264; Filed July 18, 2002, 11:46 a.m.

BOARD OF VETERINARY MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending regulations entitled: **18 VAC 150-20.**

Notices of Intended Regulatory Action

Regulations Governing the Practice of Veterinary Medicine.

The purpose of the proposed action is to amend the regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The regulations will set forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3801 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9915, FAX (804) 662-7098 or e-mail elizabeth.carter@dhp.state.va.us.

VA.R. Doc. No. R02-292; Filed July 19, 2002, 10:46 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT OF REHABILITATIVE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Rehabilitative Services intends to consider amending regulations entitled: **22 VAC 30-20. Provision of Vocational Rehabilitation Services.** The purpose of the proposed action is to allow the department to enter into an Order of Selection to provide services to eligible individuals in an efficient and economical manner. This will allow for an Order of Selection to be implemented in the event that the full range of vocational rehabilitation services cannot be provided to all persons determined to be eligible because of unavailable resources.

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

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

Public comments may be submitted until September 12, 2002.

Contact: Elizabeth E. Smith, Department of Rehabilitative Services, 8004 Franklin Farms Drive, P.O. Box K300, Richmond, VA 23288-0300, telephone (804) 662-7612, FAX (804) 662-7696 or toll-free 1-800-552-5019.

VA.R. Doc. No. R02-297; Filed July 22, 2002, 3:33 p.m.

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled: **22 VAC**

40-685. Home Energy Assistance Program Regulations.

The purpose of the proposed action is to promulgate regulations to implement the Home Energy Assistance Program. The Home Energy Assistance Program was established pursuant to Chapter 676 of the 2001 Acts of Assembly (House Bill 2473). These regulations replace emergency regulations.

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

Statutory Authority: § 63.1-25 and Chapter 22 (§ 63.1-336 et seq.) of Title 63.1 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Margaret Friedenbergh, Energy Assistance Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1728, FAX (804) 692-1704 or e-mail mjf900@dcse.dss.state.va.us.

VA.R. Doc. No. R02-300; Filed July 24, 2002, 9:17 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Social Services intends to consider adopting regulations entitled: **22 VAC 40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance and Social Services Records.** The purpose of the proposed action is to establish a regulation in accordance with Chapter 518 of the 2001 Acts of Assembly that establishes separate sections for the confidentiality of public assistance and social services programs administered by the Department of Social Services and local departments of social services. Except as provided by federal and state law and regulation, no records or information concerning applicants for and recipients of public assistance are accessible except for purposes directly connected with the administration of the public assistance program. Social services records and information are confidential except that they are accessible to persons having a legitimate interest in accordance with federal and state law and regulation.

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

Statutory Authority: §§ 63.1-25, 63.1-53, 63.1-209, and 63.1-209.1 of the Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Lynette Isbell, Policy and Planning Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1821, FAX (804) 692-1694 or e-mail lwi2@email1.dss.state.va.us.

VA.R. Doc. No. R02-301; Filed July 24, 2002, 9:18 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Social Services intends to consider amending regulations entitled: **22 VAC 40-11. Public Participation Guidelines.** The purpose of the proposed action is to make editorial changes throughout the

Notices of Intended Regulatory Action

regulation to improve clarity. Code of Virginia citations will be corrected to reflect the recodification of Title 2.2 and Title 63.2. Amendments will be proposed to (i) reflect the provisions of Chapter 241 of the 2002 Acts of Assembly; (ii) provide for electronic transmission of information to include e-mail notifications, receiving public comment by e-mail and use of the Internet for dissemination and collection of comment on regulatory actions; and (iii) reflect the statutory changes of Chapter 717 of the 1995 Acts of Assembly, which make publication of proposed regulations in a newspaper of general circulation discretionary rather than mandatory.

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

Statutory Authority: §§ 2.2-4007 and 63.1-25 of Code of Virginia.

Public comments may be submitted until September 11, 2002.

Contact: Richard Martin, Regulatory Coordinator, Department of Social Services, Legislative Affairs, 730 E. Broad St., Room 930, Richmond, VA 23219-1849, telephone (804) 692-1825, FAX (804) 692-1814, or e-mail lrn2@email1.dss.state.va.us.

VA.R. Doc. No. R02-302; Filed July 24, 2002, 9:18 a.m.



PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: **4 VAC 25-30. Minerals Other than Coal Surface Mining Regulations (REPEALING).**

Title of Regulation: **4 VAC 25-31. Reclamation Regulations for Mineral Mining (adding 4 VAC 25-31-10 through 4 VAC 25-31-570).**

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Public Hearing Date: September 26, 2002 - 9 a.m.

Public comments may be submitted until October 26, 2002.
(See Calendar of Events section for additional information)

Agency Contact: Conrad Spangler, Director, Mineral Mining, Department of Mines, Minerals and Energy, Fontaine Research Park, 900 Natural Resources Drive, P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 951-6310, FAX (804) 951-6325 or e-mail cts@mme.state.va.us.

Basis: The DMME derives its authority to promulgate this regulation from §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Section 45.1-161.3 of the Code of Virginia gives DMME the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Title 45.1 and other relevant chapters, which regulations shall be promulgated by the department, the chief, or the director, as appropriate, in accordance with the provisions of Article 2 of the Administrative Process Act.

Section 45.1-180.3 of the Code of Virginia states that the authority to promulgate rules and regulations to effectuate the provisions and the policy of the mineral mining reclamation law, Chapter 16 of Title 45.1, and the authority to adopt definitions for use in interpreting this chapter are vested in the director.

Purpose: The purpose of the proposed regulation 4 VAC 25-31, Reclamation Regulations for Mineral Mining is to replace the present regulation 4 VAC 25-30, Minerals Other Than Coal Surface Mining Regulations. The proposed regulation is amended and updated to address general provisions, permitting requirements, permitting renewals and exemptions, mapping, bonding and surety adjustments, roads, operation and reclamation plans, drainage and sediment control, and revegetation.

The goals of the proposed regulation are to provide agency customers with the proper guidance and information that is necessary to operate and reclaim mineral mine sites in a

manner that is safe, productive, and beneficial to the public, the environment and for future use.

The Reclamation Regulations for Mineral Mining, as proposed, have been amended to reflect changes in the Administrative Code. The proposed regulation also defines mineral mining industry terms that are used in the regulation. This helps to clarify proposed regulatory requirements.

The body of the proposed regulation emphasizes aspects of mineral mining reclamation requirements that are necessary to reclaim mineral mine sites. By having permit data and plans and performance criteria meet standards in Chapter 18.1 of Title 45.1 of the Code of Virginia for impoundments, the proposed regulation addresses problems associated with substandard design practices and engineering that may lead to potential impoundment releases or hazards. In addition, the proposed regulation references the Mineral Mining Handbook guidance information that should be used to control sedimentation and drainage at mineral mine sites.

Lastly, the regulation allows the operator flexibility to use acceptable procedures that can be more efficient to the particular design of the mining operation. This will enable more efficient reclamation that will provide for safely mined property that is of beneficial future use to the citizens of the Commonwealth.

Substance: The Reclamation Regulations for Mineral Mining, 4 VAC 25-31, replace the present regulation 4 VAC 25-30, Minerals Other Than Coal Surface Mining Regulations. Substantive changes to the proposed regulation were updates to address general provisions, permitting requirements, permitting renewals and exemptions, mapping, bonding and surety adjustments. The most substantive changes, though minor, were to roads, operation and reclamation plans, drainage and sediment control, and revegetation and were changes that resulted from updated guidance documents that provide general industry parameters used in mineral mining operations.

Amending the Reclamation Regulations for Mineral Mining were necessary to address industry changes and changes in technology, eliminate duplicative or nonessential requirements, clarify and strengthen current requirements and establish new requirements. A detail of changes to each individual section is listed in the detail of changes.

Issues: Through the regulatory process, the DMME has consistently asked for and received input and guidance from public and industry groups as well as agencies that may be affected by the regulation of operations on mineral mine sites. The result of the wide range of feedback was a regulation that provides consistent guidance to all types of mineral mine sites through the Commonwealth. The resulting advantage to the public is mined land that is reclaimed in a manner that is protective of public safety and beneficial to continued economic development.

An advantages to the DMME in a more efficient regulation that provides appropriate guidance for the reclamation of mine lands. This results in mine property that will provide an economic benefit to the Commonwealth.

Finally, the proposed regulation will enhance public health and safety, provide clear guidance for the mineral mining industry, and provide a more efficient regulation of mineral mine sites.

There are no disadvantages to this proposed regulation.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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 proposed regulations will delete the technical standards for reclamation of mineral mines and rely solely on the performance standards. Additionally, several new performance requirements will be established. These include allowing less stringent standards for small roads in mining areas, increasing protection of groundwater, and introducing new waste disposal requirements.

Some other changes are methodological and procedural, and generally related to financial affairs. These include changing the mineral reclamation fund deposit and release methods, allowing transfer of mining permits, establishing requirements for annual certification of all reclamation bonds, clarifying that permit fees must be submitted upon receipt of a billing notice and before the land is disturbed.

The last category of changes is related to specific reclamation activities. These include allowing wetland development on disturbed land, excluding asphalt and cement plants from the reclamation plan, allowing the use of additional material for erosion control, widening the permit boundary where sensitive features and structures must be identified and providing protection to such structures, requiring better identification of permit boundaries, requiring a meeting with the inspector prior to permit approval, removing the requirements for notarized signatures, and adopting county crop yields as benchmarks.

Estimated economic impact. These regulations apply to reclamation of mineral mines. Mining is considered a highly polluting activity because of its potential effects on environmental quality. The main environmental effects include surface and underground water pollution, air pollution, solid waste, loss of habitats due to excavation, and adverse effects on human health and buildings due to noise and vibration. Nearly 70,000 acres are covered by mining permits and about

27,750 acres of the permitted areas are disturbed and subject to reclamation in the Commonwealth.¹

Performance-based standards. Mineral mine reclamation regulations require that mine operators file a plan outlining the details of the proposed work and a program for the protection and reclamation of the land and other environmental assets affected by the mine. To ensure that mineral mines are operated in a way that minimizes the impact on the environment and the mines are reclaimed in a way that supports approximate pre-mine use when economically and technically feasible, current regulations include performance based standards. These performance standards state the goals of the reclamation.

In addition to the performance standards, technical standards are established in the Mineral Mining Revegetation Guidelines and the Mineral Mining Manual Drainage Handbook as addendums to the regulations to show how to comply with the current performance goals. The Department of Mines Minerals and Energy (the department) indicates that the technical standards in the guidelines and the handbook are prescriptive and are not always sufficient to guarantee compliance with the performance standards. This creates the possibility, for example, that a mine operator builds a structure according to the design specifications laid out in the guidelines or the handbook and still fails to achieve the performance standards perhaps due to some site-specific soil characteristics.

The department proposes to repeal the revegetation guidelines and the drainage handbook, both of which include technical standards. The contents of these documents are provided in appendices 1 and 2. An examination of the content list reveals that the scope of the guidelines and the handbook are comprehensive and the technical standards are numerous. For example, they cover testing procedures, construction specifications, material characteristics, nutrient requirements, seeding dates, design criteria, and many other standards for reclamation of mineral mines.

The department is proposing to delete these prescriptive requirements with few exceptions. The department, however, will adopt a nonregulatory assistance manual that will include most requirements of the revegetation guidelines and the drainage handbook in cases when the regulants want to implement readily available designs to comply with the performance-based standards. In addition, several published impoundment design procedures and standards will be accepted if the operator chooses to use them. These include design procedures, manuals, and criteria used by the U.S. Army Corps of Engineers, the Natural Resources Conservation Service of U.S. Department of Agriculture, the Bureau of Reclamation of U.S. Department of Interior, and the National Weather Service of U.S. Department of Commerce.

The difference between a performance standard and a technical standard is significant. A performance standard provides maximum flexibility for the regulated industry to comply with a rule whereas a technical standard is often prescriptive. In addition, a performance standard provides incentives for innovation as the regulated industry strives to

¹ Source: The department.

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reduce compliance costs. However, performance standards generally involve higher monitoring and enforcement costs. If monitoring and enforcement costs are severe, the lower costs of compliance may be outweighed by higher monitoring and enforcement costs. Any lack of monitoring and enforcement due to high costs would reduce the appeal of a performance standard because the success of a performance standard is more sensitive to monitoring than is the success of a technical standard. It is possible for compliance costs to be *higher* under a performance standard. For example, firm size may be a determining factor of the net impact on compliance costs. A small firm without the technical expertise may have to comply with a performance standard that requires a new construction design. For this firm, the costs of design development may be higher than the costs of compliance with a prescriptive but readily available design. However, allowing mine operators to use existing designs published by several sources and providing a nonregulatory assistance manual, the proposed regulations expand the compliance flexibility beyond what is provided by performance standards alone. Thus, the proposed regulations are likely to produce net benefits if savings in compliance costs outweighs additional monitoring and enforcement costs.

There is no comprehensive empirical data available to determine the size of potential savings in compliance costs. Also, the scope and the number of technical standards repealed make it a daunting task to determine the cost savings that should be expected.² Only general statements can be made about the cost savings to the regulated industry. Conversations with the industry representatives indicates a consensus view that the proposed changes will provide additional flexibility, and consequently, savings in compliance costs because of deleting technical standards. Several individuals in mineral mining industry indicated that the reclamation costs are in the \$10,000 to \$25,000 range per acre and the cost savings may reach up to 10% of the current compliance costs depending on the circumstances. Based on these rough estimates, the potential compliance costs for approximately 3,000 acres of land reclaimed by mining companies each year may easily result in significant cost savings. For example, 1.0%, 5.0%, and 10% reductions in compliance costs would annually save the mine operators about \$0.5 million, \$2.6 million, and \$5.3 million, respectively.

Additionally, the proposed changes are likely to increase the department's workload as review of designs submitted by each individual permit applicant will be more difficult than reviewing the generic design requirements established in the vegetation guidelines and the drainage handbook. The department indicates that technical expertise and resources are available to meet additional staff time that will be required. It is estimated that about 15 to 20 employee days may be devoted to meet additional workload. More importantly, the department does not expect any significant increases in monitoring and enforcement costs.

The proposed changes may also slightly improve compliance with the performance standards due to the elimination of potential conflict between current performance-based

standards and the technical standards. As mentioned, there may be some designs allowed under the current regulations that may not guarantee the desired performance. Improvements in compliance with the current performance standards are expected to provide environmental benefits. If any environmental benefits are realized, they will likely vary for each performance criteria. For example, these benefits may be in the form of reducing erosion, improving revegetation on disturbed land, reducing pollution, etc.

Despite the uncertainties involved in determining the size of the potential costs and benefits, based on the available evidence, it seems that the cost savings from this proposal will well exceed the additional costs. Thus, the proposal to repeal technical standards is likely to produce net benefits for the Commonwealth.

The proposed regulations will also add a few new performance standards. It will be required that the temporary stream crossings for pioneer roads must not restrict the stream flow and must not contribute to sedimentation off-site. There are no current requirements specific to these roads. All roads, regardless of capacity and use, follow the same basic performance standards. The proposed rules will allow crossings that can be used during times of low stream flow. These roads will be required to be small and stable so as not to restrict the stream flow and contribute to sedimentation from the road. Sediment from the road, or the trucks using the road, will be controlled so that soil particles are not washed off the mine by the stream. Bridges or large culverts will no longer be required for these locations. This is likely to provide some cost savings to the mine operators.

With another amendment, a plan for the minimization of adverse effects is required if mining below the water table is to take place. This performance standard is proposed to minimize the adverse effects of mining on groundwater quality. Mining may lower the groundwater table when water is pumped from the mining excavation. Surrounding water wells may be affected by lowering the level of water in the well. Changes in the movement of groundwater may alter the minerals in the water. In addition, pollutants from the mining, such as oxidized minerals that have been exposed to the air, may enter into the groundwater system. The cost to the operator to evaluate the hydrologic system, to estimate the likely effects of mining, and to design a mining plan to minimize the adverse hydrologic effects will be added. For mines that affect the groundwater system, the permit applicant may need to collect samples from water wells and springs to determine the location and quality of groundwater. If existing wells are sampled, the laboratory testing of the water may cost a few hundred dollars. If new wells are constructed, the cost may be \$1,000 for a well 100 feet deep. In some cases, the treatment costs may increase if the operator must purify water before it is discharged from the mine. On the other hand, this change will provide additional protection of groundwater quality.

Furthermore, the proposed regulations will introduce new waste material disposal requirements. Currently, there is no requirement for waste material disposal fills. It will be required that overburden, refuse, spoil, and waste disposal fills that do not have the capability to impound water, sediment or slurried

² See appendices for the contents of technical standards that will be repealed.

tailings, and slimes and refuse in a liquid or semi-liquid state will have to be designed according to up-to-date engineering practices, be constructed, operated, maintained in accordance with the design, and will have to be closed and abandoned in a manner that ensure continued stability with the post-mining land use. The stability may be increased if the land on which the material is placed is evaluated and prepared and the waste material is placed using control techniques. These requirements are likely to control runoff from the waste site and prevent saturation of the waste material or erosion of the fill. These additional requirements are expected to reduce the potential for hazardous and emergency situations, provide additional protection to adjacent properties, provide additional protection for the environment, and improve safety. However, these requirements will likely increase compliance costs of permit holders, as additional designs will have to be produced and complied. This may also increase the workload of the department in reviewing designs, monitoring, and enforcing compliance.

Minerals Reclamation Fund deposit and release method. Significant amounts of money need to be posted as security for mine reclamation and to provide for the protection and mitigation of damage to environmental assets affected by the mine. A new operator provides \$1,000 in bonding for the acres disturbed and projected to be disturbed. Following a five-year satisfactory operation in the Commonwealth, the operators are required to be a member of the minerals reclamation fund and bonds are no longer required. The operators deposit \$50 initially for each acre currently disturbed and projected to be disturbed and \$12.50 annually thereafter until \$500 is deposited for each acre. Currently, the amount of securities deposited to ensure reclamation of disturbed lands is about \$3.9 million with \$1.3 million in surety bonds, \$0.2 million in cash, and \$2.4 million in the mineral reclamation fund. About 26,750 acres of disturbed land are covered by the fund. The deposits are released to the operator upon successful reclamation. In 2001, \$42,060 is released from the fund for actual reclamation of 274 acres. The average fund balance per acre is currently about \$91.

Both the mining operators and the department keep records to determine how much money is deposited for an individual acre and when that specific acre is reclaimed, the funds deposited for that acre is released. The operator prepares the paperwork that identifies an individual acre on the map and then the department verifies it both on paper and in the field with an inspector. The department indicates that this method is difficult and time consuming to implement.

The proposed regulations will change the mineral reclamation fund deposit and release methods. The proposed release method will rely on the average amount of funds deposited for each acre permitted instead of the exact amount deposited for an individual acre. The operators will continue to deposit \$12.50 into the fund after the initial deposit as currently, but instead of ceasing deposits when \$500 is reached for an individual acre, deposits will stop when an average of \$500 per acre is accumulated in the fund. In other words, the deposits will continue until the average per acre is \$500. This will result in a faster growing fund. The operators will deposit the total \$500 at a faster rate and reach the required maximum deposit earlier than it would be under the current

method. For example, for an acre of disturbed land the operator would reach the limit in the 37th year and would deposit nothing in the 38th year under the current method. Under the proposed method, the operator may be required to continue depositing \$12.50 for an individual acre beyond the 37th year if the average funds deposited per acre is below \$500. This is likely to introduce costs associated with time value of money deposited earlier for the mineral mine operators. However, the exact time when this effect will be felt is not known, but it will likely be felt prior to or about 2016.³ This is because the fund has been in effect for 23 years and it takes 37 years to reach \$500 in installments of \$12.50 per year. This effect is likely to gain more significance close to 2016 and thereafter because most areas are expected to continue operations more than 37 years and in some cases operations may continue up to 100 years. Thus, the impact of this effect is not likely to be felt anytime soon but also the exact timing of this effect cannot be predicted.

Similarly, operators will be reimbursed the average amount deposited per acre rather than the sum of funds deposited for an individual acre up to the reclamation, provided the average funds per acre are less than \$500. This change has the potential to both increase and decrease the fund's growth rate through the release of funds. Under the proposed rule, an operator may receive more or less money than would be released under the current regulations. The direction of this effect will depend on the individual acres released. The proposed rule will introduce costs associated with the time value of money for the operators if they release the acres that have been disturbed longer than the other acres. This is because they will receive less money than the deposits made for that specific acre. For example, an operator may have deposited \$200 for a specific acre. If the average account balance per acre for this operator is \$100, he will receive only \$100 instead of \$200. On the other hand, the operators are likely to benefit from this change in terms of the time value of money when they reclaim acres that are disturbed for a shorter period than the other acres are. However, the acres disturbed first are likely to be the ones reclaimed first. Thus, an operator is likely to receive less money compared to the current method and incur the costs associated with the time value of money. At the same time, the fund is likely to grow faster as less money will likely be released to the operators.

Another impact will be due the proposed requirement that no funds be released if the operator has \$500 on average per acre in the fund. As these operators reclaim mineral lands, they will not receive any funds. Thus, they will incur the costs associated with the time value of the money that will not be released. This will also increase the growth rate of the fund. The department indicates that currently no one falls under this category because no one has reached the \$500 deposit limit on average. As explained before, the operator would reach the \$500 limit in the 37th year. Once the proposed \$500 limit on average is reached, then the effect of this change will be felt. However, the exact timing of this is not known.⁴ This is

³ The exact date is unknown because other proposed changes will impact the growth rate of the fund as well and because the operators may decide to deposit all \$500 at once or in installments higher than \$12.50 per year.

⁴ Ibid.

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likely to be a significant effect in the distant future when some operators no longer receive funds. Thus, this change will also increase the costs associated with the time value of the money for operators and contribute to the growth rate of the fund.

On the other hand, eliminating the need to keep records for deposits made for 27,750 acres of disturbed land, to go over the maps, and to identify the acres in the field may provide some significant savings in staff time and administrative costs for both the department and the industry.

Other changes. Pursuant to the changes in the statute in 1996, the proposed amendments will allow transfer of mining permits. If there is a bond held by the department for an operator, then the bond will have to be replaced by the new permittee. If the operator has moneys in the reclamation fund and the successor operator is a different entity, then the department will release the funds to the previous permit holder. In these cases, the new operator will incur bonding costs or the time value of money deposited into the fund and the previous operator will no longer incur these costs. Additionally, if the successor operator is essentially the same entity with a change in the organization status or after a restructuring, then the funds will not be released, but will be recorded under the new name. These operators are released funds under the current policy. For example, an operator may have \$200 deposited for an acre. If there is a change in name, the operator is released \$200 and the same operator with the new name deposits only \$50 initially and \$12.50 thereafter for the same acre. The current practice reduces the growth rate of the fund because of mere name changes. The fund release data indicates that of the total \$443,100 released in 2001, 90% was released due to name changes. Thus, the proposed change will likely help maintain the level of moneys available in the fund. On the other hand, the operators with a change in organization structure are likely to incur additional costs associated with the time value of money as they will no longer be released funds because of a change in name.

Moreover, the proposed changes will require that during annual permit renewal, operators certify the type, current issuer or bank, and the amount of all reclamation bonds. This requirement is likely to provide additional protection for the recovery of the reclamation bonds held by the department. The department had cases where bonds and certificates of deposit issued by bankrupt bonding companies or banks were held as security. This change is likely to introduce small additional costs on operators as the certification of required information on permit holders can be satisfied through a letter from the creditor.

Another proposed amendment will clarify that permit fees must be submitted upon receipt of a billing notice and before the permit is issued. The department indicates that some people send the permit fees with their applications prior to the billing notice. The permit fees submitted early are often incorrect. The proposed clarification may save operators the time value of the application fees sent early, reduce bond replacement costs if the fee is calculated incorrectly, reduce mailing costs for the department and the operator, and reduce administrative costs of the department and the operator to correct inaccurate amounts of permit fees.

Also, the proposed regulations will remove the requirement to submit a bond within 30 days from the date when the department notifies the operator at which time the bond amount submitted during annual renewal is less than the required coverage. The key change is the clarification that the bond must be submitted before the land is disturbed. This will eliminate the possibility that an operator may disturb land without providing a bond during the 30-day period. This is likely to cover potential reclamation liabilities that are created by mining activities.

Furthermore, the proposed changes will allow creation of lakes or ponds that are less than four feet deep if used for wetland development. Currently, creating ponds of water that are less than four feet deep is prohibited. This change is likely to reduce the costs of reclaiming these types of lakes and ponds created during mining activities. This change will also allow the permit holder to increase the value of the disturbed land. These wetlands may be sold to mitigation banks for about \$20,000 to \$30,000 per acre.⁵ The department expects permit holders to use this option to create about 100 to 200 acres of wetlands annually. This is expected to provide the mine operators about \$3.8 million in additional revenues. In addition, newly created wetlands will be an addition to the Commonwealth's environmental assets. Wetland benefits include providing flood control, improving water quality, and providing wildlife habitat. They are particularly suitable for recreational activities such as fishing, hiking, biking, bird watching, and duck hunting.

Also, asphalt and cement plants will not be required to be included in the reclamation plan. This change is proposed because the production of concrete and asphalt are industrial activities that may take place near mines and use processed minerals, but they are not considered mineral processing activities. The department indicates that the elimination of concrete and asphalt plants will make the regulation more consistent with the statutory definitions of mining and disturbed land under § 45.1-180 of the Code of Virginia and the definitions for surface and underground mines under § 45.1-161.292:2 of the Code of Virginia. These plants will not be considered as part of the mineral mines, and consequently, will not be subject to reclamation. The department does not know the number of permits that include an asphalt or cement plant in reclamation plans. The location of these plants usually take up about one or two acres.⁶ The land used for these plants will be subject to Virginia's Erosion and Sediment Control program. Thus, no significant adverse impact on environment is expected. On the other hand, the operators are likely to save some costs associated with bonding fees or the time value of money for the acreage where the plant is built, as there will be no bonding requirements. Additionally, the operator will not be required to reclaim these areas either. This change is likely to reduce the operators' compliance costs.

Furthermore, it is proposed to allow the use of gabions and shotcrete in addition to riprap to control erosion. This is likely to provide flexibility to operators and may provide cost

⁵ Source: The department.

⁶ Ibid.

savings, as riprap may not be available in some parts of the Commonwealth. Transportation costs to regions of Virginia where locally produced rock is not available can be high. Using locally available material for erosion control may reduce reclamation costs. There does not appear to be a significant adverse effect on erosion control or environment in general that may result from this change.

The proposed changes will also increase the boundary of permit where sensitive features and structures must be identified from 500 feet to 1,000 feet. Additionally, protection of such features and structures will be required as opposed to just identifying them on the map. These features may include cemeteries, oil and gas wells, underground mine workings, streams, creeks and other public water bodies, public utilities, utility lines, public buildings, public roads, churches, and occupied dwellings. This requirement is likely to increase the number of structures that must be identified due to the expansion of the size requirement. Additionally, the protection of these sensitive features and structures may be improved. This is expected to benefit the owner of such structures. However, there may be other laws that provide protection to some or all of these structures. The extent of the additional protection that may be afforded is not known. Also, this requirement may introduce potential costs for the mine operators, as they will be required to protect such features. Similarly, if the protection is already required under other laws, the additional costs of the proposed change will likely be less significant.

Another proposed change will require marking of the permit boundary, if natural features are not readily identifiable, and when mine activities are within 100 feet from the permit boundary. This change has the potential to increase protection of adjacent properties and make sure that mining activities are not performed closer than 100 feet to the permit boundaries. On the other hand, the operator may incur survey costs to mark the boundary. In most cases, the mine operator is expected to have already determined the property boundaries, and the marking costs are expected to be low.

The proposed changes will also allow the operator conference with the inspector prior to approval rather than prior to submittal of the permit application. This may shorten the approval time because some applications may be mailed in directly. The department receives two copies of applications. This change will allow evaluation of the plans while the inspector reviews his copy in the field. Also, as maps and plans are revised in the review process, all new documents may be mailed to the technical reviewers before the inspector reviews them. At the end, before the application is approved, the inspector will have reviewed all final documents. The operators are likely to use this option if it is beneficial for them.

The notarization of the mining permit application will no longer be required. Similarly, the requirement for a notarized signature when the operator certifies that there are no changes in maps submitted during the last annual permit renewal will be removed. Currently, a notarized signature is used to ensure that the person whose name appears on the document signed the document. The department indicates that because mines are in fixed locations and company officials are easily located, any issues regarding signatures

can be resolved easily. Thus, it appears that if any, a potential cost associated with this change is expected to be low. On the other hand, the proposal to eliminate notary requirements is expected to reduce costs in terms of fees that may be paid to a notary and the time costs of locating a notary. Also, this change is likely to reduce mailing costs. Mail is the normal method of communication between the department and the mine operator. If some of the forms received by the department are not notarized, the forms must be mailed back, and the entire process may be delayed.

Finally, the proposed regulations will require the use of the five-year average crop yield of the county instead of the average for the Commonwealth in determining compliance with the post-mining normal crop yield requirement for intensive agricultural areas. The benefit of this change is that the standard will be more closely tied to the crop yields from the locality in which the mine is situated. If the variability of production between farms is less within counties than across the state, the proposed standard will be a better benchmark for the actual yield. In addition, counties with higher average yields will require mine operators to achieve a greater standard than the statewide average while others with yields lower than the statewide average will require compliance with less stringent standards than the current rule. Thus, operators in high-yield counties may incur additional compliance costs while operators in low-yield counties may reduce the compliance costs.

Businesses and entities affected. The proposed regulations are expected to mainly affect about 310 mineral mining companies, and about 1,250 to 1,300 contractor companies.

Localities particularly affected. The proposed regulations apply throughout Virginia.

Projected impact on employment. There are about 11,000 to 12,000 mineral miners including the contract workers in the Commonwealth. Due to maximum flexibility that will be provided to the mining industry, some mine operators may choose to develop new designs that are cost effective. This may create additional demand for technical personnel. The department indicated that most large companies may choose to develop new designs themselves without hiring a consultant. Small companies may hire consultants instead. Thus, the mining companies and the consultants may demand more technical staff to be able to develop cost effective designs to comply with the performance standards.

Effects on the use and value of private property. The proposed changes are expected to reduce compliance costs in the regulated mineral mining industry. If these cost savings increase their profits, the value of such companies will likely increase. The value of consulting companies in this industry may also experience gains in value if demand for consulting services increase.

In addition, if compliance with performance standards increases and the quality of reclamation improves, this may contribute to post-mining use of land disturbed for mineral mining. The value of mining areas suitable for wetland development is also likely to increase. Finally, if the proposed regulations afford additional protection for sensitive features and structures located around 480 mines, a positive effect on

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value of these structures may be seen due to lower risks of damage. Similarly, improvements in environmental quality of disturbed land may contribute to the value of adjacent properties.

Appendix 1: Contents of Mineral Mining Revegetation Guidelines

Planning for Revegetation

Public Considerations, Operational Considerations, Developing Favorable, Planting Medium, Selecting Material for Planting Medium, Tests Useful in Selecting Overburden Materials, Surface and Seedbed Characteristics

Soil Testing Liming and Fertilization

Soil Testing, Collecting Soil-Spoil Samples, Lime, Table 1: Tons Lime Needed Per Acre to Increase pH to 5.5 and 6.5 for Coarse Textured Soils (Sands, Loamy Sands, and Sandy Loams), Table 2: Tons Lime Needed Per Acre to Increase pH to 5.5 and 6.5 for Medium Textured Soil-Spoil Materials (Sandy Clay Loams and Silt Loams), Table 3: Tons Lime Needed Per Acre to Increase pH to 5.5 and 6.5 for Fine Textured Soil-Spoil Materials (Silty Clay and Clay Loams)

Fertilization

Table 4: Plant Nutrient Requirements at Time of Seeding for Grass and Legume Mixtures Used For Stabilization, Control of Erosion, and Sediment Loss (Coarse Textured Soil-Spoil Materials), Table 5: Plant Nutrient Requirements at Time of Seeding for Grass and Legume Mixtures Used for Stabilization, Control of Erosion, and Sediment Loss (Medium and Fine Textured Soil-Spoil Materials), Table 6: Plant Nutrient Requirements at Time of Planting for Pasture, Hay and Row Crop Production (Coarse Textured Soil-Spoil Materials), Table 7: Plant Nutrient Requirements at Time of Planting for Pasture, Hay and Row Crop Production (Medium and Fine Textured Soil-Spoil Materials), Table 8: Plant Nutrient Requirements at Time of Planting for Pasture, Hay and Row Crop Production (All Textured Soil-Spoil Materials)

Grass and Legume Mixtures and Their Establishment

Seeding Dates, Seeding Mixtures, Seed Quality, Seeding Methods

Tree Plantings

Planting of Seedlings, Seedling Care, Time of Planting, Seedling Sources, Plantation Management, Screening, Noise, and Dust Abatement

Plantings for Wildlife Habitat

Annuals, Perennial Grasses and Legumes, Woody Perennials, Planting Design

Vegetation of Critical or Problem Areas

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Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the Economic Impact Analysis conducted by the Department of Planning and Budget.

Summary:

The Department of Mines Minerals and Energy is proposing to promulgate the Reclamation Regulations for Mineral Mining to ensure the most beneficial development of mineral resources and to minimize the effect of mining on the environment. This regulation (4 VAC 25-31) will replace the present reclamation regulations, 4 VAC 25-30, Minerals Other Than Coal Surface Mining Regulations.

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The revision is necessary because of extensive formatting changes from the present regulatory requirements. The regulation addresses general requirements, permit standards, bonding, and general performance standards for surface mineral mining, and enforcement.

Amendments to the proposed regulation were needed to address industry changes and changes in technology, eliminate duplicative or nonessential requirements, clarify and strengthen current requirements and establish new requirements. The amended regulation will help to ensure that surface mineral mines are reclaimed in a manner supportive of future use.

CHAPTER 31.

RECLAMATION REGULATIONS FOR MINERAL MINING.

PART I.

GENERAL PROVISIONS.

4 VAC 25-31-10. Definitions.

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

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons. One acre-foot of water is equivalent to one acre covered by water one foot deep.

"Berm" means a stable ridge of material used in reclamation for the control of sound and surface water, safety, aesthetics, or such other purpose as may be applicable.

"Critical areas" mean problem areas such as those with steep slopes, easily erodible material, hostile growing conditions, concentration of drainage or other situations where revegetation or stabilization will be potentially difficult.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his designee.

"Division" means the Division of Mineral Mining.

"Fifty-year flood" means the flood magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as a probability that there is a 2.0% chance that the flood magnitude may be equaled or exceeded in any given year.

"Intermittent stream" means a stream or part of a stream that flows for at least one month of the calendar year as a result of ground water discharge or surface run-off.

"Internal service roads" mean roads that are to be used for internal movement of raw materials, soil, overburden, finished, or in-process materials within the permitted area, some of which may be temporary.

"Natural drainageway" means any natural or existing channel, stream bed, or watercourse that carries surface or ground water.

"One-hundred year flood" means the flood magnitude expected to be equaled or exceeded on the average of once

in 100 years. It may also be expressed as a probability that there is a 1.0% chance that the flood magnitude may be equaled or exceeded in any given year.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface run-off.

"Permitted area" means the disturbed land area and areas used for access roads and other activity in the area approved for mining within the boundary shown on the application map.

"Principal access roads" mean roads that are well-defined roads leading from scales, sales offices, or loading points to a public road.

"Probable maximum flood (PMF)" means the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation available from the National Weather Service, National Oceanic and Atmospheric Association. In some cases local topography or meteorological conditions will cause changes from the generalized PMP values; therefore, it is advisable to contact local, state, or federal agencies to obtain the prevailing practice in specific cases.

"Regrade" or "grade" means to change the contour of any surface.

"Sediment" means undissolved organic or inorganic material transported or deposited by water.

"Sediment basin" means a basin created by the construction of a barrier, embankment, or dam across a drainageway or by excavation for the purpose of removing sediment from the water.

"Spillway design flood (SDF)" means the largest flood that needs be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

"Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth. This includes increasing bearing capacity, increasing shear strength, draining, compacting, rip-rapping, vegetating or other approved method.

"Ten-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as a probability that there is a 10% chance that the storm magnitude may be equaled or exceeded in any given year. A 10-year 24-hour storm occurs when the total 10-year storm rainfall amount occurs in a 24-hour period.

"Top soil" means the surface layer and its underlying materials that have properties capable of producing and sustaining vegetation.

4 VAC 25-31-20. Scope.

This chapter establishes general and specific rules for mining permits, bonds, operations and reclamation procedure, roads, revegetation, and other matters related to mineral mining.

4 VAC 25-31-30. Compliance.

The permittee shall comply fully with the requirements of Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia and this regulation and shall further ensure compliance by all employees, contractors, or other persons performing mining or reclamation activities.

4 VAC 25-31-40. Modifications.

The division may approve modifications or amendments to any drainage, reclamation and operation plan required under Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia and provisions of these regulations. All modifications or amendments shall be valid only when approved in writing.

4 VAC 25-31-50. Mineral Mine Operator's Manual.

The Mineral Mine Operator's Manual is a nonregulatory guidance document to assist operators in complying with Title 45.1 of the Code of Virginia. The manual may be obtained from the division.

4 VAC 25-31-60. Other governmental agencies and laws.

Any mineral mining permit issued shall not supersede or otherwise affect or prevent the enforcement of other laws and regulations of federal, state, or local governments.

4 VAC 25-31-70. Exemptions.

A. These regulations shall not apply to:

1. Excavation or grading when conducted solely to aid on-site farming or construction;
2. Mining of coal, unless the coal is mined incidental to the mining of minerals;
3. Searching, prospecting, exploring or investigating for minerals by drilling; and
4. Excavation or grading when conducted by an agency or governmental unit of the Commonwealth, local government, or the federal government using government employees.

B. The surface extraction of minerals shall not constitute mineral mining unless:

1. The mineral is extracted for its unique or intrinsic characteristics or:
2. The mineral requires processing prior to its intended use.

C. When considering whether an operation is exempt, the director shall consider the length of time or duration of the activity, whether it is a one-time activity, and whether all necessary permits and approvals are in place before the activity begins.

PART II. PERMIT STANDARDS.

Article 1. Permits.

4 VAC 25-31-80. Contiguous area.

Contiguous areas mined by a single operator shall be covered under one permit; however, the director may, at his discretion, combine noncontiguous areas into a single permit where such areas are close to each other and are part of the same operation.

4 VAC 25-31-90. Operator conference with inspector.

Prior to approval of a permit application, all maps and plans shall be reviewed at the proposed mining site with the inspector.

4 VAC 25-31-100. Mineral mining permits.

Permits shall be renewed annually to continue to be in effect.

4 VAC 25-31-110. Permit application.

Application for a mineral mining permit shall be made in writing on a form prescribed by the director and shall be signed and sworn to by the applicant or his duly sworn representative. Two copies of the application shall be submitted to the division.

4 VAC 25-31-120. Permit fee and bond.

A. The following permit fees shall be submitted upon receipt of a billing notice from the director and before the permit is issued:

1. A fee of \$12 per acre for the total permitted acres shall be submitted for the initial permit application.
2. A fee of \$6 per acre for the land permitted by the total operation shall be paid to transfer the permit when one operator succeeds another on an uncompleted operation.

B. All fees shall be in the form of cash, check, money order, or other form of payment acceptable to the director.

C. A bond is required as set forth in Part III of this regulation. Bonding shall be provided once the permit application is deemed complete.

4 VAC 25-31-130. Mineral mining plans.

Mineral mining plans shall be attached to the application and consist of the following:

1. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading, removal of metal, lumber, and debris, including processing equipment, buildings, and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified.

2. The operation plan shall include a description of the proposed method of mining and processing; the location of top soil storage areas; overburden, refuse and waste

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disposal areas; stockpiles, equipment storage, and maintenance areas; cut and fill slopes; and roadways. The operation plan shall also include all related design and construction data. The method of operation shall provide for the conducting of reclamation simultaneously where practicable with the mining operation. For the impoundments that meet the criteria of § 45.1-225.1 A of the Code of Virginia, plans shall be provided as required under 4 VAC-25-31-180 and 4 VAC 25-31-500.

3. The drainage plan shall consist of a description of the drainage system to be constructed before, during and after mining, a map or overlay showing the natural drainage system, and all sediment and drainage control structures to be installed along with all related design and construction data.

4. Adequate maps, plans and cross sections, and construction specifications shall be submitted to demonstrate compliance with the performance standards of Part IV (4 VAC 25-31-330 et seq.) of this chapter and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia. Designs, unless otherwise specified, shall be prepared by a qualified person, using accepted engineering design standards and specifications.

5. A copy of the Virginia Department of Transportation construction permit for roads that connect to public roads shall be included where applicable.

6. If mining below the water table is to take place, the following conditions apply:

a. A plan for the minimization of adverse affects on water quality or quantity shall be submitted and approved by the director.

b. In no case shall lakes or ponds be created if they are less than four feet deep, except when creation of wetlands is approved as part of the post-mining land use.

4 VAC 25-31-140. Marking of permit boundaries.

A. The permit boundary of the mine shall be clearly marked with identifiable markings when mine related land disturbing activities are within 100 feet of the permit boundary.

B. This regulation is not applicable to lands disturbed prior to the effective date of this regulation.

C. Maintenance of permit boundary markers is not required after completion of construction, completion of final disturbances, or completion of final reclamation unless the area is being redisturbed by mining.

D. Separate boundary markings are not required if clear, readily identifiable features, such as streams, permanent roads, or permanent power lines coincide with the permit boundary.

4 VAC 25-31-150. Maps.

A. Maps shall be supplied as described in §§ 45.1-181 and 45.1-182.1 of the Code of Virginia and in this chapter that show the total area to be permitted and the area to be affected in the next ensuing year (with acreage calculated).

B. Preparation of maps.

1. All application, renewal, and completion maps shall be prepared and certified under the direction of a professional engineer, licensed land surveyor, licensed geologist, issued by a standard mapping service, or prepared in such a manner as to be acceptable to the director.

2. If maps are not prepared by the applicant, the certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief, all the information required by the mineral mining laws and regulations of the DMME."

3. The applicant shall submit a general location map showing the location of the mine, such as a county highway map or equivalent, in the initial application.

4. Sensitive features within 1,000 feet of the permit boundary such as cemeteries, oil and gas wells, underground mine workings, streams, creeks and other bodies of public water, public utilities and utility lines, public buildings, public roads, churches, and occupied dwellings shall be shown.

C. Map code and legend.

1. A color code as prescribed by the director shall be used in preparing the map.

2. Graphic symbols may be used to represent the different areas instead of a color-coded map.

3. The map shall include a legend that shows the graphic symbol or color code and the acreage for each of the different areas.

4 VAC 25-31-160. Legal right.

A. A statement of the source of the legal right of the applicant to enter and conduct operations on the land proposed to be covered by the permit as noted in § 45.1-181 of the Code of Virginia shall be submitted to the division. In addition, the applicant shall submit proof of right of entry, which shall consist of a copy of the lease or deed, or names of parties to the lease or deed, date of execution, and recording information.

B. On the permit application the applicant shall disclose all past mineral surface mining permits, revocations, and bond forfeitures in Virginia or any other state with which he or any individual, corporation, partnership, association, or other legal entity with which he has or has had control or common control.

4 VAC 25-31-170. Permit notifications.

A. The following shall be made with a new permit application:

1. Notification to property owners within 1,000 feet of the permit boundary by certified mail. A record shall be kept of:

a. The names and addresses of those notified, and

b. The certified mail return receipts used for the notification.

2. A statement as required by § 45.1-184.1 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the

operator is seeking a surface mining and reclamation permit from the Department of Mines, Minerals and Energy. The statement shall also include:

- a. Company name;
- b. Date;
- c. Location;
- d. Distance and direction of nearest town or other easily identified landmark;
- e. City or county;
- f. Tax map identification number; and
- g. Requirements for (i) regrading; (ii) revegetation; and (iii) erosion controls of mineral mine sites.

B. A statement that property owners within 1,000 feet of the permit boundary have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the Department of Mines, Minerals and Energy, Division of Mineral Mining, P.O. Box 3727, Charlottesville, Virginia 22903.

C. A statement, with certified mail receipt, certifying that the chief administrative official of the local political subdivision has been notified.

D. Notification to any utilities on or within 500 feet of the permitted area. The notification shall consist of the following:

1. The name of the party issuing the notice;
2. The applicant name, address, and phone number; and
3. The name and address of the party receiving the notice and the information noted in subdivision A 2 of this section.

E. Property owners within 1,000 feet of the permit boundary have 10 days from receipt of the notification of proposed mining to file objections with the director. No permit will be issued until at least 15 days after receipt of the application by the division. If all persons required to receive notice have issued a statement of no objection, the permit may be issued in less than 15 days.

F. Copies of all permit notifications and statements required in subsections A through D of this section shall be supplied to the department with the application.

4 VAC 25-31-180. Impoundments.

The design data and construction plans and specifications for impoundments meeting the criteria set forth in Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia shall be submitted to the director prior to initiation of construction activities. Such a plan shall be certified as prepared by, or under the supervision of, a registered professional engineer and shall include:

1. Design and construction specifications;
2. Examination and monitoring;
3. Emergency procedures; and
4. Closure and abandonment plans.

4 VAC 25-31-190. Availability of permits.

Mineral mining permits and a copy of the permit application shall be kept on-site while mining is underway.

4 VAC 25-31-200. Exemption for restricted mining.

Any operator engaging in mining and disturbing less than a total of one acre of land and removing less than 500 tons of minerals total is exempt from all mining permit fees, renewal fees and bonding requirements in this chapter. The mining operator shall submit an application for a permit, a sketch of the mining site, and an operations plan, which shall be adhered to in accordance with §§ 45.1-181 and 45.1-182.1 of the Code of Virginia.

Article 2.

Permit Renewal and Surety Adjustments.

4 VAC 25-31-210. Annual renewal.

A. If a permitted mineral mine operator wishes to continue operations, the mineral mining permit shall be renewed each year within 10 days of the anniversary date. If the time requirements set forth herein are not met, the permit shall expire 10 days following the anniversary date.

B. A renewal fee in the amount of \$6 per acre for previous acres disturbed plus estimated additional acres to be disturbed in the next 12 months shall accompany the permit renewal submitted to the director.

C. The permit renewal shall be submitted on a form prescribed by the director. The renewal shall be signed by the applicant or his legal representative. The permit renewal and maps must be received by the anniversary date and meet the requirements in 4 VAC 25-31-100 through 4 VAC 25-31-220.

D. If in a given year there are no substantive changes to the map required in 4 VAC 25-31-150, the operator may submit a certification instead of the map for the year. The certification shall read as follows: "I, the undersigned, hereby certify that no changes have been made in the different areas or in other map features since the last annual permit renewal or modification."

E. If at renewal time, bond or other surety is less than the required coverage, the director will notify the operator in writing of the amount required. The operator shall submit the required bond according to the requirements in 4 VAC 25-31-220 through 4 VAC 25-31-270 before the area is disturbed.

PART III. BONDING.

4 VAC 25-31-220. Requirements for bonding of mineral mines.

A. Once the permit application is deemed complete, the applicant shall submit a bond or bonds on a form meeting the requirements in 4 VAC 25-31-220 through 4 VAC 25-31-270, made payable to the department and conditioned upon the satisfactory performance of all the requirements of this chapter, the approved permit, and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

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B. The bond or bonds shall cover the entire area presently disturbed by mining plus the estimated number of acres to be disturbed in the upcoming year.

C. As additional areas outside the bonded acreage are to be disturbed to facilitate the mining operation, the permittee shall file a bond or bonds to cover the acreage with the division.

D. Bond shall be posted and accepted by the division prior to disturbing an area for mining-related activity.

E. Permitted operators shall certify annually with the permit renewal the type, current insurer or bank, and the amount of all reclamation bonds.

4 VAC 25-31-230. Period of liability.

A. The bond liability shall be for the duration of the mineral mining operation and for the period following reclamation, which is necessary to demonstrate the success of the final reclamation.

B. In lieu of the requirements of 4 VAC 25-31-240 through 4 VAC 25-31-270, a permittee accruing five years of satisfactory operation under Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia shall be required to enter the Minerals Reclamation Fund as established in Article 4 (§ 45.1-197.8 et seq.) of Chapter 16 of Title 45.1 of the Code of Virginia and 4 VAC 25-31-320. All performance bonds will be released upon acceptance in the Minerals Reclamation Fund and payment of required fees.

4 VAC 25-31-240. Bond amount.

A. The amount of bond shall be \$1,000 per acre of disturbed land.

B. The minimum bond for a mineral mining permit shall be \$1,000, except for restricted permits and Minerals Reclamation Fund participants.

4 VAC 25-31-250. General terms and conditions of bond.

A. The bond shall be of the form and amount as specified by the division.

B. The performance bond shall be payable to the department.

C. The performance bond shall be conditioned upon satisfactory performance of all the requirements of this chapter, the approved permit, and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

4 VAC 25-31-260. Form of performance bond.

The bond shall be submitted in the form of cash, check, certificate of deposit, or insurance surety bond.

A. Certificates of deposit.

1. Certificates of deposit must be made payable to the Treasurer of Virginia, Division of Mineral Mining.

2. The amount of the certificate of deposit must include the maximum early withdrawal penalty rounded up to the next higher hundred dollars.

3. The original certificate of deposit shall be submitted to the division and held by the division throughout the bond liability period.

4. Certificates of deposit must be automatically renewable.

5. The certificate of deposit must be from a bank located in the Commonwealth of Virginia or approved as an allowable bank depository by the Virginia Department of Treasury.

6. Interest accrued on certificates of deposit may be deposited to the permittee's individual account and is free of encumbrance by bond liability.

7. In the event of forfeiture of a certificate of deposit, the face value of the deposit plus any accrued interest that has been rolled back into the certificate principal will be subject to bond liability and expenditure in the performance of the reclamation obligation.

B. Surety bonds.

1. All bonds shall be acceptable by the director. Bonds shall be executed by the permittee, and a corporate surety and agent licensed to do business in the Commonwealth.

2. Surety bonds shall not be canceled during their term except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the division. The division shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

4 VAC 25-31-270. Replacement of bonds.

A. The division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

B. The division shall not release existing performance bonds until the permittee has submitted and the division has approved acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond.

4 VAC 25-31-280. Release of bond.

The division may release all or part of the bond for the entire permit area or a portion of the permit area if the division is satisfied that all reclamation covered by the bond or portion thereof has been accomplished in accordance with this chapter, the approved permit, and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

4 VAC 25-31-290. Intensive agricultural use.

If the post-mining use is to be intensive agriculture, then planting and harvesting of a normal crop yield is required to meet the regulatory requirements for full or partial bond release. A normal yield for a particular crop is equal to the five-year average for the county. The use of grass, water bars, or diversion strips and natural vegetative drainage control may be required in the initial planting year as specified by the director.

4 VAC 25-31-300. Inspections for adequacy of vegetation and bond release.

A. Final inspection for bond release shall be made no sooner than two growing seasons after the last seeding.

B. Final inspection for bond release shall require:

1. No noncritical areas larger than one-half acre shall be allowed to exist with less than 75% ground cover. Vegetation shall exhibit growth characteristics for long-term survival.
2. Seeded portions of critical areas shall have adequate vegetative cover so the area is completely stabilized.
3. Bond release inspections for industrial, residential, or commercial post-mining use shall ensure that:
 - a. All areas not redisturbed by implementation of the post-mining use are reclaimed and satisfactorily stabilized.
 - b. All areas associated with construction of buildings or residential dwellings for post-mining use are covered by appropriate plans approved by the local governing body, i.e., erosion and sediment control plans, building permits, and development plans.
 - c. All areas not covered by such approved local government plans shall be reclaimed and stabilized in accordance with subdivisions 1 and 2 of this subsection prior to release of bond.
4. Bond release inspections for other post-mining uses will ensure that all areas not directly used by the post-mining use are stabilized in accordance with subdivisions 1 and 2 of this subsection and that the post-mining use is implemented.

4 VAC 25-31-310. Bond forfeiture.

A. If the permittee refuses or is unable to comply with an order by the director under § 45.1-186.1 of the Code of Virginia, fails to comply with the terms of the permit, or defaults on the conditions under which the bond was accepted, the division shall take the following action to revoke the permit and forfeit the bond or bonds for the permit area or a portion of the permit area:

1. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond informing them of the decision to revoke the permit and forfeit all or part of the bond, and the reasons for this action.
2. Advise the permittee and surety of the conditions under which forfeiture may be avoided. Such conditions may include:
 - a. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule acceptable to the division, which meets the conditions of the permit and the reclamation plan, and demonstrates that such party has the ability to satisfy the conditions; or
 - b. The division may allow a surety to complete the reclamation plan if the surety can demonstrate an ability to complete the reclamation in accordance with the

approved reclamation plan. Except where the division may approve partial release, no surety liability shall be released until successful completion of all reclamation under the terms of the permit.

B. In the event forfeiture of the bond is required, the division shall:

1. Proceed to collect the forfeited amount as provided by Virginia law for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, if any rights of appeal have not been exercised within a time established by the division, or if such appeal is unsuccessful.

2. Use funds collected from bond forfeiture to complete the reclamation plan on the permit area.

C. Upon default the division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability shall extend to the entire permit area under conditions of forfeiture.

D. Reclamation costs in excess of the forfeited bond amount will constitute a debt of the operator to the Commonwealth of Virginia and shall be collected in accordance with § 45.1-186.2 of the Code of Virginia.

E. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the division to the party from whom they were collected.

F. Appeal of bond forfeiture decisions may be made by the operator to the Board of Surface Mining Review by providing notice of appeal to the director in accordance with §§ 45.1-186.1 and 45.1-194 of the Code of Virginia. If the operator files a notice of appeal, then the director's orders revoking the permit and declaring forfeiture shall be held in abeyance until the appeal is determined by the Board of Surface Mining Review.

4 VAC 25-31-320. Minerals Reclamation Fund (MRF).

A. Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia shall become a member of the fund by making an initial payment to the fund of \$50 for each acre currently disturbed and each acre estimated to be affected by mining operations during the next year. Thereafter the member shall make an annual payment of \$12.50 for each acre currently disturbed plus each acre estimated to be affected during the next ensuing year. No annual Minerals Reclamation Fund deposits will be collected from members where the permit Minerals Reclamation Fund deposits divided by the number of bonded acres in the next ensuing year is equal to or greater than \$500.

B. Entry into the Minerals Reclamation Fund shall be mandatory for all eligible permittees.

C. Operator deposits into the Minerals Reclamation Fund shall be released or retained under the following conditions:

1. When the operation and reclamation are complete and the reclaimed area is suitable for bond release Minerals

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Reclamation Fund deposits for the reclaimed area shall be returned to the operator.

2. When the mining permit is transferred to another permittee and division approval is granted, Minerals Reclamation Fund deposits for the permit may be returned to the transferring permittee.

3. When a mining permit is completely relinquished to another operator, other than in a permit transfer, all of the Minerals Reclamation Fund deposits for the permit shall be returned to the relinquishing operator upon division approval of the relinquishment.

4. After bond release applications are approved by the division, Minerals Reclamation Fund deposits for the permit shall be held or retained according to the following formulas:

a. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is equal to or greater than \$500, Minerals Reclamation Fund deposits for the permit will be released so that the remaining deposits equal \$500 per acre for the acres remaining under bond.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = \$4,000;

Minerals Reclamation Fund balance \div remaining bonded acres = \$500;

$\$4,000 \div (10-2) \text{ acres} = \$500.$

b. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is less than \$500 the bond release amount will be determined by dividing the permit Minerals Reclamation Fund deposit by the number of bonded acres including the acres to be released and then multiplying by the number of acres to be released.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = \$3,000;

Minerals Reclamation Fund balance \div total bonded acres = Release amount \$ per acre;

$\$3,000 \div 10 \text{ acres} = \$300 \text{ per acre};$

Release amount = \$300 per acre x 2 acres = \$600.

D. Moneys available in the Minerals Reclamation Fund may be less than the total of all operator deposits due to expenditures for bond forfeiture as required by § 45.1-197.12 of the Code of Virginia. Minerals Reclamation Fund refunds are subject to availability of moneys in the Minerals Reclamation Fund and shall be suspended if the fund decreases below \$250,000. Payments to the fund are then proportionately assessed until the fund returns to a minimum, \$250,000 or bond or other securities are posted as required by the director in accordance with § 45.1-197.14 of the Code of Virginia.

E. Minerals Reclamation Fund deposits will be transferred to the successor operator when a permit transfer occurs due to a

change in organization status or restructuring that does not involve a complete change of ownership.

PART IV. PERFORMANCE STANDARDS.

4 VAC 25-31-330. Protected structures and sensitive features.

Mining activities shall be conducted in a manner that protects cemeteries, public utilities, public buildings, public roads, churches, and occupied dwellings.

4 VAC 25-31-340. Signs.

A permanent sign shall be installed on the mining site adjacent to the principal access road and shall be visible and legible to access road traffic. The name of the permittee and the permit number shall be on the marker.

4 VAC 25-31-350. Roads.

A. Internal service roads and principal access roads shall be planned to minimize the impact of traffic, dust, and vehicle noise on developed areas outside the mining site.

B. Construction standards.

1. The integrity of drainageways shall be maintained. If natural drainageways are altered or relocated during construction, adjoining landowners shall be protected from damage resulting from construction.

2. Drainage structures shall be required in order to cross a stream channel. Such structures shall be constructed with consideration for surrounding drainage acreage and culvert size, and slope so as not to restrict the flow of the stream, i.e., the bridge or culverts shall be of adequate size to permit stream flow throughout the seasonal periods during the life of the surface mine permit. Temporary stream crossings for pioneer roads shall be for infrequent use, stable, only used in low flow times, and shall not contribute to sedimentation off-site.

3. Roads shall be located away from streams wherever possible.

4. Road surfaces and ditches shall be stabilized. Side slopes shall be constructed in a stable manner to minimize erosion and sedimentation.

5. Ditches shall be constructed where necessary, with consideration for surrounding drainage acreage and slope and shall have sufficient capacity to control surface run-off.

6. Culverts shall be installed in accordance with the following standards:

a. Relief culverts shall be installed at intervals to prevent overloading of ditches.

b. Culverts shall be placed on a minimum grade to ensure free drainage and be covered by compacted fill as specified by the manufacturer.

c. The inlet end shall be protected by a headwall of a suitable material such as a concrete retaining wall, sand bags, rock riprap, or other approved material.

d. The outlet end shall discharge onto an apron of rock riprap or other approved material. Where practical, the outlet end shall be placed below the toe of the fill. At no time should run-off be allowed to flow over an unprotected fill slope.

e. All culverts shall have the capacity to carry storm run-off and shall be properly maintained.

7. Sediment control shall be provided for roads to minimize sediment that leaves the disturbed area.

8. Dust from roads shall be adequately controlled.

9. Roads shall be surfaced and maintained to prevent the depositing of mud and debris on public roads.

10. Roads shall not be surfaced with any acid producing material or any material that will introduce a high concentration of suspended solids into surface drainage.

C. Maintenance is required to ensure the proper functioning of the road and drainage system. Maintenance of the road system shall consist of inspecting, repairing and cleaning of roadways, ditches, and culverts as necessary. Particular attention shall be given to removing debris from culvert inlets.

D. When a road is abandoned, steps shall be taken to minimize erosion and establish the post-mining use in accordance with the reclamation plan.

4 VAC 25-31-360. Operation and reclamation.

A. Mining operations shall be conducted to minimize adverse effects on the environment and facilitate integration of reclamation with mining operations according to the special requirements of individual mineral types. Mining shall be conducted to minimize the acreage that is disturbed and reclamation shall be conducted simultaneously with mining to the extent feasible.

B. Open pit mining of unconsolidated material shall be performed in such a way that extraction and reclamation are conducted simultaneously.

C. Mining activities shall be conducted so that the impact on water quality and quantity are minimized. Mining below the water table shall be done in accordance with the mining plan under 4 VAC 25-31-130.

D. In no case shall lakes or ponds of water be created that are less than four feet deep, unless wetlands are formed as part of the approved post-mining land use.

E. Excavation shall be done in such a manner as to keep storm drainage flowing toward sediment control structures. Diversions shall be used to minimize storm run-off over disturbed areas.

F. The mining operation shall be planned to enhance the appearance to the public during mining and to achieve simultaneous and final reclamation.

G. At the completion of mining, all entrances to underground mines shall be closed or secured and the surface area reclaimed in accordance with the mineral mining plan.

H. Reclamation shall be completed to allow the post-mining land use to be implemented. After reclamation, the post-mining land use shall be achievable and compatible with surrounding land use. All necessary permits and approvals for the post-mining land use shall be obtained prior to implementation.

4 VAC 25-31-370. Slopes.

A. The grade of completed slopes shall be as described in the mineral mining plan. Long uninterrupted slopes shall be provided with drainage control structures, such as terraces, berms, and waterways, to minimize erosion due to surface run-off.

B. Slopes shall be stabilized, protected with a permanent vegetative or riprap covering, and shall not be eroded.

C. Constructed cut or fill slopes shall not extend closer than 25 feet to any property boundary without the written permission of the adjoining property owner and the approval of the director.

4 VAC 25-31-380. Treatment of acid material.

All acid material, which is part of or directly associated with the mineral deposit or deposits being mined, shall be properly controlled during mining and upon completion of mining shall be covered with a material capable of shielding the acid material and supporting plant cover in accordance with the approved reclamation plan. Unless otherwise specified by the director, the minimum cover shall be four feet in depth.

4 VAC 25-31-390. Handling of spoil piles and stockpiles of minerals.

A. All spoil piles will be graded in accordance with the mineral mining plan in such a manner as to minimize sediment run-off.

B. Stockpiles of minerals shall be removed to ground level and the area shall be scarified and planted in accordance with the approved mineral mining plan. The director shall allow a reasonable time for sale of stockpiles.

4 VAC 25-31-400. Overburden, refuse, spoil and waste fills.

A. Overburden, refuse, spoil and waste disposal fills with the capability to impound water, sediment or slurred tailings, slimes or refuse in a liquid, or semi-liquid state, shall be designed and constructed in accordance with 4 VAC 25-31-500.

B. Overburden, refuse, spoil and waste disposal fills that do not have the capability to impound water or other liquid or semi-liquid materials, shall meet the requirements of this section.

C. Fills that are not impoundments shall be designed to meet the requirements of this section and use current, prudent engineering practices.

D. The plans and specifications for fills shall consist of a detailed engineering design report that includes engineering calculations, drawings, and specifications, with the following as a minimum:

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1. A site plan showing the location of the structure, associated access, surface and subsurface drainage systems, sediment control structures, and the proposed fill configuration.

2. Cross sections and profiles showing the original ground, proposed fill profile, location of terraces and constructed slopes.

3. Design details for all surface and subsurface drainage control structures.

4. A narrative description of site preparation, foundation evaluation and preparation, materials placement, material handling, and sequencing of construction.

5. A closure and final reclamation plan for the fill and associated structures.

E. Fills shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout the life of the fill.

F. Fills shall be constructed with slopes no steeper than two horizontal to one vertical for predominantly clay soils and no steeper than three horizontal to one vertical for predominantly sandy soils or must exhibit a static safety factor of 1.5 for other steeper slopes.

G. Fills shall be constructed, maintained and inspected to ensure protection of adjacent properties, preservation of public safety, and to provide prompt notice of any potentially hazardous or emergency situation.

H. Fills shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4 VAC 25-31-410. Storage of top soil.

A. Top soil required for reclamation shall be stored in such a manner as to remain available for reclamation. Top soil will be needed for future reclamation and shall not be removed from the permitted area unless authorized by the division.

B. The stockpiled top soil shall be seeded with quick growing grasses or legumes for stabilization until used in final reclamation.

4 VAC 25-31-420. Screening.

A. Screening shall be provided to improve the appearance of the mining site from public roads, public buildings, recreation areas, and occupied dwellings.

B. If screening is to be undisturbed forest, a distance of 100 feet must be left undisturbed within the permit boundary. Planted earth berms, natural topography, appropriately designed fences or walls may be used if approved in the mineral mining plan.

C. On permanent berms for screening, the spoils (waste materials) shall be initially placed on the proposed berm area and top soil (where available) shall be spread over the spoil areas, not less than four inches in thickness, and if possible, 12 inches in thickness. The remaining top soil shall be placed in a designated area for future spreading on other areas which

need top dressing. The top soil shall be seeded or planted in accordance with the approved reclamation plan.

4 VAC 25-31-430. Completion of active mining.

A. Except as provided in subsection B of this section, a mining operation, where no mineral has been removed or overburden removed or regraded for a period of 12 consecutive months, shall be declared complete and total reclamation shall begin.

B. At the option of the operator and with the director's concurrence, an operation may remain under permit for an indefinite period during which no mineral or overburden is removed if the following conditions are met to the director's satisfaction:

1. All disturbed areas are reclaimed to prevent erosion and sedimentation in accordance with mining plans and proper engineering practices.

2. All drainage structures such as culverts and ditches are constructed and maintained in accordance with mining plans and proper engineering practices.

3. All vegetation is maintained, including reseeding if necessary.

4. All improvements on site, including machinery and equipment, are maintained in a state of good repair and condition.

If the above conditions are not met, the permit may be revoked by the director in accordance with § 45.1-186.1 of the Code of Virginia.

4 VAC 25-31-440. Drainage and sediment control.

All mining operations shall have adequate drainage, erosion, and sediment control measures installed and maintained in accordance with the approved drainage plan or as acceptable to the division. If adequate drainage, erosion, and sediment control measures cannot be provided, the permit for the affected portion or the entire mine may be denied.

4 VAC 25-31-450. Sediment basins.

Drainage from disturbed areas shall be directed into a sediment basin before it is discharged from the permit area. Sediment basins shall be located as close to the disturbed area as possible. Sediment basins shall not be located in perennial streams. Sediment control measures shall be installed prior to land disturbing activities within the drainage area controlled by the sediment basin. Each primary sediment basin shall provide at least 0.125 acre feet of storage capacity for each acre of disturbed land draining to it. Storage basins shall be cleaned as necessary to ensure proper functioning before they reach 60% capacity. Alternate sediment control measures that are as effective as sediment basins may be approved. The measures may include reduced basin storage capacity for small short-term disturbances, sediment channels, check dams, or mining methods that incorporate sediment control.

4 VAC 25-31-460. Intermittent or perennial streams.

All intermittent or perennial streams shall be protected from spoil by natural or constructed barriers. Stream channel diversions shall safely pass the peak run-off from a 10-year,

24-hour storm. Stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

4 VAC 25-31-470. Natural drainageways.

Drainageways shall be identified on the map submitted with the application. If it is necessary for the operation to cross or fill such a drainageway, properly engineered drainage structures shall be provided to allow free-flowing drainage and minimize erosion. Where necessary, water-retarding structures shall be placed in drainageways.

4 VAC 25-31-480. Diversions.

Surface water diversions shall be installed as necessary where run-off has the potential for damaging property, causing erosion, contributing to water pollution, flooding or interfering with the establishment of vegetation. Diversions that will be removed in 18 months or less shall convey the peak run-off of a 1-year, 24-hour storm. Diversions that function more than 18 months shall be able to convey the peak run-off of a 10-year, 24-hour storm.

4 VAC 25-31-490. Water quality.

The pH of all water discharge resulting from the mining of minerals shall be between pH 6.0 and pH 9.0.

4 VAC 25-31-500. Water impoundments.

A. Structures that impound water or sediment to a height of five feet or more above the lowest natural ground area within the impoundment and have a storage volume of 50 acre-feet or more, or impound water or sediment to a height of 20 feet or more regardless of storage volume, shall meet the following criteria (noted in Chapter 18 of Title 45.1 of the Code of Virginia):

1. Impoundments meeting or exceeding the size criteria set forth in this section shall be designed utilizing a spillway flood and hazard potential classification as specified in the following table:

Class of Impoundment*	Hazard Potential if Failure Occurred	Size Classification **		Spillway Design Flood (SDF)***
		Capacity (ac-ft)	Height	
I	Probable loss of life	A) > 1000	> 40 ft	PMF
		B) > 500	< 40 ft	2 PMF-PMF
	Extensive off-site effect	C) > 50	> 5 ft	2 PMF-PMF
		D) < 50	> 20 ft	100 yr – 2 PMF
II	Probable loss of life	A) > 1000	> 40 ft	2 PMF-PMF
		B) > 500	< 40 ft	100 yr – 2 PMF
	Appreciable off-site effects	C) > 50	> 5 ft	100 yr - 2 PMF
		D) < 50	> 20 ft	100 yr

III	No loss of life	A) > 1000	> 40 ft	100 yr – 2 PMF
		B) > 500	< 40 ft	100 yr
	Minimal off-site effect	C) > 50	> 5 ft	100 yr
		D) < 50	< 20 ft	50 yr - 100 yr

*Size and hazard potential classifications shall be proposed and justified by the operator and shall be subject to approval by the director. Present and projected development in the inundation zone downstream from the structure shall be used in determining the classification.

**The factor determining the largest size classification shall govern.

*** The establishment of rigid design flood criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions for each impounding structure and in recognition of the many factors involved, some of which may not be precisely known. Such can only be done by competent, experienced engineering judgment, which the values in the table are intended to add to, not replace.

2. Impounding structures shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout their life.

a. Impoundments shall be designed and constructed by or under the direction of a qualified registered professional engineer experienced in the design and construction of impoundments.

b. The designs shall meet the requirements of this section and use current prudent engineering practices.

c. The plans and specifications for an impoundment shall consist of a detailed engineering design report that includes engineering drawings and specifications, with the following as a minimum:

(1) The name of the mine; the name of the owner; classification of the impounding structure as set forth in this regulation; designated access to the impoundment and the location with respect to highways, roads, streams and existing impounding structures and impoundments that would affect or be affected by the proposed impounding structure.

(2) Cross sections, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways and other additional drawings in sufficient detail to indicate clearly the extent and complexity of the work to be performed.

(3) The technical provisions as may be required to describe the methods of the construction and construction quality control for the project.

(4) Special provisions as may be required to describe technical provisions needed to ensure that the impounding structure is constructed according to the approved plans and specifications.

d. Components of the impounding structure, the impoundment, the outlet works, drain system and

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appurtenances shall be durable in keeping with the design and planned life of the impounding structure.

e. All new impounding structures regardless of their hazard potential classification, shall include a device to permit draining of the impoundment within a reasonable period of time as determined by the owner's professional engineer, subject to approval by the director.

f. Impoundments meeting the size requirements and hazard potential of Class I, Class II and Class III shall have a minimum static safety factor of 1.5 for a normal pool with steady seepage saturation conditions and a seismic safety factor of 1.2.

g. Impoundments shall be inspected and maintained to ensure that all structures function to design specifications.

h. Impoundments shall be constructed, maintained and inspected to ensure protection of adjacent properties and preservation of public safety and shall meet proper design and engineering standards under Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia. Impoundments shall be inspected at least daily by a qualified person, designated by the licensed operator, who can provide prompt notice of any potentially hazardous or emergency situation as required under § 45.1-225.2 of the Code of Virginia. Records of the inspections shall be kept and certified by the operator or his agent.

3. Impoundments shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4. The following are acceptable as design procedures and references:

a. The design procedures, manuals and criteria used by the United States Army Corps of Engineers:

b. The design procedures, manuals and criteria used by the United States Department of Agriculture, Natural Resources Conservation Service:

c. The design procedures, manuals and criteria used by the United States Department of Interior, Bureau of Reclamation:

d. The design procedures, manuals and criteria used by the United States Department of Commerce, National Weather Service: or

e. Other design procedures, manuals and criteria that are accepted as current, sound engineering practices, as approved by the director prior to the design of the impounding structure.

B. Impoundments that do not meet or exceed the size criteria of subsection A of this section shall meet the following criteria:

1. Be designed and constructed using current, prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Safely pass the runoff from a 50-year storm event for temporary (life of mine) structures and a 100-year storm event for permanent (to remain after mining is completed) structures.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

C. Impoundments with impounding capability created solely by excavation shall comply with the following criteria:

1. Be designed and constructed using prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Be designed and constructed with outlet facilities capable of:

a. Protecting public safety;

b. Maintaining water levels to meet the intended use; and

c. Being compatible with regional hydrologic practices.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

4 VAC 25-31-510. Alternative methods of stabilization.

Riprap shall be used for the control of erosion on those areas where it is impractical to establish vegetation or other means of erosion control or in any areas where rock riprap is an appropriate means of reclamation. Placing of rock riprap shall be in accordance with drainage standards and the approved mineral mining plan. Other methods of stabilization shall include gabions, concrete, and shotcrete.

4 VAC 25-31-520. Revegetation.

Disturbed land shall be stabilized as quickly as possible after it has been disturbed with a permanent protective vegetative cover. The Mineral Mining Operator's Manual provides guidance in the revegetation of surface mined areas. Exposed areas subject to erosion on an active mining site shall be protected by a vegetative cover or by other approved methods. Simultaneous revegetation shall be incorporated into the mineral mining plan. Reclamation shall be completed on areas where mining has ceased.

4 VAC 25-31-530. Process in revegetation.

A. Slopes shall be graded in keeping with good conservation practices acceptable to the division. Slopes shall be provided with proper structures such as terraces, berms, and

waterways, to accommodate surface water where necessary and to minimize erosion due to surface run-off. Slopes shall be stabilized, protected with a permanent vegetative or riprap covering and not be in an eroded state at the time reclamation is complete.

B. Crusted and hard soil surfaces shall be scarified prior to revegetation. Steep graded slopes shall be tracked (running a cleated crawler tractor or similar equipment up and down the slope).

C. Application of lime and fertilizer shall be performed based on soil tests and the revegetation requirements in the reclamation plan.

D. Vegetation shall be planted or seeded and mulched according to the mixtures and practices included in the approved reclamation plan. Mulch shall be applied at the rate of 2,000 pounds per acre for straw or hay, and 1,500 pounds per acre for wood cellulose mulch.

E. The seed used must meet the purity and germination requirements of the Virginia Department of Agriculture and Consumer Services. The division may, at its discretion, take samples for laboratory testing. Noncritical vegetated areas shall achieve adequate cover so that no areas larger than one-half acre shall exist with less than 75% cover after two growing seasons. Seeded portions of critical areas shall have adequate vegetative cover so the area is completely stabilized.

4 VAC 25-31-540. Trees and shrubs.

Trees and shrubs shall be planted according to the specific post-mining land use, regional adaptability, and planting requirements included in the approved reclamation plan. Tree and shrub planting for ground cover shall be combined with well established grass species. For forest and wildlife post-mining land uses, at least 400 healthy plants per acre shall be established after two growing seasons.

4 VAC 25-31-550. Intensive agricultural use.

If the post-mining use is to be intensive agriculture, the planting and harvesting of a normal crop yield is required. A normal yield for a particular crop is equal to the five-year average for the county. The use of grass, water bars, or diversion strips and natural vegetative drainage control may be required in the initial planting year as specified by the director.

PART V.
ORDERS.

4 VAC 25-31-560. Informal review.

Orders of the director may be reviewed through informal processes in accordance with § 2.2-4019 of the Code of Virginia.

4 VAC 25-31-570. Formal review.

Orders of the director, which are final agency actions for which no further informal resolution is available, shall be appropriately identified and may be appealed to the Board of Surface Mining Review in accordance with § 45.1-194 of the Code of Virginia.

NOTICE: The forms used in administering 4 VAC 25-31, Reclamation Regulations for Mineral Mining, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Mines, Minerals and Energy, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

- Permit License Application, DMM-101 (rev. 9/99).
- Notice of Application to Mine, DMM-103 (rev. 9/99).
- Statement Listing the Names and Addresses of Adjoining Property Owners, DMM-103a (rev. 9/99).
- Yearly Progress Report, DMM-105 (rev. 12/94).
- Surety Bond, DMM-107 (rev. 9/99).
- Legend, DMM-109 (rev. 9/99).
- Relinquishment of Mining Permit, DMM-112 (rev. 9/99).
- Request for Amendment, DMM-113 (rev. 7/99).
- Consolidated Biennial Report of Waivered Counties, Cities, and Towns, DMM-116 (rev. 2002).
- Biennial Waivered Counties, Cities, and Towns, Report of Individual Mining Companies, DMM-117 (rev. 12/99).
- Consent for Right of Entry, DMM-120 (rev. 12/99).
- License Renewal Application, DMM-157 (rev. 9/99).
- Permit Transfer Acceptance, DMM-161 (rev. 9/99).

VA.R. Doc. No. R01-167 and R01-165; Filed August 6, 2002, 2:29 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-70. Regulation No. 5 -- Control of Pollution from Boats (REPEALING).**

Title of Regulation: **9 VAC 25-71. Regulations Governing the Discharge of Sewage and Other Wastes from Boats (adding 9 VAC 25-71-10 through 9 VAC 25-71-70).**

Title of Regulation: **9 VAC 25-730. Smith Mountain Lake No-Discharge Zone (REPEALING).**

Statutory Authority: § 62.1-44.33 of the Code of Virginia.

Public Hearing Date: September 27, 2002 - 10 a.m.

Public comments may be submitted until 5 p.m. on November 12, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA

Proposed Regulations

23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

Basis: The basis for this regulation is § 62.1-44.33 of the Code of Virginia, which empowers and directs the State Water Control Board to adopt and promulgate all necessary rules and regulations for the purpose of controlling the discharge of sewage and other wastes from boats. The proposed regulation does not exceed applicable federal minimum requirements.

Purpose: The purpose of this proposed action is to provide a state regulation to address discharges of sewage and other wastes from boats and to implement enforcement of designated no discharge zones. It is essential to prevent contamination of state waters from sewage discharges from boats in order to protect the health and safety of citizens of the Commonwealth. The proposed action replaces two existing boat regulations that have limited enforcement capabilities with one regulation that effectively serves their purposes, applies to all waters of the state and provides specific language regarding no discharge zones, areas which have received federal approval to prohibit all discharges of sewage, whether treated or not, from boats. The 2001 General Assembly has required that the State Water Control Board promulgate such a regulation and have it become effective by July 2002.

Substance: The proposed regulation will replace 9 VAC 25-70 and 9 VAC 25-730 with one regulation to accomplish their intended purposes but without their limitations. It will address discharges of sewage and other wastes from boats and will prohibit all discharges of sewage from boats, whether treated or not, into state waters designated as no discharge zones.

Issues: The proposed regulation specifies requirements existing in the state code with respect to discharges from boats and provides a means of designating no discharge zones, but it is no more stringent than requirements under federal law, so there are no disadvantages to the public or the Commonwealth. Members of the community of Smith Mountain Lake, which is the only designated no discharge zone in the Commonwealth at present, would prefer a more stringent regulation with no discharge zone enforcement methods specified; however, state code does not provide the authority.

Locality Particularly Affected: This regulation will be applied uniformly throughout the Commonwealth and will generally not impact any one locality. In designated no discharge zones the discharge of treated sewage as well as untreated sewage is prohibited from boats while in other areas treated discharges of sewage are allowed. In that sense, Smith Mountain Lake, as the only designated no discharge zone in the Commonwealth, might be considered as particularly affected; however, the Smith Mountain Lake no discharge zone and its requirements are already in place in one of the existing regulations to be repealed and incorporated into this proposed regulation.

Public Participation: The board is seeking comments on the proposed action, including (i) the costs and benefits of any alternatives and (ii) impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the

public comment file may do so at the public meeting, by mail to Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, (804) 698-4065, by fax to (804) 698-4032, or by e-mail to mbgregory@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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 proposed changes will add language in the water quality control regulations to clarify that (i) boat waste regulations apply to all state waters, (ii) in addition to sewage, the discharge of other wastes from all vessels into the state waters is prohibited, and (iii) vessels without installed toilets must not discharge sewage into the state waters and waste from containment devices must be pumped out at pump out facilities or carried ashore for treatment.

Estimated economic impact. The proposed regulations will apply to discharge of sewage and other wastes from boats or vessels into the state waters. Currently, there are two regulations that apply to discharge of waste from boats. One of these regulations¹ prohibits discharge of sewage (treated or untreated) from boats into the Smith Mountain Lake No Discharge Zone (SMLNDZ)². The jurisdiction of this regulation is limited in two aspects. First, it is only applicable to discharges into SMLNDZ. Second, it does not prohibit discharge of wastes other than sewage in its jurisdiction.³

¹ 9 VAC 25-730.

² SMLNDZ includes Smith Mountain Lake from Smith Mountain Dam (gap of Smith Mountain) upstream to the 795.0 foot contour (normal pool elevation) in all tributaries, including waters to above the confluence with Back Creek in the Roanoke River arm and to the Brooks Mill Bridge (Route 834) on the Blackwater River arm.

³ The wastes other than sewage may include decayed wood, sawdust, wood shavings, bark, lime, garbage, refuse, ashes, petroleum products, chemicals, and industrial liquid wastes.

The other regulation⁴ prohibits discharge of other wastes and of sewage into designated shellfish growing waters as well as into all other state waters from boats. However, this regulation has never been enforced since its adoption in March 1976. Its effective date was tied to the U.S. Environmental Protection Agency's (EPA) approval of a no discharge zone in the proposed designated shellfish growing waters. EPA did not approve the Department of Environmental Quality's (the department) proposal and the regulation did not become effective. The department also indicated that this regulation is unlikely to be effective in foreseeable future.

The proposed regulation will replace the two current boat waste regulations. The proposed language contains the same provisions of the first regulation that is effective. It also adds new language stating that the discharge of boat waste into all state waters is prohibited as opposed to only prohibiting discharges into SMLNDZ, that the types of waste is not limited only to sewage, but also include the other types of waste, and that the vessels without installed toilets must not discharge sewage into state waters and sewage and other types of waste from containment devices must be pumped out at pump out facilities or carried ashore for treatment.

According to the department, all of the proposed requirements are currently administered under the general provisions of the Water Control Law and the proposed regulations will have no effect on waste discharge activities of boat or vessel operators in the Commonwealth. Thus, the State Water Control Board's proposal to replace the two other boat waste regulations with the proposed regulations is not expected to have a significant economic impact. However, it is expected that the proposed regulations will improve the clarity of water quality control regulations. Additionally, by implementing the authority of § 62.1-44.33 of the Code of Virginia as generic rules, the proposed regulations will be the repository for newly designated no discharge zones where all discharge of sewage, whether treated or not, and of other wastes from all vessels is prohibited. This will allow the State Water Control Board to add any no discharge zones approved in the future to these regulations rather than promulgating new site-specific boat waste regulations.

Businesses and entities affected. About 243,500 boats are subject to the proposed regulations statewide and about 19,000 boats are principally used in counties surrounding the Smith Mountain Lake.

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

Projected impact on employment. No significant impact on employment is expected.

Effects on the use and value of private property. The proposed changes are not expected to have a significant impact on the use and value of private property.

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

⁴ 9 VAC 25-70.

Summary:

The proposed regulation addresses discharges of sewage and other wastes from boats and prohibits all discharges of sewage from boats, whether treated or not, into state waters designated as no discharge zones. The proposed action repeals 9 VAC 25-70 and 9 VAC 25-730, which have limited enforcement capabilities, and replaces them with one regulation that applies to all state waters. The proposed changes add language in the water quality control regulations to clarify that (i) boat waste regulations apply to all state waters; (ii) in addition to sewage, the discharge of other wastes from all vessels into the state waters is prohibited; and (iii) vessels without installed toilets must not discharge sewage into the state waters and waste from containment devices must be pumped out at pump out facilities or carried ashore for treatment.

9 VAC 25-71-10. Definitions.

For the purposes of this chapter, the following definitions apply:

"Act" means the Clean Water Act (33 USC § 1251 et seq.) and standards and regulations promulgated thereunder.

"Board" means the State Water Control Board.

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Discharges incidental to the normal operation of a vessel" means discharges of graywater (galley, bath and shower water), bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other discharge from a properly functioning marine engine or propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or catapult, or from a protective, preservative, or adsorptive application to the hull of a vessel, or a discharge in connection with the testing, maintenance, and repair of a system described above whenever the vessel is waterborne. It does not include a discharge of rubbish, trash, garbage, other such material discharged overboard or pollution.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of natural resources.

"Marine sanitation device" means any equipment installed on a boat or vessel and that is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

"Other waste" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances, except industrial waste and sewage, which may cause pollution in any state waters.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other

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reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Pump-out facility" means any device, equipment or method of removing sewage from a marine sanitation device. Also it shall include any holding tanks either portable, movable or permanently installed, and any sewage treatment method or disposable equipment used to treat, or ultimately dispose of, sewage removed from boats.

"Sewage" means human body wastes, the wastes from toilets and other receptacles intended to receive or retain human wastes, and liquid-carried human wastes together with such industrial wastes and other liquid as may be present.

"State" means the Commonwealth of Virginia.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth of Virginia or within its jurisdiction, including wetlands.

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used on the waters of the state, including boats and houseboats regardless of size, means of propulsion or place of registry.

9 VAC 25-71-20. Federal regulations.

The following federal regulations are hereby incorporated by reference: Marine Sanitation Device Standard, 40 CFR Part 140 (2002).

9 VAC 25-71-30. Penalty.

Section 62.1-44.33 of the Code of Virginia provides penalties for violations of these regulations.

9 VAC 25-71-40. Miscellaneous waste discharges.

No person shall discharge other wastes from any vessel on any navigable or nonnavigable waters into state waters. This provision shall not prohibit discharges incidental to the normal operation of a vessel and shall not be applicable to the harvesting of seafood and fisheries products.

9 VAC 25-71-50. Sewage discharges.

Vessels with installed toilets and marine sanitation devices shall be in compliance with federal regulations at 40 CFR Part 140 (2002), which set standards for sewage discharges from marine sanitation devices. Vessels without installed toilets or without installed marine sanitation devices shall not directly or indirectly discharge sewage into state waters. Sewage and other wastes from self-contained portable toilets or other containment devices shall be pumped out at pump-out facilities or carried ashore for treatment in facilities approved by the Virginia Department of Health.

9 VAC 25-71-60. No discharge zones.

All discharge of sewage, whether treated or not, and other wastes from all vessels into designated no discharge zones is prohibited. A listing of designated no discharge zones within the state appears at 9 VAC 25-71-70.

9 VAC 25-71-70. Listing of designated no discharge zones in the Commonwealth of Virginia.

The following are designated no discharge zones: A no discharge zone is hereby established for Smith Mountain Lake in the counties of Bedford, Franklin and Pittsylvania, Virginia, from Smith Mountain Dam (Gap of Smith Mountain) upstream to the 795.0 foot contour (normal pool elevation) in all tributaries, including waters to above the confluence with Back Creek in the Roanoke River arm, and to the Brooks Mill Bridge (Route 834) on the Blackwater River arm.

VA.R. Doc. No. R01-220; Filed July 30, 2002, 8:29 a.m.

* * * * *

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 B, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007 F, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9 VAC 25-120. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges From Petroleum Contaminated Sites and Hydrostatic Tests (amending 9 VAC 25-120-10, 9 VAC 25-120-20, 9 VAC 25-120-50 through 9 VAC 25-120-80; repealing 9 VAC 25-120-31).

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

Public Hearing Date: September 27, 2002 - 10 a.m.

Public comments may be submitted until 4 p.m. on October 31, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Jon van Soestbergen, P.E., Environmental Manager II, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvsoest@deq.state.va.us.

Summary:

This proposed regulatory action sets forth guidelines for the permitting of the discharge to surface waters of wastewaters from sites contaminated by petroleum products or resulting

from the hydrostatic testing of petroleum and natural gas storage tanks and pipelines. The State Water Control Board proposes to reissue the general permit with limitations and monitoring requirements for the following parameters:

1. For discharge of gasoline contaminated wastewaters to freshwater receiving waters; estimated flow in millions of gallons per day; benzene, maximum 50 micrograms per liter; toluene, maximum 175 micrograms per liter; ethylbenzene, 320 micrograms per liter; total xylenes, 82 micrograms per liter; MTBE, 1,840 micrograms per liter; pH, 6.0 minimum, 9.0 maximum; total recoverable lead is limited based on a formula dependant on hardness; and monitoring is required for hardness. Monitoring frequency is once per month.

2. For discharge of contamination by petroleum products other than gasoline to freshwater receiving waters; estimated flow in millions of gallons per day; naphthalene, 62 micrograms per liter maximum; total petroleum hydrocarbons, 15 milligrams per liter; pH, 6.0 minimum, 9.0 maximum. Monitoring frequency is once per month. Additionally, monitoring once per year is required for semi-volatile organics, volatile organics, and dissolved metals.

3. For discharges of hydrostatic test waters; estimated flow in million gallons per day; pH, 6.0 minimum, 9.0 maximum; total petroleum hydrocarbons, 15 mg/l maximum; total residual chlorine, 0.011 mg/l maximum; monitoring only for total organic carbon and total suspended solids. Monitoring frequency is once per discharge.

4. For discharges of gasoline contaminated wastewaters to saltwater receiving streams; estimated flow in millions of gallons per day; benzene, 50 micrograms per liter; toluene, 500 micrograms per liter; ethylbenzene, 4.3 micrograms per liter; total xylenes, 74 micrograms per liter; MTBE, 440 micrograms per liter; pH, 6.0 minimum, 9.0 maximum; total recoverable lead, 8.5 micrograms per liter. Monitoring frequency is once per month.

5. For discharges of contamination by petroleum products other than gasoline to saltwater receiving waters; estimated flow in millions of gallons per day; naphthalene 23.5 micrograms per liter; total petroleum hydrocarbons, 15 milligrams per liter; pH, 6.0 minimum, 9.0 maximum. Monitoring frequency is once per month. Additionally, monitoring once per year is required for semi-volatile organics, volatile organics, and dissolved metals.

The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.

CHAPTER 120.
GENERAL VIRGINIA POLLUTANT DISCHARGE
ELIMINATION SYSTEM (VPDES) PERMIT FOR
DISCHARGES FROM PETROLEUM CONTAMINATED
SITES AND HYDROSTATIC TESTS.

9 VAC 25-120-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9 VAC 25-31-10 et seq. (VPDES permit regulation) unless the

context clearly indicates otherwise, except that for the purposes of this chapter:

"Central wastewater treatment facilities" means any facility that treats (for disposal, recycling, or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or nonhazardous industrial wastewater, or used material from offsite. This includes both a facility that treats waste received from off-site exclusively, and a facility that treats waste generated on-site as well as waste received from off site.

"Petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include hazardous waste as defined by the Virginia Hazardous Waste Regulations, (9 VAC 20-60-40 et seq.).

9 VAC 25-120-20. Purpose.

This general permit regulation governs the discharge of wastewaters from sites contaminated by petroleum products. ~~Petroleum-contaminated wastewater and the hydrostatic testing of petroleum and natural gas storage tanks and pipelines.~~ These wastewaters may be discharged from the following activities: excavation dewatering, bailing groundwater monitoring wells, conducting pump and treat tests to characterize site conditions, hydrostatic tests of natural gas and petroleum storage tanks or pipelines, hydrostatic tests of underground and above ground storage tanks, pumping contaminated groundwater to remove free product from the ground, or discharges resulting from another petroleum product cleanup activity approved by the department. Discharges not associated with petroleum-contaminated water or hydrostatic tests are not covered under this general permit.

9 VAC 25-120-31. Evaluation of chapter and petitions for reconsideration or revision. (Repealed.)

~~A. Within three years after February 24, 1998, the department shall perform an analysis of this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

~~B. The board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this chapter.~~

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9 VAC 25-120-50. Effective date of the permit.

This general permit will become effective on February 24, 1998 2003. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-120-60 and the receipt of this general permit.

9 VAC 25-120-60. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters within the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the registration statement of 9 VAC 25-120-70 and complies with the applicable effluent limitations and other requirements of 9 VAC 25-120-80, and provided that:

1. Individual permit. The owner ~~shall not have~~ *has not* been required to obtain an individual permit according to 9 VAC 25-31-170 B;

2. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge to state waters designated as public water supplies or specifically named in other board regulations or policies which prohibit such discharges; and

3. Central wastewater treatment facilities. The owner shall not be authorized by this general permit to discharge to surface waters where there are permitted central wastewater treatment facilities reasonably available, as determined by the board.

B. ~~Coverage under Receipt~~ of this general permit does not relieve any owner of the responsibility to comply with any other appropriate federal, state or local statute, ordinance or regulation.

9 VAC 25-120-70. Registration statement.

The owner shall file a complete *VPDES* general permit registration statement *for discharges from petroleum contaminated sites and hydrostatic tests*. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge 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. Any owner of an existing discharge not currently covered by a *VPDES* permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

GENERAL VPDES PERMIT REGISTRATION STATEMENT FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES

1. Legal Name of Facility _____

2. Location of Facility (Address and Telephone Number)

3. Facility Owner

Last Name _____ First Name _____ M.I. _____

4. Address of Owner

Street _____

City _____ State _____ Zip _____

5. Phone

Home _____ Work _____

6. Nature of the business conducted at the facility

7. Type of petroleum products causing or that caused contamination.

8. Which activities will result in a point source discharge from the petroleum contaminated site? (Check all that apply)

Excavation dewatering

Bailing groundwater monitoring wells

Pump tests to characterize site conditions

Hydrostatic tests of petroleum storage tanks or pipelines

Pumping contaminated groundwater to remove petroleum products from the ground

Other (specify) _____

9. Has a site characterization report for this site been submitted to the Department of Environmental Quality? Yes ___ No ___

10. Identify the discharge point and the waterbody into which the discharge will occur.

11. How often will the discharge occur (e.g., daily, monthly, continuously)? _____

12. Estimate how long each discharge will last _____ hours/days.

13. Estimate total volume of wastewater to be discharged _____ gal.

14. Estimate maximum flow rate of the discharge _____ gal/day.

15. Attach a diagram of the proposed wastewater treatment system identifying the individual treatment units.

16. Attach a topographic or other map which indicates the receiving waterbody name, the discharge points, the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies, which are identified in the public record or are otherwise known to the applicant, within a 1/2 mile radius of the proposed discharges.

17. Are central wastewater treatment facilities available to this site? Yes ___ No ___ If yes, has the option of discharging to the central facilities been evaluated? What was the result of that evaluation?

18. Does this facility currently have a permit issued by the board? Yes ___ No ___

If yes, please provide permit number: _____

19. Pollution complaint number (if applicable) _____

20. Is the material being treated or discharged classified as a hazardous waste under the Virginia Hazardous Waste Regulation, 9 VAC 20-60-10 et seq.? Yes ___ No ___

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. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.

Signature: _____ Date: _____

Print Name: _____

Title: _____

For department use only:

Registration Statement Accepted/Not Accepted by: _____

Date: _____

Basin _____ Stream Class _____ Section _____

Special Standards _____

- 1. Legal name of facility;
2. Location of facility, address, and telephone number;
3. Facility owner name, address, and telephone number;
4. Nature of business conducted at the facility;
5. Type of petroleum or natural gas products causing or that caused the contamination;
6. Identification of activities that will result in a point source discharge from the contaminated site;
7. Whether a site characterization report for the site has been submitted to the Department of Environmental Quality;
8. The location of the discharge point and identification of the waterbody into which the discharge will occur;

9. The frequency with which the discharge will occur (i.e., daily, monthly, continuously);

10. An estimate of how long each discharge will last;

11. An estimate of the total volume of wastewater to be discharged;

12. An estimate of the flow rate of the discharge;

13. A diagram of the proposed wastewater treatment system identifying the individual treatment units;

14. A topographic map or other map that indicates the receiving waterbody name, the discharge points, the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies that are identified in the public record or are otherwise known to the applicant within a 1/2 mile radius of the proposed discharges.

15. Whether central wastewater facilities are available to the site, and if so, whether the option of discharging to the central wastewater facility has been evaluated and the results of that evaluation;

16. Whether the facility currently has a permit issued by the board, and if so, the permit number;

17. Any applicable pollution complaint number;

18. A statement as to whether the material being treated or discharged is certified as a hazardous waste under the Virginia Hazardous Waste Regulation (9 VAC 20-60);

19. 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. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.

The registration statement shall be signed in accordance with 9 VAC 25-31-110.

9 VAC 25-120-80. General permit.

Any owner whose request for coverage under this general permit is accepted by the board shall comply with the requirements of the general permit and be subject to all requirements of 9 VAC 25-31-170 B of the VPDES permit regulation. Not all pages of Part I A of the general permit will apply to every permittee. The determination of which pages apply will be based on the type of contamination at the individual site and the nature of the waters receiving the discharge. Part I B and all pages of Part II apply to all permittees.

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General Permit No.: VAG83

Effective Date:

Expiration Date:

**GENERAL VPDES PERMIT FOR DISCHARGES FROM
PETROLEUM CONTAMINATED SITES AND HYDROSTATIC
TESTS**

**AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA
POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
PROGRAM AND THE VIRGINIA STATE WATER CONTROL
LAW**

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant thereto, the owner is authorized to

discharge to surface waters at the locations identified in the accepted registration statement within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters specifically named in other 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 and Part II--Conditions Applicable to All VPDES Permits, as set forth herein.

If there is any conflict between the requirements of a Department of Environmental Quality approved cleanup plan and this permit, the requirements of this permit shall govern.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. GASOLINE CONTAMINATION--FRESHWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number XXXX. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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/Month	Estimate
Benzene (µg/l)	NA	50	1/Month	Grab*
Toluene (µg/l)	NA	175	1/Month	Grab*
Ethylbenzene (µg/l)	NA	320	1/Month	Grab*
Total xylenes (µg/l)	NA	82	1/Month	Grab*
MTBE (methyl tert-butyl ether) (µg/l)	NA	NL	1/Month	Grab*
pH (standard units)	6.0	9.0	1/Month	Grab
Total recoverable lead* (µg/l)	NA	$e^{(1.273(\ln \text{hardness}^{**})) - 4.705}$	1/Month	Grab***
Hardness (mg/l as CaCO ₃)*	NL	NA	1/Month	Grab***

NL = No Limitation, monitoring required

NA = Not Applicable

* Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to EPA Method 602 (40 CFR Part 136, 1996) or EPA SW 846 Method 8021B (1995 1998).

** ~~Hardness of the effluent~~ pH may be determined in the field using EPA Method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

*** Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be according to EPA Method 239.2 (40 CFR Part 136, 1996) or EPA SW 846 Method 7421 (1986 1998). There are no limits for hardness. The minimum hardness concentration that will be used to determine the lead effluent limit is 15 mg/l.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

2. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE - FRESHWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples

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taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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/Month	Estimate
Naphthalene (µg/l)	NA	62	1/Month	Grab*
Total petroleum hydrocarbons (mg/l)	NA	15	1/Month	Grab**
pH (standard units)	6.0	9.0	1/Month	Grab
Semi-volatile organics***	NA	NL	1/Year****	Grab
Volatile organics***	NA	NL	1/Year****	Grab
Dissolved metals***	NA	NL	1/Year****	Grab

NL = No Limitation, monitoring required
 NA = Not Applicable

* Naphthalene analysis shall be according to either analyzed by one of the following methods: EPA Method 610 or 625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8100 or 8270C (1995 1998).

** TPH shall be analyzed using either the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW-141 (1995), or by EPA Method SW 8015B (1996) for diesel range organics, or by EPA SW Method 4664 (1996) 8270C (1998). If 8270C is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

*** pH may be determined in the field by EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

*** Monitoring for these parameters is required only when contamination is from used oils. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to EPA Method 1625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8270C (1995 1998); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or EPA SW 846 Method 8260B (1995 1998); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or EPA SW 846 Method 6010B (1995 1998) or other equivalent EPA 40 CFR Part 136 (1997) methods with comparable detection limits and target analyte specificity.

**** The first annual sample shall be collected within 72 hours of commencement of the discharge.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. DISCHARGES OF HYDROSTATIC TEST WATERS – ALL RECEIVING WATERS

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

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/discharge	Estimate
pH (standard units)*	6.0	9.0	1/discharge	Grab
Total Petroleum Hydrocarbons (TPH, mg/l)**	NA	15	1/discharge	Grab
Total Organic Carbon (TOC, mg/l)	NA	NL	1/discharge	Grab
Total Residual Chlorine (TRC, mg/l)	NA	0.011	1/discharge	Grab
Total Suspended Solids (TSS)	NA	NL	1/discharge	Grab

NL = No Limitation, monitoring required
 NA = Not Applicable

* pH may be determined in the field by EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

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** TPH shall be analyzed by the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW-141 (1995), or by EPA SW 846 Method 8015B (1996) for diesel range organics, or by EPA SW Method 8270C (1998). If 8270C is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. GASOLINE CONTAMINATION - SALTWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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/Month	Estimate
Benzene (µg/l)	NA	50	1/Month	Grab*
Toluene (µg/l)	NA	500	1/Month	Grab*
Ethylbenzene (µg/l)	NA	4.3	1/Month	Grab*
Total xylenes (µg/l)	NA	74	1/Month	Grab*
MTBE (methyl tert-butyl ether) (µg/l)	NA	NL 440	1/Month	Grab*
pH (standard units)	6.0	9.0	1/Month	Grab
Total recoverable lead* (µg/l)	NA	8.5	1/Month	Grab**

NL = No Limitation, monitoring required

NA = Not Applicable

* Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to EPA Method 602 (40 CFR Part 136, 1996) or EPA SW 846 Method 8021B (1995-1998).

** pH may be determined in the field using EPA Method 150.1 (EPA 600/4-87-020) or EPA SW 846 Method 9040B.

*** Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be performed according to EPA Method 239.2 (40 CFR Part 136, 1996) or EPA SW 846 Method 7421 (1986-1998).

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. 5. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE - SALTWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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/Month	Estimate
Naphthalene (µg/l)	NA	23.5	1/Month	Grab*
Total petroleum hydrocarbons (mg/l)	NA	15	1/Month	Grab**
pH (standard units)	6.0	9.0	1/Month	Grab
Semi-volatile organics***	NA	NL	1/Year****	Grab
Volatile organics***	NA	NL	1/Year****	Grab
Dissolved metals***	NA	NL	1/Year****	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

* Naphthalene analysis shall be according to either analyzed by one of the following methods: EPA Method 610 or 625 (40 CFR Part 136, 1996), or EPA SW 846 Method Methods 8100 or 8270C (1995 1998).

** TPH shall be analyzed using either the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW-141 (1995) or EPA SW 846 Method 1664 (1996) 8270C (1998). If 8270C is used, the lab must report the combination of diesel range organics and polynuclear hydrocarbons.

*** pH may be determined in the field using EPA method 150.1 (EPA 600-4-87-020) or EPA SW 846 Method 9040B.

**** Monitoring for these parameters is required only when contamination is from used oils. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to EPA Method 1625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8270C (1995 1998); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or EPA SW 846 Method 8260B (1995 1998); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or EPA SW 846 Method 6010B (1995) or other equivalent EPA 40 CFR Part 136 (1997) methods with comparable detection limits and target analyte specificity.

***** The first annual sample shall be collected within 72 hours of commencement of the discharge.

PART I.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."
3. O & M Manual. If the permitted discharge is through a treatment works, within 30 days of coverage under this general permit, the permittee shall develop and maintain on site, an Operations and Maintenance (O & M) Manual for the treatment works permitted herein. This manual shall detail practices and procedures which will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O & M Manual. The manual shall be made available to the department upon request.
4. Operation schedule. The permittee shall construct, install and begin operating the treatment works described in the registration statement prior to discharging to surface waters. The permittee shall notify the department's regional office within five days after the completion of installation and commencement of operation.
5. Materials storage. Except as expressly authorized by this permit or another permit issued by the board, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.
6. If the permittee discharges to surface waters through a municipal separate storm sewer system, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following

information: the name and location of the facility, a contact person and telephone number; the nature of the discharge; and the number of outfalls.

7. Termination of coverage. Provided that the department agrees that the discharge covered under this general permit is no longer needed, the permittee may request termination of coverage under the general permit, for the entire facility or for specific outfalls, by submitting a request for termination of coverage. This request for termination of coverage shall be sent to the department's regional office with appropriate documentation or references to documentation already in the department's possession. Upon the permittee's receipt of the regional director's approval, coverage under this general permit will be terminated. Termination of coverage under this general permit does not relieve the permittee of responsibilities under other board regulations or directives.

PART II.

CONDITIONS APPLICABLE TO ALL VPDES PERMITS.

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individuals who performed the sampling or measurements;
 - c. The dates and times analyses were performed;

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- d. The individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this permit; and records of all data used to complete the registration statement for this permit for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of

this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person 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, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall submit the report to the department in writing within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health as follows:

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:
 - a. Any unanticipated bypass; and
 - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone or by FAX. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - a. The permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
 - (1) After promulgation of standards of performance under § 306 of the Clean Water Act which are applicable to such source; or
 - (2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act which

are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the Act within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer 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-making 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 million (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 partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. 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

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plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative thus may be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts II K 1 or 2 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 ensure 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."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. 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 invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. 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. Except as provided in permit conditions on bypass (Part II U) and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. 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 Article 11 (§ 62.1-44.34:14 et seq.) of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. 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.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset and before an action for noncompliance is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. *The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.*

DOCUMENTS INCORPORATED BY REFERENCE

Wisconsin Publication SW-141 (1995).

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EPA Method 1664 (1996).

EPA SW 846 Method 6010 (1995).

EPA SW 846 Method 7421 (1986).

EPA SW 846 Method 8021 (1995).

EPA SW 846 Method 8260 (1995).

EPA SW 846 Method 8270 (1995).

<i>Method</i>	<i>Cite</i>
150.1	EPA 600/4-87-020
200.7	EPA 600/R-94-111; 40 CFR 136, App D, 1996
239.2	EPA 600/4-79-020; 40 CFR 136, App D, 1996
602	40 CFR 136, 1996
610	40 CFR 136, 1996
625	40 CFR 136, 1996
1624	40 CFR 136, 1996
1625	40 CFR 136, 1996
6010B	EPA SW 846, Ch. 3.3, (1998)
7421	EPA SW 846, Ch. 3.3, (1998)
8015B	EPA SW 846, Ch. 4.3.1, (1998)
8021B	EPA SW 846, Ch. 4.3.1, (1998)
8100	EPA SW 846, Ch. 4.3.1, (1998)
8260B	EPA SW 846, Ch. 4.3.2, (1998)
8270C	EPA SW 846, Ch. 4.3.2, (1998)
9040B	EPA SW 846, Ch. 8.2, (1998)

NOTICE: The forms used in administering 9 VAC 25-120, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges From Petroleum Contaminated Sites and Hydrostatic Tests, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

General VPDES Permit Registration Statement for Discharges from Petroleum Contaminated Sites ~~eff. 9/97~~ and Hydrostatic Tests (rev. 2/03).

GENERAL VPDES PERMIT REGISTRATION STATEMENT
FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES AND HYDROSTATIC TESTS

1. Legal Name of Facility _____
2. Location of Facility (Address and Telephone Number)

3. Facility Owner _____

	Last Name	First Name	M.I.
--	-----------	------------	------
4. Address of Owner _____

	Street		
	City	State	Zip
5. Phone _____

Home	Work
------	------
6. Nature of the business conducted at the facility _____
7. Type of petroleum product(s) causing or that caused the contamination. _____
8. Which activities will result in a point source discharge from the petroleum contaminated site? (Check all that apply)
 - Excavation Dewatering
 - Purging Ground Water Monitoring Wells
 - Aquifer Tests to Characterize Site Conditions
 - Hydrostatic Relief of Building or Parking Deck Underdrains
 - Hydrostatic Tests of Petroleum Storage Tanks or Pipelines
 - Hydrostatic Tests of Natural Gas Pipelines
 - Pumping Contaminated Ground Water to Remove Petroleum Products From The Ground
 - Other (specify)
9. Has a site characterization report for this site been submitted to the Department of Environmental Quality?
Yes ___ No ___
10. Identify the discharge point and the waterbody into which the discharge will occur. _____

11. How often will the discharge occur (e.g. daily, monthly, continuously)? _____
12. Estimate how long each discharge will last _____ hours/days
13. Estimate total volume of wastewater to be discharged _____ Gal.
14. Estimate maximum flow rate of the discharge _____ Gal/day.

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GENERAL VPDES PERMIT REGISTRATION STATEMENT
FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES AND HYDROSTATIC TESTS
Page 2.

15. Attach a diagram of the proposed wastewater treatment system identifying the individual treatment units.
16. Attach a topographic or other map which indicates the receiving waterbody name, the discharge point(s), the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies, which are identified in the public record or are otherwise known to the applicant, within a 1/2 mile radius of the proposed discharge(s).
17. Are central wastewater treatment facilities available to this site? Yes__ No__ If yes, has the option of discharging to the central facilities been evaluated? What was the result of that evaluation?

18. Does this facility currently have a permit issued by the Board? Yes____ No____
If yes, please provide permit number: _____
19. Pollution Complaint Number (if applicable) _____
20. Is the material being treated or discharged classified as a hazardous waste under the Virginia Hazardous Waste Regulation, 9 VAC 20-60-10 et seq.? Yes__ No__

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. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.

Signature: _____ Date: _____

Print Name: _____

Title: _____

For Department use only:

Registration Statement Accepted/Not Accepted by: _____ Date: _____

Basin _____ Stream Class _____ Section _____

Special Standards _____

INSTRUCTIONS FOR COMPLETING THE
GENERAL VPDES PERMIT REGISTRATION STATEMENT
FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES AND HYDROSTATIC TESTS

General

A registration statement must be submitted to the Department of Environmental Quality in order for a discharge to be covered under the General VPDES Permit for Discharges from Petroleum Contaminated Sites.

Questions 1 and 2: Facility Information

Give the name of the business or other entity that occupies the site where the discharge is proposed to occur. Provide either the street address or other information that will allow DEQ personnel to locate the site. Give a telephone number at the site so that DEQ can contact someone at the facility.

Questions 3, 4 and 5: Owner Information

Provide the full name, street address and telephone numbers of the owner to whom the permit will be issued. This person, firm, public organization or other entity is the party responsible for the control of the facility's operation.

Question 6: Nature of Business

Give a brief statement as to what usual business activities are conducted at the site of contamination.

Question 7: Type of petroleum products involved

The type of petroleum products that are involved in the contamination will determine the conditions under which the general permit is issued. It is important to list or describe all of the materials involved.

Question 8: Proposed activities

Select all of the categories that apply to this proposed discharge. If events at the facility will cause the discharge to change over time from one category to another, indicate all categories that are anticipated.

Question 9: Site Characterization

Please indicate if a site characterization report has been submitted to the DEQ. NOTE: An SCR is required from the person responsible for conducting the release investigation and performing corrective action. If you are not a Responsible Person (RP), you are NOT required to submit an SCR.

Question 10: Discharge Location

Provide a narrative description of the point of discharge (e.g. northwest corner of intersection of First St. and Second Ave.) Give the name of the stream, lake, river, etc. that the discharge will go into (e.g. Unnamed Tributary to Clear Creek). If the discharge is to enter a storm drain, give the name of the owner of the storm drain system (e.g. Fairfax Co. storm drain inlet).

Questions 11, 12, 13 and 14: Discharge Information

Provide estimates of the frequency at which the discharge will occur, the duration of the discharge and of the amount and flow rate of wastewater to be discharged.

Question 15: Treatment Works Design

Attach a line drawing that traces the flow of wastewater from one treatment unit to the next. This drawing may be a sketch that shows, conceptually, what system will be used to treat wastewater so that it will meet the effluent quality requirements of the general permit. Identify all treatment technologies that will be employed at the facility.

Question 16: Topographic Map

The topo map should be a copy of the USGS 7.5 minute quadrangle that encompasses the facility and the surrounding property for at least 1/2 mile in all directions. Maps other than the USGS quadrangle may be substituted if they provide at least the same level of detail. The required information should be clearly marked on the map. Information regarding public water supplies and private wells may be obtained from local health department officials.

Question 17: Central Wastewater Availability

The owner should investigate the possibility of discharging to central sewer prior to requesting coverage under this general permit. If central sewer is in the vicinity but access for this discharge is denied, make that statement in the space provided.

Questions 18 and 19: Permit/Pollution Complaint Numbers

If the facility has already been permitted to discharge and has a discharge permit number, or if the facility is responsible for the release and the DEQ has issued a Pollution Complaint Number for the site, fill in the appropriate blanks with the permit or pollution complaint number. In some instances the applicant should fill in both questions; in others only one question may apply.

Question 20: Hazardous Material Statement

Indicate yes or no in the blanks provided. The general permit cannot be used to cover the treatment or discharge of hazardous materials.

Certification Statement:

State statutes provide for severe penalties for submitting false information on this registration statement. State regulations require that the registration statement be signed as follows:

For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer 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 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. {If the title of the individual signing is Plant Manager, submit a written verification that the facility employs more than 250 people or has gross annual sales or expenditures in excess of \$25 million (in 1980 dollars) and that authority to sign the registration statement has been delegated to the Plant Manager in accordance with corporate procedures.};

For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

VA.R. Doc. No. R01-265; Filed August 5, 2002, 9:55 a.m.

Proposed Regulations

REGISTRAR'S NOTICE: The following regulation (9 VAC 25-196) filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 B, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007 F, and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: 9 VAC 25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges (amending 9 VAC 25-196-40 through 9 VAC 25-196-70; repealing 9 VAC 25-196-80).

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

Public Hearing Date: September 27, 2002 - 10 a.m.

Public comments may be submitted until 4 p.m. on October 31, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Jon van Soestbergen, P.E., Environmental Manager II, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvsoest@deq.state.va.us.

Summary:

This proposed regulatory action sets forth guidelines for the permitting of the point source discharge of cooling water to surface waters. The State Water Control Board proposes to reissue the general permit subject to certain conditions and has prepared a draft permit. The proposed general permit consists of limitations and monitoring requirements on point source discharges of cooling water to surface water for the following parameters; flow, 50,000 gallons per day maximum; temperature, maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for discharges to upper piedmont waters; pH, 6.0 minimum, 9.0 maximum; total residual chlorine, nondetectable. Monitoring only is also required for Ammonia, Hardness, Total Dissolved Copper, Total Dissolved Zinc, Total Dissolved Silver, Total Phosphorous. Monitoring frequency is once every three months. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.

9 VAC 25-196-40. Effective date of the permit.

This general permit will become effective on March 1, 1998 2003. This general permit will expire five years from the effective date. This general permit is effective as to any

covered owner upon compliance with all the provisions of 9 VAC 25-196-50 and the receipt of this general permit.

9 VAC 25-196-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the registration statement of 9 VAC 25-196-60, files the required permit fee, complies with the effluent limitations and other requirements of 9 VAC 25-196-70, and provided that:

1. The owner ~~shall not have~~ has not been required to obtain an individual permit ~~as may be required in the VPDES Permit Regulation according to 9 VAC 25-31-170 B 3.~~

2. The owner shall not discharge to Class V stockable trout waters, Class VI natural trout waters, or any state waters specifically named in other board regulations or policies which prohibit such discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9 VAC 25-260-110 C of the Water Quality Standards.

3. The owner shall neither use tributyltin and any chemical additives containing tributyltin, nor use any hexavalent chromium-based water treatment chemicals in the cooling water systems.

4. The owner shall not use groundwater remediation wells as the source of cooling water.

B. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

9 VAC 25-196-60. Registration statement.

The owner shall file a complete general VPDES permit registration statement for cooling water discharges. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge 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. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

~~VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM~~

~~GENERAL PERMIT REGISTRATION STATEMENT FOR COOLING WATER DISCHARGES~~

1. ~~APPLICANT INFORMATION~~

A. ~~Name of Facility:~~ _____

B. ~~Facility Owner:~~ _____

C. ~~Owner's Mailing Address~~

- a. Street or P.O. Box _____
- b. City or Town _____ c. State ___ d. Zip Code _____
- e. Phone Number _____

D. Facility Location: _____
 Street No., Route No., or Other Identifier

County _____

E. Is the operator of the facility also the owner?
 Yes ___ No ___ If No, complete F. & G.

F. Name of Operator: _____

G. Operator's Mailing Address

- a. Street or P.O. Box _____
- b. City or Town _____ c. State ___ d. Zip Code _____
- e. Phone Number _____

2. FACILITY INFORMATION

A. Does this facility currently have a VPDES permit?
 Yes ___ No ___ If yes, give permit number.

B. List any point source discharges that are not composed entirely of cooling water _____

C. List type and size (tons) of cooling equipment or noncontact cooling water process:

Type Size (tons)

D. Complete the following if any chemical and/or nonchemical treatment is employed in each of the cooling water systems:

a. Describe the chemical and/or nonchemical treatment to be employed and its purpose;

If chemical additives other than chlorine are used, complete b, c, d and e below.

b. Provide name and manufacturer of each additive used;

c. Provide list of active ingredients and percent composition;

d. Give the proposed schedule and quantity of chemical usage, and estimate the concentration in the discharge; and

e. Attach available aquatic toxicity information for each additive proposed for use.

E. Describe any type of treatment or retention being provided to the wastewater before discharge (i.e., retention ponds, settling ponds, etc.):

3. FACILITY SCHEMATIC DRAWING

Attach a schematic drawing of the cooling water equipment which shows the source of the cooling water, its flow through the facility, and each cooling water discharge point.

4. MAP

For cooling water systems with a direct discharge to surface waters, attach a topographic map extending to at least one mile beyond property boundary. The map must show the outline of the facility, and the location of each of its existing and proposed intake and discharge points. Include all springs, rivers and other surface water bodies.

5. DISCHARGE INFORMATION

A. List all cooling water discharges by a number that is the same as on the map required in Question 4, if applicable. Identify the source of cooling water. Estimate the maximum daily discharge flow in gallons per day (gpd). Give the name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system.

Outfall No.	Source	Max. Daily Flow (gpd)	Receiving Stream
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

B. Identify the duration and frequency of the discharge for each separate discharge point:

- a. Continuous: _____
- b. Intermittent: (please describe) _____
- c. Seasonal: _____

C. Give the name of the owner of the municipal separate storm sewer system that receives the discharge (if applicable):

6. 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

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~~including the possibility of fine and imprisonment for knowing violations.~~

Signature _____ Date: _____

Name of person(s) signing above: _____

(printed or typed)

Title(s): _____

REQUIRED ATTACHMENTS

~~Aquatic Toxicity Information For Chemical Additives (if applicable)~~

~~Facility Schematic Drawing~~

~~Topographic Map (if applicable)~~

~~For Department Use Only:~~

~~Accepted/Not Accepted by: _____~~

~~Date: _____~~

~~Basin _____ Stream Class _____ Section _____~~

~~Special Standards _____~~

1. Facility name and address, owner name and mailing address and telephone number;

2. Operator name, mailing address, and telephone number if different from owner;

3. Does the facility currently have a VPDES permit? Permit Number if yes;

4. Listing of point source discharges that are not composed entirely of cooling water;

5. Listing of type and size (tons) of cooling equipment or noncontact cooling water processes;

6. The following information if any chemical or nonchemical treatment, or both, is employed in each of the cooling water systems:

a. Description of the chemical or nonchemical treatment, or both, to be employed and its purpose;

For chemical additives other than chlorine, b, c, and d below;

b. Name and manufacturer of each additive used;

c. List of active ingredients and percent composition;

d. Proposed schedule and quantity of chemical usage, and estimate of the concentration in the discharge;

e. Available aquatic toxicity information for each proposed additive used; and

f. Any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation of the discharge.

7. Description of any type of treatment or retention being provided to the wastewater before discharge (i.e. retention ponds, settling ponds, etc.)

8. A schematic drawing of the cooling water equipment that shows the source of the cooling water, its flow through the facility, and each cooling water discharge point.

9. For cooling waters with a direct discharge to surface waters, a topographic map extending to at least one mile beyond the property boundary. The map must show the outline of the facility and the location of each of its existing and proposed intake and discharge points, and must include all springs, rivers and other surface water bodies.

10. The following discharge information:

a. A listing of all cooling water discharges by a unique number;

b. The source of cooling water for each discharge;

c. An estimate of the maximum daily flow in gallons per day for each discharge;

d. The name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system;

e. The duration and frequency of the discharge for each separate discharge point; continuous, intermittent, or seasonal;

f. The name and contact information of the owner of the municipal separate storm sewer system that receives the discharge, if applicable.

11. 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.

The registration statement shall be signed in accordance with 9 VAC 25-31-110.

9 VAC 25-196-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the ~~VPDES Permit Regulation 9 VAC 25-31.~~

General Permit No: VAG25
 Effective Date:
 Expiration Date:

GENERAL PERMIT FOR COOLING WATER DISCHARGES
 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 cooling water discharges are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except Class V stockable trout waters, Class VI natural trout waters, and those specifically named in board regulations or policies which prohibit such discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened

species as identified in 9 VAC 25-260-110 C of the Water Quality Standards.

The authorized discharge shall be in accordance with this cover page, Part I--Effluent Limitations and Monitoring Requirements, and Part II--Conditions Applicable to all VPDES Permits, as set forth herein.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): outfall(s) serial number: _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	⁽¹⁾	NA	1/3 Months	Immersion Stabilization
pH (SU)	g ⁽²⁾	6 ⁽²⁾	1/3 Months	Grab
Ammonia-N ⁽³⁾ (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine ⁽³⁾ (mg/l)	Nondetectable	NA	1/3 Months	Grab
Hardness (mg/l CaCO ₃)	NL	NA	1/3 Months	Grab
Total Dissolved Copper ⁽⁴⁾ (ig/l)	NL	NA	1/3 Months	Grab
Total Dissolved Zinc ⁽⁴⁾ (ig/l)	NL	NA	1/3 Months	Grab
Total Dissolved Silver ^{(4), (5)} (ig/l)	NL	NA	1/3 Months	Grab
Total Phosphorus ⁽⁶⁾ (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required
 NA = Not applicable

⁽¹⁾ The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3° C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

⁽²⁾ Where the Water Quality Standards (9 VAC 25-260-5 et seq.) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

⁽³⁾ Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine and ammonia monitoring only apply to outfalls directly discharging to surface waters and are required where the source of cooling water is chlorinated or contains chloramines.

⁽⁴⁾ A specific analysis is not specified for these materials. An appropriate analysis shall be selected from the following list of EPA methods to achieve a quantification level that is less than the target level for the material under consideration:

Material	EPA Method	Target Level (ig/l)
Copper	220.1, 220.2, 200.7, 200.8, 200.9, 1638, 1640	9.2

Zinc	289.1, 289.2, 200.7, 200.8, 1638, 1639	65.0
Silver	272.1, 272.2, 200.7, 200.8, 200.9, 1638	1.2

Quality control/assurance information shall be submitted to document that the required quantification level has been attained.

⁽⁵⁾ Silver monitoring is only required where Cu/Ag anode is used.

⁽⁶⁾ Phosphorous monitoring is only required where additive containing phosphorous is used.

Material	EPA Method	Target Level (ig/l)
Copper	220.1, 220.2, 200.7, 200.8, 200.9, 1638, 1640	9.2
Zinc	289.1, 289.2, 200.7, 200.8, 1638, 1639	65.0
Silver	272.1, 272.2, 200.7, 200.8, 200.9, 1638	1.2

Quality control/assurance information shall be submitted to document that the required quantification level has been attained.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. No discharges other than cooling water, as defined, are permitted under this general permit.

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3. The use of any chemical additives not identified in the registration statement, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical and/or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:

- a. Describe the chemical and/or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions 3 b, c, d and e;
- b. Provide name and manufacturer of each additive used;
- c. Provide list of active ingredients and percentage of composition;
- d. Give the proposed schedule and quantity of chemical usage, and estimate the concentration in the discharge; and
- e. Attach available aquatic toxicity information for each additive proposed for use.
- f. *Attach any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation for the discharge.*

4. Where cooling water is discharged through a municipal storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, nature of the discharge, number of the outfalls, and the location of the discharge. *A copy of such notification shall be provided to the department.*

5. The permittee shall at all times properly operate and maintain all cooling water systems. Inspection shall be conducted for each cooling water unit by the plant personnel at least once per year with reports maintained on site.

6. The permittee shall notify the department as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:
 - (1) One hundred micrograms per liter (100 µg/l);
 - (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five times the maximum concentration value reported for that pollutant in the permit application; or

- (4) The level established by the board in accordance with 9 VAC 25-31-220 F.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9 VAC 25-31-220 F.

PART II

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity

or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person 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, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious

substance into or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:

- a. Any unanticipated bypass; and

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- b. Any upset which causes a discharge to surface waters.
- 2. A written report shall be submitted within five days and shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
 - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

- 3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

- 1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
 - (1) After promulgation of standards of performance under § 306 of Clean Water Act which are applicable to such source; or
 - (2) After proposal of standards of performance in accordance with § 306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;
 - b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or
 - c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

- 2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

- 1. Registration statements. All registration statements shall be signed as follows:

- a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer 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-making 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 million (in second quarter 1980 dollars) if, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;~~

- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

- 2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Part II K 1;

- b. 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, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

- c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 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."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. 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 invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. 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. Except as provided in permit conditions on bypass (Part II U

and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. 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 §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. 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.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

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(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part II I; and
- d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable. If any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

9 VAC 25-196-80. Evaluation of chapter and petitions for reconsideration or revision. (Repealed.)

~~A. Within three years after March 1, 1998, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to~~

~~whether this chapter is clearly written and easily understandable by affected entities. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

~~B. The board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this chapter.~~

DOCUMENTS INCORPORATED BY REFERENCE

Method Cite

- 200.7 EPA 600/R-94-111; 40 CFR 136, App D, 1996
- 200.8 EPA 600/R-94-111
- 200.9 EPA 600/R-94-111
- 220.1 EPA 600/4-79-020; 40 CFR 136, App D, 1996
- 220.2 EPA 600/4-79-020; 40 CFR 136, App D, 1996
- 272.1 EPA 600/4-79-020
- 272.2 EPA 600/4-79-020; 40 CFR 136, App D, 1996
- 289.1 EPA 600/4-79-020; 40 CFR 136, App D, 1996
- 289.2 EPA 600/4-79-020
- 1638 EPA 821/R-95-031
- 1639 EPA 821/R-95-032
- 1640 EPA 821/R-95-033

VA.R. Doc. No. R01-273; Filed August 5, 2002, 9:54 a.m.

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REGISTRAR'S NOTICE: Due to its length, the following proposed regulatory action filed by the State Water Control Board is not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the State Water Control Board (see contact information below) and is accessible on the Virginia Register of Regulations website at <http://legis.state.va.us/codecomm/register/vol18/welcome.htm>.

Title of Regulation: 9 VAC 25-260. Water Quality Standards (amending 9 VAC 25-260-5 through 9 VAC 25-260-30, 9 VAC 25-260-50, 9 VAC 25-260-140, 9 VAC 25-260-170, 9 VAC 25-260-310, 9 VAC 25-260-320, 9 VAC 25-260-380 through 9 VAC 25-260-450, and 9 VAC 25-260-470 through 9 VAC 25-260-540; repealing 9 VAC 25-260-150, 9 VAC 25-260-190 through 9 VAC 25-260-240, and 9 VAC 25-260-340).

Title of Regulation: 9 VAC 25-280. Ground Water Standards (adding 9 VAC 25-280-10 through 9 VAC 25-280-90).

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

Public Hearing Dates:

- October 1, 2002 - 2 p.m. (Roanoke)
- October 2, 2002 - 2 p.m. (Glen Allen)
- October 3, 2002 - 2 p.m. (Virginia Beach)

Public comments may be submitted until November 1, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111 or e-mail emdau@deq.state.va.us.

Basis: Section 62.1-44.15(3a) of the Code of Virginia mandates and authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at § 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The proposed amendments do not exceed applicable federal minimum requirements. The groundwater standards, while not addressed by the federal Clean Water Act, however, are required by the State Water Control Law.

Purpose: Water Quality Standards establish the requirements for the protection of water quality and of beneficial uses of these waters. The justification for the proposed regulatory action is via the state's legal mandate for a three-year review of the Water Quality Standards under § 62.1-44.15(3a) of the Code of Virginia and federal regulation at 40 CFR Part 131. During this review the board must adopt, modify or cancel standards as appropriate. This rulemaking is needed because the last triennial review was completed in December 1997 and new scientific information is available to update the water quality standards. In addition, the Environmental Protection Agency (EPA) disapproved several sections of the regulation, which must be addressed as soon as possible by the state or EPA will promulgate the amendments. Changes to the regulation are also needed to better reflect existing permitting practices and update use designations as well as to address EPA's new recommendations for this triennium.

This provision of the regulation is justified from the standpoint of the public's health, safety or welfare in that it allows for the protection of designated uses of the water bodies. Proper criteria protect water quality and living resources of Virginia's waters for consumption of fish and shellfish, recreational uses and conservation in general.

Substance: In 9 VAC 25-260-5 definitions are proposed for "drifting organisms," "mixing zones," "passing organisms," "secondary contact recreation" and "swamp waters." These definitions are intended to clarify the intent of the regulation and assist in implementation.

In 9 VAC 25-260-20, the general criteria is revised to recognize that mixing zones established accordingly do not violate the general criteria. This is necessary to allow mixing zones and does not change existing implementation

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procedures. In subsection B of the same section, the mixing zone provisions have been revised to recognize that mixing zones are used in evaluation of permit limitations for all types of criteria. Also, mixing zone sizing requirements are being added for saltwater discharges. This will result in reevaluations of mixing zones for all tidal discharges where mixing zones have not been defined. Mixing zones are not allowed for effluents to wetlands, swamps, marshes, lakes or ponds. The board via guidance has already implemented this prohibition. In addition, a statement has been added that no mixing zones shall be approved that violate the federal and state Endangered Species Acts. This is a recognition of existing mandates and is not expected to change the way permits have been implemented.

In 9 VAC 25-260-30, language that restricts the implementation of the antidegradation policy to board-regulated activities has been removed. This is an EPA-required change. These amendments to the antidegradation policy are not expected to have impacts on current permitting procedures. However, the interpretation of these changes has raised questions about the effect on nonpoint source activities that are not under the jurisdiction of the board. The board does not believe this change increases any regulatory authority under the Clean Water Act, but is asking EPA and the public to provide comment as to whether this change is appropriate.

In 9 VAC 25-260-50, Class VII waters have been recognized as "swamp waters" and appropriate pH criteria have been added to this table. This change will provide for a more accurate water quality assessment of these waters that are naturally low in pH. The proposal stipulates that permit limits will continue to be regulated under existing pH levels. A group of these waters has been listed in the River Basin Section Tables 9 VAC 25-260-470.

In 9 VAC 25-260-140, the existing Table of Parameters is deleted and replaced with a reformatted table. This new table contains revisions of approximately 30 existing criteria and the addition of approximately 33 new criteria. The reformatted table contains information directly under the parameter names that once was formerly provided by footnotes. The reformatted table also contains chemical abstracts service (CAS) numbers and is expected to aid in readability of the table for the general public. The taste and odor criteria in the Table of Parameters now state that they apply at the drinking water intake. Previously, they applied throughout the entire public water supply. Subdivision E of this section also states that variances are granted to conditions that limit attainment of designated uses, rather than conditions that limit attainment of water quality criteria. This is a correction of the language and is not expected to change implementation of the section.

In 9 VAC 25-260-150, the dioxin surface water quality standard is deleted and is moved to the Table of Parameters in 9 VAC 25-260-140.

In 9 VAC 25-260-170, the fecal coliform bacteria criteria have been modified to add new criteria for secondary contact recreational waters. All waters currently are designated for primary and secondary recreation, yet no criteria have been established for secondary because no waters have ever been designated for only secondary contact recreation. It is

believed that secondary contact waters do exist in the state and in order to make this designation, criteria are needed to protect for secondary.

In 9 VAC 25-260-190 through 9 VAC 25-260-240, the groundwater criteria, standards and antidegradation policy are proposed for deletion and moved to a new VAC chapter, 9 VAC 25-280. The new VAC number is necessary because the groundwater standards are not Clean Water Act-mandated and therefore have a different effective date from the surface water standards.

In 9 VAC 25-260-310, special standard "d" is cancelled because it has been replaced by other regulations. Special standard "m" is modified to clarify the intent of the application of the special standard. Special standard "q" is deleted since its effective date hinges on Congressional authorization for construction of a dam on the Rappahannock River and this authorization has never been granted. Special standard "z" is a new standard that reflects a site specific study in the Hampton Roads harbor and Elizabeth River.

In 9 VAC 25-260-320, the Roanoke Scenic River designation has been modified to reflect the existing statute wording. These designations are placed in this regulation for informational purposes only.

9 VAC 25-260-380 has been revised to reflect what is written in 9 VAC 25-260-140, which is that the taste and odor criteria apply at the drinking water intake (see 9 VAC 25-260-140 above).

9 VAC 25-260-390 through 9 VAC 25-260-540 have all been updated to reflect new and revised public water supplies, natural and stockable trout streams. 9 VAC 25-260-410 and 9 VAC 25-260-420 have been revised so that all waters below the fall line are in section 9 VAC 25-260-410. The Chowan Basin has been updated to include Class VII waters (see 9 VAC 25-260-50 above).

A new regulation, 9 VAC 25-280, is created as part of this rulemaking, which contains the existing groundwater standards, criteria and antidegradation policy as well as pertinent definitions, general requirements, requirements for modification, amendment, and cancellation of standards and designations of authority.

Issues: The primary advantage to the public is that the updated numerical criteria are based on better scientific information to protect water quality. Another advantage to the public is that the numerical criteria now include all 307(a) pollutants for which 304(a) criteria have been published. This will ensure future protection of state waters if a new pollutant is found or a new industry is introduced. The updated saltwater copper criterion may be viewed as less stringent than the existing criteria; however, the scientific data base supporting that criterion is better than the one supporting the existing criteria and more accurately portrays the toxicity of copper in Virginia's marine and estuarine waters. The disadvantage is that the public may see this as an attempt to "lower the bar" on water quality. The goal is to set realistic, protective goals in water quality management and to maintain the most scientifically defensible criteria in the water quality standards regulation. EPA has also reviewed the copper

saltwater and site-specific criteria and has indicated these are "approvable" under the Clean Water Act.

A potential disadvantage to the public may occur in the implementation of the new mixing zone sizing requirements for tidal waters. These new requirements may cause more stringent permit limits for some discharges. These expenses are outlined under "Fiscal Impacts."

The advantage to the agency or the Commonwealth that will result from the adoption of these amendments will be more accurate and scientifically defensible permit limits. This is the direct result of the adoption of new and updated criteria and defensible mixing zone requirements for tidal waters. Another advantage is the adoption of a set of Class VII "swamp waters" with corresponding lower pH criteria. The adoption of these waters will ensure that water quality assessments are accurate for these waters and these waters will not be inappropriately placed on the 303(d) impaired waters list for these naturally low pH waters.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Localities Particularly Affected:

Counties

Alleghany, Augusta, Bath, Charles City, Culpeper, Fauquier, Giles, Halifax, Hanover, Henrico, Highland, Loudoun, Nelson, New Kent, Pittsylvania, Prince William, Powhatan, Rappahannock, Rockbridge, Rockingham, Shenandoah, Spotsylvania, Stafford

Towns

Round Hill, Front Royal, Culpeper, Madison, Halifax, Monterey, Elkton, Edinburg

Cities

Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Richmond, Covington

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the impacts of the regulation and the impacts of the proposal on farm lands and farm land preservation.

The board also seeks comment on whether the antidegradation policy should be amended as EPA has required, including whether this change may be interpreted to mean that the board must control nonpoint sources when the board has no authority in statute to control nonpoint source pollution. The antidegradation policy has been disapproved by EPA and the state risks federal promulgation of the amendments if these changes are not made.

Related to the antidegradation policy is the implementation of tier one (waters at or below the standards) and tier two (higher quality) waters. Currently, the agency designates tier two waters using a holistic or water body approach. This means that the exceedance of one water quality criteria places a water body into the tier one category and each parameter is regulated at the level set by the water quality criteria. The board seeks comment on whether this implementation process should be done on a parameter by parameter

approach. This means that each parameter is regulated individually; either at the level set by the water quality criteria or at the higher quality background level.

Comment is sought as to whether it is necessary to state in the mixing zone policy that no mixing zones shall be approved that violate the endangered species acts (state and federal). The board is concerned that this statement may be interpreted to mean that additional prohibitions or controls beyond what is already implemented may be required. The board is also concerned and seeks comment on whether this amendment expands the authority of the board from what is required by the Clean Water Act.

The board requests comments on the appropriateness of applying the accepted five mile upstream protection zone to those public water supply designations that do not currently follow the accepted five mile upstream protection zone. The Virginia Department of Health has stated that they consider it acceptable to measure the five mile distance as stream miles from the intake as the starting point of a water supply designation whether main stem or tributaries. The Virginia Department of Health does not interpret any designation that contains the words "and its tributaries" to include the tributaries to their headwaters if such distance exceeds five miles from the intake.

The board requests comments on whether Class C, possible human carcinogen criteria should be calculated using a reference dose, or an oral slope factor with a risk level. EPA has recommended that the Commonwealth use the oral slope factor and risk level; this results in a more stringent criterion. The Virginia Department of Health has stated these decisions should be approached on a case by case basis.

The board requests comments on whether the acute averaging periods for metals and organics should be different than fast acting, nonpersistent pollutants such as ammonia (24 hr., 96 hr. and 1-hour averaging periods respectively). EPA has published cadmium as a 24-hr average and the board has proposed it as such.

The board requests comments on the secondary contact recreational use criteria. Under what circumstances should waters be designated as secondary? Also, what information should be collected in the use attainability study (a use attainability study contains the information that supports the use change from primary to secondary)? For example, the board believes waters naturally contaminated by wildlife would be good candidates for secondary contact designations and bacterial source tracking could be used to support this change.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail to Eleanore Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, (804) 698-4111, by fax to (804) 698-4522 or e-mail emdaub@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations.

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The board will hold a formal hearing at a time and place to be established, if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23(b) of the Board's Procedural Rule No. 1 (1980), and must be received by the contact person by October 1, 2002.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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 State Water Control Board proposes to amend the water quality standards in the Commonwealth. The proposed substantive changes are following:

Mixing zone size requirements will be established for discharges into saltwater.

Class VII waters, currently known as "wetlands," will be recognized as "swamp waters" and a less stringent pH criteria will be adopted for them.

Water quality criteria will be established for 33 new compounds and 30 existing water quality criteria will be revised.

Taste and odor criteria will apply at the drinking water intake instead of applying to the entire public water supply.

Two new bacteria criteria for secondary contact recreational waters will be established.

A site-specific copper standard will be adopted for Little Creek Harbor, Hampton Roads Harbor, and Elizabeth River.

Estimated economic impact. The purpose of the water quality standards is to protect the state waters for designated uses including fish consumption, shellfishing, aquatic life, swimming, drinking water, and conservation in general. The standards include narrative and numerical criteria for physical, chemical, and biological characteristics of water set at levels to protect aquatic life and human health. Numerous changes are proposed. These changes are discussed below.

Mixing Zones. The proposed changes will establish mixing zone criteria for discharges to saltwater. A mixing zone is a limited area or volume of water where initial dilution of a discharge takes place and where numeric water criteria can be exceeded, but lethality is prevented. Currently, the Department of Environmental Quality (the department) does not have appropriate water quality criteria for mixing zones in

salt water. Mixing zones in salt water are established in one of three ways: analysis of a submerged diffuser, analysis of an existing mixing zone by dye tracer, and application of default dilution ratios.

In many cases, permit discharge limits are established by application of the default dilution ratios (two times the standard water quality criteria for acute limits and 50 times the normal standards for chronic limits). This method relies on the assumption that a dilution ratio of 2:1 for the acute limits and 50:1 for the chronic limits are appropriate for all mixing zones regardless of the size and other pertinent stream conditions. However, this level of dilution may not be available in smaller tidal creeks. Especially, discharge of large quantities of effluents into small salt waters may be potentially harmful for the aquatic life and human health.

The proposed regulations will add mixing zone size requirements for discharges to saltwater that can be technically analyzed and are scientifically more appropriate. For new or expanded large discharges (>0.5 million gallons per day) of freshwater to saltwater, it is proposed that the effluent be discharged via a submerged diffuser. This will likely provide for reliable and effective mixing that may not otherwise be obtained. This proposed rule is separately discussed below. For all other discharges that do not fall under the diffuser requirement, the boundary of the mixing zone is proposed to be no more than five times the average depth along a line extending 1/3 of the way across the receiving water from the discharge point to the opposite shore.

The proposed mixing zone size requirement will apply to current and any future Virginia Pollutant Discharge Elimination System permit applications. This will result in reevaluations of mixing zones for all tidal discharges where mixing zones have not been defined. Since the permits have to be renewed, all of the current permits for all types of water quality criteria will be reevaluated over the next five years. Thus, the proposed changes will not have an immediate impact on current permittees, but will have a gradual impact. However, this requirement may be waived if the actual extent of the mixing zone is demonstrated to be acceptable. In addition to current permits, mixing zone size requirements will apply to any new permits for saltwater discharges as well.

Also, there is likely to be a differential impact on acute and chronic water quality criteria. The proposed mixing zone requirement is likely to have proportionally more impact on chronic limits. Conversations with the industry and the department indicate that currently required dilution ratio of 50:1 for chronic limits is too lenient and is not binding for most dischargers. The proposed mixing zone rule is expected to result in much more stringent standards for the chronic limits than for the acute limits.

Some economic effects on permitted discharges to saltwater are expected because of the new mixing zone requirements. Some discharges are not likely to meet the required amount of dilution determined by the proposed mixing zones for saltwater. Large discharges into small tidal creeks are particularly likely to be affected. There are currently 100 individual permits for discharges to tidal waters. The department estimates that at least 60 of these permits may be found to have dilution ratios that would not support the water

quality criteria when mixing zones are established. The permittees who do not meet the proposed mixing zone size standard will most likely have to install treatment equipment to cope with available dilution, or somewhat less likely, reduce the amount of discharge into the tidal waters.

Although the proposed mixing zone requirement is expected to be protective of aquatic life resources for all of the criteria pollutants, the main effect is likely to be on ammonia limits for sewage discharges that are large in volume compared to the receiving tidal stream. Ammonia is a toxic, colorless gas with a very sharp odor and may originate from both manmade sources and nature. High ammonia levels may kill fish, adversely affect fish reproduction, and may have negative effects on plant life. The purpose of the water quality ammonia standard is to protect aquatic life from toxicity.

If ammonia limits are found high then the permit holder may reduce the ammonia discharge through nitrification, which would convert ammonia into nitrate-nitrogen and then discharge nitrate into the water. This process reduces the toxicity contributed by ammonia, but contributes to nitrate-nitrogen discharges into water. However, nitrate-nitrogen is a plant nutrient, and higher nutrient levels add to the eutrophication problem in the Chesapeake Bay. Eutrophication leads to excess algal growth. When the algae die, they fall to the bottom, decompose and cause an oxygen demand. The lower levels of dissolved oxygen can kill aquatic life and reduce the amount of habitat available in deep waters. Too much algae also causes the water to be too turbid and reduces the amount of sunlight able to reach the submerged aquatic vegetation. Vegetation provides important habitat for aquatic life and their presence is considered a measure of good water quality.

If nitrate cannot be discharged into the water because of permit limits, then the facility may install a nitrification/denitrification system, convert nitrate-nitrogen from the first step into the harmless gas form of nitrogen, and discharge into the air instead of water. In these cases, low ammonia discharge is expected to be an environmentally positive contribution to the Chesapeake Bay.

A simple nitrification system costs about \$250,000 for a 0.10 million gallon/day (MGD) sewage treatment plant.¹ The cost of an advanced treatment system capable of both nitrification and denitrification can range from \$0.5 to \$5.5 million, depending on the current level of treatment and volume of discharge. These costs are one-time capital expenditures and are unlikely to recur during the useful life of the equipment. In addition to these, the facility would incur ongoing operation and maintenance costs once the system is installed. Operation and maintenance costs of a simple nitrification system at a small facility are estimated at \$6,000 per year. Operation and maintenance costs for a nitrification/denitrification system vary from \$23,000 for a 0.10 MGD plant to \$195,000 for a 0.60 MGD plant. It is estimated that up to 35 permittees may be required to comply with lower ammonia limits due to the new mixing zone requirements. However, it is not known how many of these will install a

simple nitrification system or an advanced nitrification/denitrification system.

There is a chance that the proposed generic mixing zone size requirement might be too small for some dischargers and actual stream conditions may require a specific mixing area. Any permittee who is faced with less dilution will have an option to do a mixing study to propose a site-specific mixing zone and waive the generic size requirements. A mixing study could be a dye study, desktop computer model, or some other type of study. The cost of a mixing study for acute criteria varies from \$15,000 to \$75,000 depending upon its complexity.² Chronic mixing zone studies may cost up to \$250,000 depending on the data needs.³ It is not known how many permit holders will choose to do a mixing study to waive the proposed size requirement.

Moreover, the department indicates that the mixing zone rule may also affect toxic limits in permits. The toxic limits in some of the permits may become more stringent due to mixing zone size requirements than the current levels, but the extent of this possibility is not known. Thus, the potential impact on point sources is not known as well. It should be noted that more stringent toxic limits would not affect nonpoint sources. This is because toxic discharges generally do not originate from nonpoint sources. Any required reductions in toxic discharges would probably come from the point sources. Thus, potential costs associated with development and implementations of TMDLs are not expected.

Furthermore, new and expanding large dischargers into saltwater will be subject to additional mixing requirements. Large discharges that will be affected are those that discharge freshwater effluents greater than 0.5 MGD into saltwater. Existing large facilities will not be affected, but may be subject to this rule in the future if they wish to increase their flow. These new or expanded large dischargers will be required to install a subsurface diffuser. They will be required to install a diffuser because freshwater does not mix well with the salt water due to weight difference. The diffuser will facilitate mixing of these large effluent discharges into saltwater in order to obtain reliable mixing. Also, no specific mixing zone size is proposed for these areas because the range of the diffuser can be adjusted to provide adequate dilution. The mixing zone sizes for these areas will be established on a case-by-case basis. According to the department, on average, a 300-400 foot diffuser would be sufficient in saltwater areas for these large flows of effluent. A diffuser with this capacity is believed to cost about \$3,000 to \$4,000.⁴ However, the number of new facilities that will come online and the number of facilities that will apply to increase their flow are not known.

Finally, the proposed changes are expected to introduce small costs associated with rewriting the mixing zone guidance document and developing a simple computer model for the permit writers to use when establishing effluent limits. The department plans to do these with existing staff resources.

¹ Source of this and other cost information in this paragraph: the Department of Environmental Quality.

² Source: The U.S. Navy.

³ Source: Hampton Roads Sanitation District.

⁴ Source: The department.

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pH Criteria and Swamp Waters. Another amendment is proposed to recognize Class VII waters as "swamp waters" instead of "wetlands" and adopt a less stringent pH criterion for these waters. According to the department, the term "wetlands" are broad and inclusive of the swamp waters. There are nine black water swamps in Chowan Subbasin listed in the 303d impaired waters list because of low pH levels.⁵ If the concentration levels for a pollutant measured in a water body exceed the criteria more than 10% of the time, the stream, creek, lake, or river is classified as impaired. For the impaired waters, a total maximum daily load (TMDL) must be developed and implemented to bring the water body into compliance with pH water quality standard. A TMDL reflects the total pollutant loading a water body can receive and still meet the water quality standards. TMDLs are pollutant specific and in this case they must be developed for the pH standard. A TMDL establishes the maximum allowable pollutant loading from both point and nonpoint sources for a water body, allocates the load among the pollutant contributors, and provides a framework for taking actions to restore water quality. While the TMDL program has significant implications for the point sources, probably the most significant effect is on the nonpoint sources. This is because the point sources are subject to discharge limits under permits issued to them. Their discharges could be reduced through the permits without the need of a TMDL.

This proposed change will remove swamp waters from the impaired waters list for pH standard, and, consequently, no TMDL will be developed for the swamp waters low in pH. However, all of these swamps are on the impaired waters list also for dissolved oxygen standard. So they will continue to be on the list. According to the department, these swamps are naturally low in pH levels and the development of a TMDL is not appropriate. If this proposed change provides for a more accurate water quality assessment of these swamps, then there is likely to be some savings to both point and nonpoint sources near these swamps from not implementing TMDLs. There is lack of information on the range of implementation costs for pH TMDLs because none has been done in Virginia. However, an earlier report prepared by the department contains an estimate of \$400,00 to \$800,000 to implement a TMDL in a watershed.⁶ At this time this range is the best estimate for the potential cost savings to point and nonpoint sources per TMDL. In addition, the department is likely to realize some cost savings in terms of TMDL development. It is estimated that a TMDL development for pH would cost the agency about \$25,000.

Water Quality Criteria. The proposed changes will also establish 33 new water quality criteria and revise 30 existing criteria for surface waters including freshwater, saltwater, public water supplies, and all other surface waters. The department indicates that all of these changes are made based on the recommendations from the Environmental Protection Agency (EPA) that developed the proposed

standards and that the EPA will likely promulgate these criteria if the state does not follow the EPA recommendations. All of the proposed additional criteria are human health criteria and have the potential to reduce many types of sicknesses including cancer. However, none of these pollutants were found in a search of pollutants being used in the Commonwealth during the last triennial review. If this is the case, no immediate significant impact is likely to be realized, but if any discharge containing these chemicals is discovered, health risks originating from the drinking water and fish consumption routes may be reduced and the source may have to incur some additional compliance costs.

The revisions of 30 existing criteria are for both human health and aquatic life. Some of the proposed revisions are more or less stringent than the current standards by one or more order of magnitude.⁷ However, the department indicates that, except for the metal criteria, there are no permits containing any of these significantly less or more stringent standards currently. Thus, no significant economic impact is expected from adopting these revised criteria at this time, but there may be additional compliance costs for new industrial sources in the future to protect aquatic life.

The main effect of these revised criteria is expected to be on permits containing metal standards. The proposed aquatic life criteria for metals are more stringent, except for copper in saltwater, than existing criteria, but for most metals the changes are small. A survey of industrial and municipal permit limits indicates that most of the effects on permit limits for metals are for chromium and copper. The proposed more stringent standards for freshwater copper and chromium may affect a small number of permittees when the permits are renewed within five years as well as the new sources that may come online. These sources may incur some additional treatment costs to comply with proposed more stringent chromium and copper standards. The department is unable to determine the number of permits that may be affected due to lack of monitoring data, but does not expect more than a few permits to be affected by the changes in the metal criteria.

Also, the saltwater criteria for copper are proposed as less stringent criteria. Both industry and the department believe that the proposed standard is a more accurate assessment of what level of copper is toxic to marine life. It is indicated that the current standard does not consider the chemistry of the salt water that binds and renders the copper nontoxic. The proposed criteria are based on new toxicity data provided by the Navy for two species (the blue mussel and the juvenile

⁵ Source: Ibid.

⁶ Report to the Honorable James S. Gilmore, III, Governor and Chairs of the House Committees on Appropriations and Conservation and Natural Resources and the Senate Committees on Finance and Agriculture, Conservation and Natural Resources, November 1, 2000.

⁷ Existing criteria proposed as significantly more stringent:

Chlordibromomethane for all waters not designated as water supply, Chromium III for freshwater, Dichloroethylene for all waters not designated as water supply, Dieldren for freshwater acute criteria, Endrin for freshwater acute criteria, Hexachlorocyclohexane for freshwater acute criteria, Isophorone for all waters not designated as water supply, Tetrachloroethylene for all waters not designated as water supply, Vinyl chloride for all waters not designated as water supply.

Existing criteria proposed as significantly less stringent: Chloroform for all waters not designated as water supply, Chlorodane for all waters not designated as water supply, Dieldren for freshwater chronic criteria, Endrin for freshwater chronic criteria, Hexachlorocyclohexane for freshwater chronic criteria, Hexachlorocyclohexane for saltwater chronic criteria, Mercury for freshwater and saltwater chronic criteria.

summer flounder), additional toxicity data on two species (the eastern oyster and *Acartia tonsa*), and data that indicate that four species (embryonic summer flounder, Pacific mussels, the Pacific oyster, and *Tigriopus californica*) are not present in state waters. Due to anti-backsliding rules, existing permit limits cannot be made less stringent. Thus, less stringent copper standard is unlikely to have an effect on current permit limits. However, potential new sources discharging copper into saltwater will be subject to less stringent limits and may avoid installing treatment systems. Thus, the new sources may realize some cost savings in potential treatment costs.

Taste and Odor Criteria. It is proposed that the existing taste and odor criteria apply at the drinking water intake. Currently, they apply throughout the entire public water supply, including tributaries to water bodies on which drinking water intakes are located. Thus, effluent from upstream facilities may be restricted even though they have little effect on water quality at the water intake. The taste and odor compounds include manganese, chloride, foaming agents, iron, sulfide, and total dissolved solids. Effective effluent limitations based on taste and odor standards cannot be removed from the current permits for discharge into the public water supply because of anti-backsliding rules.

However, the anti-backsliding rules do not apply to new facilities. If new facilities come on line in existing public water supply watersheds, they are likely to benefit from the proposed change, as they will not be subject to taste and odor standards. This change may be most beneficial to dischargers to tributaries of water bodies on which public water supply intakes are located. The proposed changes may also benefit facilities with effluent limits that are tied to compliance schedule, and consequently, are not yet effective. These facilities are not subject to anti-backsliding rules. Similarly, if new public water supplies are designated, facilities on these waters will no longer be subject to taste and odor criteria unless they discharge in the proximity of the intake zone.

The department is aware of seven facilities that have either monitoring requirements or permit limits for the taste and odor compounds. One of these facilities has permit limits scheduled to go in effect, but the limits are not yet effective. With the proposed changes, these limitations will likely not be necessary for this source. The facility estimates that capital costs to install treatment technology to attain the existing limitations for these constituents are over \$1 million with \$54,000 to \$240,000 per year in operating costs. Although the remaining six sources are not believed to have the same potential to incur similar cost savings, there is a chance that the proposed rule may allow them to continue discharging at existing levels and may provide some savings in potential treatment costs.

On the other hand, potential increases in discharges of the taste and odor compounds from new sources may slightly reduce the quality of the public water supply at or near their outfall. The discharges of these compounds from new or existing sources are not expected to have a significant effect on human health and aquatic life because they are not human health or aquatic life criteria and the number of sources is small.

Bacteria Criteria for Secondary Contact Waters. The proposed regulations will also add new bacteria criteria for secondary contact recreational waters. The two classifications that currently apply to all waters in the Commonwealth are primary and secondary contact designations. The primary contact waters are swimmable waters with a high probability of total body immersion. The secondary contact waters are those with a low probability of immersion where humans are not likely to come in direct contact with, but may be exposed to it. For example, waters that are not used for swimming, but used for wading, boating, and fishing are examples of secondary recreation waters. However, no waters are currently designated for secondary contact recreation in the Commonwealth. Also, there are no bacteria criteria for secondary contact waters under the current regulations. The department believes that secondary recreation waters exist in the state and in order to protect these waters when designations are made, bacteria criteria are needed.

E. coli and enterococci concentrations are used as bacteria indicators to protect people from the risk of gastrointestinal illness contracted from waters. Pollution from both point and nonpoint sources can lead to fecal bacteria contamination of water bodies. Sources of fecal contamination to surface waters include wastewater treatment plants, on-site septic systems, domestic and wild animal manure, and storm runoff. The fecal coliform is found in the intestinal tract of warm-blooded animals; consequently, fecal waste of warm-blooded animals contains fecal coliform. Even though fecal coliform is not pathogenic, its presence in water indicates the potential for contamination by fecal material. Thus, recreational activities in contaminated waters might be a health risk. Since it is difficult, time-consuming, and expensive to test directly for the presence of a large variety of pathogens, water is usually tested for fecal coliforms instead. Potential health risks are lower for secondary contact recreational uses such as boating and fishing than for the primary contact recreational activities such as swimming.

Consistent with the proposed bacteria criteria for primary contact waters in a separate regulatory rule making, the proposed changes will adopt *E. coli* and enterococci bacteria standards for secondary contact fresh waters and enterococci standard for secondary contact marine waters. Both of these standards are currently proposed to apply to primary contact waters. However, the proposed bacteria standard for secondary waters is about five times less stringent than the bacteria criteria for the waters designated as primary contact waters because potential health risks are lower. Current point sources will likely be required to meet the bacteria standard for primary contact bacteria limits regardless of this proposed rule and will likely not be affected by this change. However, if a less stringent proposed standard is appropriate for the secondary contact waters, there is likely to be some potential savings for nonpoint sources when secondary contact designations are made. It should be noted that the following potential effects are contingent upon designation of secondary contact waters.

Currently, about 102 TMDLs must be developed during the next ten years because of the bacteria criteria for primary contact waters. The proposed regulations will establish a less stringent value for the secondary contact waters and may

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reduce the number of TMDLs. If the number of TMDLs that must be developed decreases, significant fiscal impact on the state and nonpoint sources would result. Development of TMDLs requires significant amounts of labor to collect data, to determine land uses, animal densities, crop densities, the number of septic systems, contributions from point sources, and to construct a simulation model. According to the department, developing a fecal TMDL may require \$33,000 to \$76,000 depending on whether modeling is needed or not. The department usually incurs the development costs, but some funding is provided from the federal government. Currently, the federal government funds about forty percent of TMDL development costs. Thus, the proposed changes will make it possible to provide some savings to the department in TMDL development costs when the secondary contact water designations are made. However, the department does not know the number of waters that may be designated as secondary contact waters, or the number of TMDLs that may be avoided.

Implementation of a TMDL represents significant costs to pollution sources as well. For example, fencing may be required to prevent direct deposition into water from cattle, a buffer area may be needed to function as a filter, and failing septic systems may have to be fixed. In addition to these, the implementation involves public participation, and staff travel which add to the overall costs. The department's total cost estimate for implementing a fecal TMDL in a typical watershed is about \$1.4 million. There are also various cost share and incentive programs for TMDL implementation. Since the number of TMDLs that may not be required due to less stringent standards is not known, the size of the potential cost savings to nonpoint sources, cost share and incentive programs, and the state is also not known.

Site-Specific Copper Criterion. A site-specific copper standard will be adopted for Little Creek Harbor, Hampton Roads Harbor, and Elizabeth River. The proposed site-specific copper standard is slightly less stringent than the proposed statewide water quality standard. One of the permittees in this region, the U.S. Navy, conducted a site-specific study and demonstrated that the receiving stream naturally reduces the bio-availability of copper and therefore able to assimilate more copper without adversely affecting aquatic life. The proposed criteria reflect the outcome of this study. The department and the Navy believe that the site-specific copper criteria are more technically correct and better represent the actual toxicity of copper in these areas. Currently, only one Navy permit contains effluent limits for copper. In addition, there are several other permits issued to other facilities in this area containing effluent limits or monitoring requirements for copper. The department indicates that the difference between this site-specific standard and the proposed statewide standard is negligible and does not believe that this proposed standard will significantly affect any of the existing permittees at this time. If this is the case, the proposed change is not expected to provide significant savings in compliance costs to existing permit holders in this area.

However, if any of the permittees in this region have actual copper concentrations in their discharge that exceeds the existing copper criteria, or new sources come on line in this area, or become subject to the proposed standards due to

change in department's policy, then they may be able to avoid some treatment costs if the proposed standard is adopted. The Navy pointed out the possibility that about 300 storm water discharges that are currently monitored may be required to comply with the proposed copper standard in the future if the department's policy changes. About 200 of these storm discharges would not meet the current criteria, but would be able to comply with the proposed standard. In this case, the proposed change would eliminate compliance costs associated with 200 storm discharges. There is a similar possibility for the local governments as well for hundreds of other storm discharges. The compliance costs for these outfalls could be significant and include treatment costs, costs associated with disposal of residuals, and infrastructure costs to establish piping systems. Thus, the proposed less stringent standard has the potential to reduce the number of such outfalls that may be found out of compliance, and consequently, reduce the compliance costs. For example, these sources may avoid purchasing of a chemical precipitation processor or an infiltrating system and may avoid application of best management practices that may otherwise be required.

Businesses and entities affected. The proposed regulations are expected to affect about 60 ammonia sources over a five year period due to mixing zone rule, about seven facilities due to taste and odor criteria, and several copper sources discharging into Little Creek Harbor, Hampton Roads Harbor, and Elizabeth River. The proposed changes may also affect new and expanded point sources as well as nonpoint sources in the future.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth except the site-specific copper standard. This standard will apply only to copper sources discharging into Little Creek Harbor, Hampton Roads Harbor, and Elizabeth River.

Projected impact on employment. While some of the proposed changes are likely to increase the demand for labor, some others are likely to decrease it. For example, the proposed taste and odor criteria are expected to reduce the demand for labor because some treatment projects will be cancelled. On the other hand, the mixing zone requirement is expected to increase demand for labor because the level of treatment will likely be higher. Thus, the net impact on the employment is not known.

Effects on the use and value of private property. The net effect of the proposed changes on private property is unclear. However, if expected increase in compliance costs of about 60 ammonia sources is significant, this may hurt the firm value over a five-year period due to the mixing zone rule. On the other hand, about seven facilities that are subject to taste and odor criteria may be able to avoid some of their compliance costs and contribute to firm value. Similarly, privately owned copper sources discharging into Little Creek Harbor, Hampton Roads Harbor, and Elizabeth River may also increase in value due to less stringent copper standards. All other potential effects are expected to take place in the future, but there is not enough information at this time to determine what the net impact, if any, on firm values will be.

The proposed changes also have the potential to affect the private property prices through improvements in environmental quality. However, such effect is usually contingent upon noticeable improvements. Since the magnitude of likely effects on environment is not known, no conclusive statements can be made about the effect on the value of private property.

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

Summary:

The proposed amendments (i) add new definitions; (ii) modify the mixing zone and antidegradation policies; (iii) update the Table of Parameters with new and revised criteria and a reformatted table; (iv) state that the taste and odor criteria apply at the drinking water intake; (v) move the groundwater standards to a new regulation; (vi) delete and modify special standards; (vii) add a site-specific criterion for copper in Hampton Roads; (viii) update use designations for trout streams and public water supplies; (ix) identify Class VII swamp waters in the Chowan basin; and (x) rearrange the Middle and Lower James river basin tables.

VA.R. Doc. No. R01-78; Filed August 5, 2002, 9:57 a.m.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-10 through 12 VAC 30-120-60; adding 12 VAC 30-120-55).**

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

Public Hearing Date: N/A -- Public comments may be submitted until October 25, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Vivian Horn, Policy Analyst, Division of Long-Term Care, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 371-4986 or e-mail vhorn@dmas.state.va.us.

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

Purpose: The Elderly and Disabled Individuals (E&D) Waiver program provides individuals with personal care, respite care,

and adult day health care services. The addition of the personal emergency response systems (PERS) allows individuals who are at high risk of institutionalization to remain in their homes with less direct human supervision. PERS are electronic devices that enable community recipients to secure help in an emergency. PERS services are limited to those recipients who live alone or are alone for significant parts of the day with no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision by personal care aides.

This regulatory action is expected to help protect the health, safety, and welfare of participants in this waiver. These regulations will provide a service that enables recipients to live successfully in their homes and communities.

Substance:

12 VAC 30-120-10

The definition of "designated preauthorization contractor" was added in order to define the term that was added throughout the regulations.

The definition of "medication monitoring" was added to define this component of the PERS service.

Definitions related to the PERS service were added.

The definition of "Plan of Care" was changed to specify that the plan of care is developed by the provider related solely to the specific services required by the recipient.

The definition of "Service Plan" was added to specify the plan that is developed and certified by the screening teams.

The definition of "respite care" was changed to add the word "unpaid" when discussing the primary caregiver as the recipient of the respite services.

12 VAC 30-120-20

Language was added in subsection C 2 to clarify the preauthorization requirements that providers must follow in order to receive reimbursement from Medicaid.

Language was added in subsection C 7 to clarify that Medicaid will not pay for any services delivered prior to the authorization date approved by the screening team and the physician signature on the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96). Language is also added to clarify that if services have not begun within 6 months of the screening, a new screening must be completed or an update to the original screening must be completed prior to the beginning of services.

12 VAC 30-120-30

Language was added in subsection E to clarify that the recipient has the choice of providers if there is more than one provider who provides services in the community and that the recipients will have the option of selecting the provider of his choice from among those providers that can appropriately meet the recipient's needs.

Language was corrected in subsection F regarding termination of provider participation. The old language specified that DMAS may terminate a provider from

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participation upon 60 days' written notification. This was changed to 30 days per the regulations for other programs to be consistent.

Language was corrected in subdivision G 2 regarding the time that the provider has to submit language for reconsideration, informal conference, and formal evidentiary hearing. The old language specified that the provider had 15 days to submit this information. In these proposed regulations, this language was corrected to specify 30 days, as per the appeals regulations.

Language was added in subdivision I 1 a for clarity regarding decreases in amount of authorized care by the provider. The new language specifies that the provider may decrease the amount of authorized care if the amount of care in the revised plan of care is appropriate based on the needs of the recipient. Language is also included that specifies what the recipient may do if he disagrees with this decrease.

Language currently states that the provider must discuss with the recipient or family or both the decrease in care and that the provider must notify the recipient or family of the change by letter. The new language in subdivision I 1 c states that this letter must give the right to reconsideration.

New language was added to subsection K which states that a provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a retraction of Medicaid payment or termination of the provider agreement.

Language was added regarding waiver desk reviews. DMAS added this language per CMS' requirement that DMAS perform this function.

12 VAC 30-120-40

The current language states that the adult day health care (ADHC) center must provide a separate room or area equipped with one bed or cot for every six Medicaid participants. Language was added to subdivision B 3 to allow recliners to count in this ratio and the ratio was changed to one for every twelve participants.

Language was added to subdivision B 4 d to be consistent with the DSS regulations for ADHCs regarding the use of volunteers.

Language was clarified regarding the amount of time that a registered nurse must be present in the ADHC each month. The old language specified that the registered nurse must be present a minimum of one day each month at the ADHC. The new language in subdivision B 4 g specifies that the registered nurse must be present a minimum of eight hours each month at the ADHC. Language was deleted that stated that the registered nurse renders direct services to Medicaid adult day health care participants.

New language was added under the qualifications of the ADHC program aide to include the ability to read and write in English to the degree necessary to perform the tasks expected.

Language was also added in subdivision C 1 c that the provider must comply with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

Language was added to the registered nurse section that states that the registered nurse must have two years of related clinical experience. The setting of the public health clinic and the home health agency has been added. Language was also added in subdivisions C 2 b and c that states that the provider must comply with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

Language for the criminal records check was added in subdivisions C 3 c and C 4 to the activities director section and the director's section.

Language regarding the transportation responsibilities was deleted from subdivision D 4 of the regulations.

At subdivision E 6 language was added and deleted from the daily record section. The language deleted stated that the record must be signed weekly by the participant or representative. The language added includes the requirement that a copy of this record must be given to the participant or representative weekly.

12 VAC 30-120-50

Language was added to subsection A to clarify that the recipient may continue to work or attend post-secondary school while he receives services under this waiver. Language was added that describes the requirements that must be met.

Language was added to subdivisions B 2 a and b regarding the registered nurse, who must have two years of related clinical experience, which may include work in a rehabilitation hospital or as an LPN. Language was also added that states that the providers must comply with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

Language was added (per the request of the workgroup) in subdivision B 2 d that states that the RN supervisor must make supervisory visits as often as needed to ensure both quality and appropriateness of services. The minimum frequency of these visits is every 30 days for recipients with a cognitive impairment and every 90 days for recipients who do not have a cognitive impairment. Language was added to include the definition of cognitive impairment, the requirements for the initial and follow-up visits and a statement that the recipient (if he does not have a cognitive impairment) has the choice of frequency of the supervisory visits (not to exceed 90 days). Language was also added to include a safeguard that if DMAS or the designated preauthorization contractor determines that the health, safety or welfare of a recipient is in jeopardy, DMAS, or the designated preauthorization contractor, may require the provider's registered nurse to supervise the personal care aide every 30 days or more frequently.

Language was deleted that stated "Any change in the identity of the RN providing coverage shall be reported immediately to DMAS."

Language was added at subdivisions B 3 a and d under the qualifications of the personal care aide to include the ability to read and write in English to the degree necessary to perform

the tasks expected. Language was also added that states that providers must comply with the § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

Language was added at subdivision B 3 e, also under the qualifications of the personal care aide, to include the requirement that the aide cannot be the parents of minor children, the recipients' spouses, or the legal guardian of the recipient. Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.

Language was deleted that described the procedure that the provider must follow when using substitute personal care aides. This information will now be located in the provider manual.

12 VAC 30-120-55

This is a new section in the VAC created for the language for the PERS service. The language included in this section includes a description of the service, DMAS criteria for the service, service units and service limitations, provider requirements, and standards for the PERS equipment. Information regarding medication monitoring was added as a component of the PERS service.

12 VAC 30-120-60

Language was added about respite care and that it is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the unpaid caregiver for temporary relief. Language was also added in subsection A that the authorization of respite care is limited to 720 hours per calendar year. This was for clarification purposes since the old language limited respite to 30 24-hour days over a 12-month period.

Language was added to the section on the registered nurse. The registered nurse must have two years of related clinical experience, which may include work in a rehabilitation hospital or as an LPN.

Language was also added at subdivision B 2 a that states that the same providers must comply with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

Language was added under the qualifications of the personal care aide to include the ability to read and write in English to the degree necessary to perform the tasks expected.

Language was also added at subdivisions B 3 a and e that states that the providers must comply with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

Language was added at subdivision B 3 f, also under the qualifications of the personal care aide, to include the requirement that the aide cannot be the parents of minor children receiving services paid for by Medicaid, the recipients' spouses, or legal guardian of the recipient. Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care.

These family members must meet the same requirements as aides who are not family members.

Language was added at subdivision B 4 a regarding the Licensed Practical Nurse. Language included that the LPN must be currently licensed to practice in the Commonwealth. Language was also added that states that the providers must comply with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

Language was deleted that described the procedure that the respite care agency must follow when using substitute respite care aides. This information will now be located in the provider manual.

Language was added at subsection E that states that respite care services cannot begin prior to preauthorization from the designated preauthorization contractor.

Issues: The primary advantage for the Commonwealth's citizens regarding the addition of PERS as a new covered service in the Elderly and Disabled Waiver is that it could greatly improve a recipient's autonomy and ability to remain in the community without requiring an aide's presence. It could enable some recipients to live on their own and enable some recipients to remain with their families, instead of being institutionalized. To the extent of their abilities, recipients will be able to function in their communities, attending school and continuing employment. Another advantage is that since recipients who use personal care services for their supervision needs can use the PERS service, the aides that do not have to provide the supervision service could provide the direct personal care services to recipients who would otherwise be institutionalized.

Changing the requirement of supervisory visits from every 30 days in general to every 90 days for noncognitively impaired individuals will allow recipients more freedom and privacy in their homes. This change would not affect those recipients with a cognitive impairment as the requirement for the supervisory visit remains at every 30 days. DMAS also included a safeguard in these regulations which states that if a recipient's personal care aide is supervised by the provider's registered nurse less often than every 30 days and DMAS determines that the recipient's health, safety or welfare is in jeopardy, DMAS or the designated preauthorization contractor, may require the provider's registered nurse to supervise the personal care aide every 30 days or more frequently.

All of the proposed changes to the regulations are intended to protect the recipient from abuse, to prevent the recipient from receiving services from unqualified staff, and to promote the recipient's independence in the community.

There are no disadvantages to the public or the Commonwealth with these regulation changes.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or

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other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Medical Assistance Services (the board) proposes to make its emergency Elderly and Disabled (E&D) Waiver regulations permanent. The proposed changes will continue to make optional Personal Emergency Response System (PERS) services available to eligible recipients in lieu of supervision services provided under personal care. The proposed changes will also require the department to perform annual desk reviews to assess waiver recipients' ongoing need for Medicaid funded long-term care. Another proposed amendment will decrease the minimum frequency of supervisory visits conducted by a registered nurse supervisor for recipients without a cognitive impairment from every 30 days to every 90 days with the consent of the recipient. Finally, family members of the recipient other than the parents of minor children receiving services, the recipient's spouse, or the legal guardian will be allowed to provide care for the recipient under the waiver program. All other changes are clarifications of the current requirements.

Estimated economic impact. These regulations apply to Medicaid's E&D waiver program. The program is established under section 1915(c) of the federal Social Security Act, which encourages the states to provide home and community based services as alternatives to institutionalized care. The states have some flexibility in the program and may waive federal rules such as statewide coverage, comparability of services, and income and resource requirements. Hence, the program is referred to as a waiver program. The purpose of the waiver program is to prevent or delay placement of persons in a nursing home by providing care for individuals in their homes and communities consequently avoiding high long-term care costs. (LeBlanc et al., 2000) Medicaid agencies in all states wishing to implement such waiver programs are required to demonstrate that the costs would be lower under a waiver than they would be without it.

Virginia's E&D waiver program provides personal care, adult day health care, and respite care services. Personal care covers services of aides who provide assistance with activities of daily living such as bathing, dressing, transferring, and cooking and who provide supervision. Adult day health care includes similar personal care services and socialization, nursing, rehabilitation, and transportation services provided by a group of professionals and aides in a congregate setting during the day. Respite care services focus on the need of the unpaid caregiver, who is usually related to the recipient, for temporary, but periodic breaks. Respite care covers reimbursements for aides and licensed practical nurses (LPN) providing personal care services when the caregiver is away. A synopsis of 2001 program activity is provided in the table below.

Some of the proposed requirements are already enforced in practice under emergency regulations effective since February 2002. With this action, the board proposes to make the emergency regulations permanent. One of the changes already implemented is making available PERS services to eligible recipients who wish to use such a system in lieu of supervision services provided under personal care. For eligibility, the recipient must be at least 14 years old, must live alone or be alone for significant parts of the day, must have no regular caregiver for extended periods, and must otherwise require extensive supervision.

Table: E&D Waiver Program Summary Statistics

	Personal Care	Adult Day Health Care	Respite Care	Total
Expenditures	\$84,039,347	\$2,562,469	\$1,395,997	\$87,997,813
Number of Recipients	9,316	473	893	10,682
Cost Per Recipient	\$9,021	\$5,418	\$1,563	\$8,238
Number of Providers	261	55	212	528
Revenue Per Provider	\$321,990	\$46,590	\$6,585	\$166,663

Source: The Statistical Record of the Virginia Medicaid Program and Other Indigent Health Care Programs, State Fiscal Year 2001, Department of Medical Assistance Services.

PERS is an electronic device that monitors recipient safety in the home and provides 24-hour access to assistance in medical or environmental emergencies, e.g., home emergency problems, household accidents, and assault. Access is provided through a phone line and may include medication-monitoring devices as well. A PERS comprises a radio transmitter carried or worn by the user, a console connected to the phone line, and an emergency response center that monitors calls.¹ The user can seek help by activating the transmitter by breath, by touch, or by some other means. Generally, once the transmitter is activated, the console dials a designated emergency telephone number. The emergency center responds to the call and determines the nature of the emergency and dispatches appropriate help from an emergency response organization such as police/fire departments or from an emergency responder such as a 911 dispatcher. If the emergency center determines it is a nonemergency situation, the center contacts a designated neighbor or person on the recipient's contact list.

The research literature indicates that being found incapacitated and unable to get help is common. Gurley et al. (1996) reports that frequency of being found helpless or dead was 3 per 1,000 per year for 60-64 age group and 27 per 1,000 per year for 85 and older. The mortality rate among these cases was 28%, of which 23% were found dead and 5% died in a hospital. Of those who were found alive, 62% were

¹ Source: Personal Emergency Response Systems, Facts for Consumers, Federal Trade Commission, Bureau of Consumer and Business Education, March 2001.

admitted to a hospital on average for eight days and of those admitted, 52% required intensive care. About 62% of the survivors were not able to return to independent living. The mortality rate was 67% among those who were helpless for more than 72 hours, while the deaths were 12% among those who were helpless for more than 1 hour.

Sherwood and Morris (1980) report that the average emergency rate for frail populations was approximately ½ per user per year, or one each week for every 100 users. Of the emergencies, 73% were health related and 27% were environmental. According to Lifeline Central Survey (1988), the most frequent types of incidents were falls, not feeling well, difficulty in breathing, and chest pain. In support of these findings, Dibner (1992) reports that most users are elderly women who live alone, who are 70 to 80 years old, who have cardiac or musculoskeletal problems, and who are subject to falls.

A number of studies analyze the effects of PERS services. These studies compare the outcomes with a PERS unit to outcomes without the system.² The comparisons are made between subjects who have 24-hour access to a PERS unit and those who do not have any access to a PERS unit. This should be noted because the population affected by the proposed changes are recipients of the E&D waiver program and may already be receiving personal care and supervision from Medicaid, and thus the research findings mentioned are likely to overestimate the effects on waiver recipients. The department does not have data to determine the average number of hours the recipients are with an aide providing personal care or supervision. Consequently, it cannot be estimated how much the effects may be overstated. In short, since current recipients may already be with an aide for some time of the day, the effects on waiver recipients are likely to be lower than the effects on the research subjects analyzed in the literature. Thus, the effects identified in the literature must be discounted by an unknown factor.

The studies summarized in Montgomery (1992) identify the effects of the system under three categories. These include the effects on the user, effects on the caregiver, and effects on the health care system. The optional feature of PERS services is likely to benefit users. Since PERS is an optional service, recipients are expected to choose it if they perceive it would benefit them. They also have the option to cancel the service if they are dissatisfied. Recipients are likely to consider a myriad of factors before making a decision on whether to use the system. First, 24-hour availability of a PERS unit may be attractive to some recipients as 24-hour aide supervision is not provided under the program. Also, recipients are likely to consider the potential attributes of a PERS unit, which may include an enhanced sense of privacy, independence, self-reliance, security, peace of mind, and being less of a burden on others. It is reported that the system users felt more comfortable about living alone and more confident about continuing to live independently compared to

nonusers. (Sherwood and Morris, 1980) Also, according to one survey, 42% of the responses identified quick help if needed as the number one benefit, 24% identified security, and 13% identified peace of mind as the most important benefit. (Patel, 1989)

On the other hand, there is some chance for recipients to require inpatient services and some chance of experiencing difficulty returning to independent living following an emergency because of potential response delays under the PERS services. There is no data to assess the size of these potential costs. Additionally, the chances of being found helpless or dead, the quality and the speed of the assistance provided under a PERS system as opposed to the assistance provided by a supervising aide may be different and are likely to be taken into account. For example, the response time under the supervision of an aide may be shorter because the response time in cases where a PERS unit is utilized would generally include the user decision delay that takes place between the onset of emergency and the call for help, the dispatch delay that includes determining the most appropriate assistance needed and dispatching the appropriate mobile unit such as fire or emergency squad to the scene, travel time of the mobile unit to the scene, and the time required for transport and treatment. The use of PERS units may have direct effects on the time spent incapacitated as a result of waiting for treatment. This can affect the incidence of survival, the incidence of survivors requiring inpatient hospital services, and the chance of returning to independent living.

In short, the optional PERS services are likely to be adopted if the recipients perceive the units would benefit them. If the additional risks and benefits are taken into account appropriately, the recipient's decision to use a PERS unit should indicate that the benefits to him are greater than the risks. However, there is no available data on recipient morbidity and mortality measures in Virginia to make a conclusive statement regarding the net economic effect of the proposed change on the system users.

The effects on the caregiver have also been studied because the system has the potential to reduce caregiver responsibilities. (Montgomery, 1992) According to a survey, 20% of employees of the Travelers Insurance Corporation over age 30 spent an average of 10.2 hours per week caring for an elderly parent and 8% spent 35 hours or more per week also caring for an elderly parent. (AARP, 1987) These employees reported being less focused on their work, being distracted and less productive, spending excessive amounts of time on the phone checking on the family member, and missing work to provide care. One survey also indicates that utilization of this system may relieve the anxiety the family caregivers experience when they cannot physically be with their family members. (Montgomery, 1992) Thus, the system has the potential to benefit caregivers.

Moreover, PERS services are likely to have economic effects on the department and the health care system. The costs of the PERS system include one-time installation charges, monthly rental fees, and wages paid for nursing services to refill the medication-monitoring unit if it is included with PERS. Current reimbursement rates for PERS services are provided in the table below. PERS unit costs differ between Northern

² More specifically, they employ either repeated measures methods by which the effects on the same subject are compared before and after using the system or cross sectional methods by which the effects are compared between two groups one with the system and another without the system.

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Virginia and the rest of the Commonwealth. Installation charges are one-time costs and include the removal of the unit as well. Installation charges are higher if a medication-monitoring unit is required along with the PERS unit. For example, the installation charge is \$50 outside of northern Virginia while it is \$75 if a medication-monitoring unit is also provided. Monthly monitoring charges are the same for all PERS units with or without the medication-monitoring unit, which is \$30 per month outside of northern Virginia. A registered nurse (RN) or an LPN must refill medication-monitoring units periodically. Refilling the unit is estimated to take about half an hour of a nurse's time, which costs \$12.25 for an RN and \$10.25 for an LPN outside of northern Virginia.

The total cost of providing PERS services depends on the number of eligible recipients who choose to utilize PERS services in lieu of the supervision services already available, the number of recipients who use the medication monitoring services, as well as the average length of service per recipient. According to the data available from February to June 2002, about 10 recipients have elected to use the system. The current number of users may greatly underestimate the long run potential of this system if many recipients do not know about the option to request a PERS unit. The data from other states with similar services offered under the waiver program may be more appropriate to provide an estimate. The department does not have any information on which other states provide PERS services in their waiver program. Also, the number of medication-monitoring units provided with these systems is not known. Finally, the turnover rate is likely to affect the total costs through one-time installation charges. The current turnover rate for the system is not known either. However, Dibner (1990) finds that the average length of system use is 10.5 months with most users terminating due to death or institutional placement, and Schantz (1992) finds that the average length of service per subscriber is approximately 12 months.

Table: Summary of PERS unit Costs

	PERS Unit		PERS with Medication Monitoring Unit		
	Installation	Monitoring	Installation	RN	LPN
N. Virginia	\$59.00	\$35.40/month	\$88.50	\$15.00/.5 hour	\$13.00/.5 hour
Rest of State	\$50.00	\$30.00/month	\$75.00	\$12.25/.5 hour	\$10.25/.5 hour

The main benefit of the PERS for the health care system and the department is the decreased need for supervision. It is reported in a study that on average the system reduced the personal care hours by 91.2 hours per client per month. (New York City Human Resources Administration, 1988) In Virginia, a PERS unit is estimated to reduce the need for home attendant services such as aide supervision by about 60 hours per client per month on average. The department reimburses \$11.25 per hour for personal care provided by aides. On a monthly basis, it costs \$30 to provide a PERS unit to the recipient and it costs about \$675 for 60 hours of aide supervision. Thus, a PERS unit, without medication monitoring and without taking into account installation costs, represents cost savings of approximately \$645 per recipient per month.

The total reduction in aide supervision required and consequently the cost savings to the department depends on the number of recipients who utilize the PERS option.

Other benefits to the health care system include fewer days spent in long-term care settings, decreased hospital admissions, decreased lengths of stays in hospitals, and decreased emergency room visits. (Montgomery, 1992, Roush et al., 1995) It is reported that system users used 10 times less long-term care than nonusers. (Ruchlin and Morris, 1981) Another survey conducted by Dibner and Stafford (1984) found that 75% of PERS users spent less time in acute care hospitals and 16% reported a delay in long-term care placement. The survey participants reported that in 87% of cases the length of hospital stay was reduced by one to seven days. Similarly, Koch (1984) reports that the system lowered the hospital admissions and reduced the length of hospital stays by 26%. Moreover, a 26.4% decrease in hospital admissions, a 23.2% decrease in length of stay, and a 6.5% decrease in emergency room visits are reported in Dibner (1985). Further, Cain (1987) reports a 48.4% reduction in hospital admissions, and a 69.3% reduction in days hospitalized. For Canadian subjects, Roush et al. (1995) reports that average hospital admissions decreased by 25% per person after using the system and inpatient days decreased by 59%. Finally, the system may provide early assistance in an emergency and prevent more complicated treatment and reduce the length of stay in addition to early discharge. Most of these benefits are also acknowledged in Benson (1992).

A few studies estimate the potential cost savings from a PERS unit. It is estimated that the system produced net savings of \$7.19 in terms of total reduced long-term care costs for each dollar spent on the system among users who were severely functionally disabled and not socially isolated. (Sherwood and Morris, 1980) Similarly, Ruchlin and Morris (1981) found that every dollar spent on the system produced \$1.87 in terms of costs averted.

These studies indicate that the availability of PERS services is likely to benefit the health care system. However, there is no available data to determine the size of the potential benefits to Virginia. Also, the size of the benefits mentioned in these studies should be discounted by some factor to take into account the fact that PERS substitutes for aide supervision currently provided as discussed above.

The proposed permanent changes will also require the department to perform annual desk reviews to assess the E&D waiver recipients' ongoing need for Medicaid funded long-term care in the community. Annual needs assessment for each recipient is required by the Centers for Medicare and Medicaid Services for the department to continue to receive federal funding for the waiver program. Annual desk reviews are proposed to meet this federal requirement.

The E&D waiver providers will fill out a two-page review form with relevant information for each waiver recipient in their caseloads and submit it to the department. As a result, every year, approximately 20,000 pages will be filled out by about 400 providers for about 10,000 recipients and will be transported to the department for review. The costs of this requirement include the value of paper, office equipment, and

time that will be devoted by providers filling out the forms, the postal costs of transporting them to the department, and the time and other resources that will be devoted by the department to review the submitted forms. Providers' costs will vary based on the number of recipients they are caring for.

The department estimates that it will take about two to three full-time employees with a per person average salary of \$44,700 to conduct the reviews. Although there are no plans to hire additional employees, the department plans to appoint the necessary number of employees for this purpose. Thus, the costs to the department include about \$89,400 to \$134,100 for the staff time, the cost of employee benefits, and the value of other resources such as the office equipment and office space that may be devoted for this purpose. The main benefit of this requirement is to meet the federal requirement and thereby continue to receive federal funding for the E&D waiver program. The annual review may also improve the long-term needs determination of recipients and consequently improve the welfare of recipients by identifying appropriate services, or provide cost savings by avoiding the services that may not be appropriate. However, there is no data available to determine if any of these benefits will be realized.

Another proposed amendment will decrease the minimum frequency of supervisory visits conducted by a registered nurse supervisor for recipients who do not have cognitive impairments from every 30 days to every 90 days. The recipient has the option to request more frequent supervisory visits for any increment between every 30 to 90 days. The purpose of the supervisor's visit is to make sure that aides continue to provide proper personal care services to recipients. The hourly reimbursement rate for the aide services to a provider includes the RN supervisory visits. A supervisory visit may take from 1/2 hour to 1 hour depending on the capabilities of the recipient and whether or not an aide is present at the time of the visit. This change has the potential to provide some cost savings to providers in terms of reducing the hours RNs spend conducting supervisory visits. Further, an issue may be created in that providers may have incentives to provide less frequent visits to save registered nurse time. However, this problem may be mitigated to some degree as the registered nurse must inform the recipient about his option of requesting visits for any increment between every 30 to 90 days while meeting the obligation to document the conversation with the recipient on this issue and the option chosen. Moreover, there is a "safety net" so that if the department or the department's preauthorization contractor believes that more frequent supervision is best for the recipient, the provider must provide more frequent supervision. The option to request visits more frequent than every 90 days is likely to help ensure that the value attached to supervisory visits by the recipient is taken into account. Recipients who value their privacy and independence more than the benefits of supervisory visits will likely to use this option and request fewer visits. For example, younger people may wish to receive fewer visits than elderly people. If the recipients are aware of advantages and disadvantages of less frequent visits, this option is likely to benefit them because it takes into account their preferences. Since this is a new provision, the total number of recipients who may receive less frequent visits than every 30 days is not known.

With another amendment, the recipients are allowed to receive personal care services from recipient's family members other than the parents of minor children receiving services, the recipients' spouse, or the legal guardian. Previously, other family members such as all children, siblings, grandparents, and grandchildren were not allowed to provide personal care services to the recipient. In these cases, it must be justified in writing why there are no other providers available to provide the care in order for the department to make payments to such family providers. Additionally, for family members to qualify for this reimbursement, they must meet all of the professional licensing standards that the department requires of nonfamily members who seek reimbursement. This change may increase the number of aides who can provide personal care services to a recipient. The recipients and the providers in rural areas where the chance of an aide being related to a recipient is particularly high may benefit from this flexibility. The department is aware of only anecdotal evidence in which there was difficulty in finding an unrelated aide. The quality of care provided by a family member is expected to be at least as good as that provided by a nonfamily member professional because both must have the same minimum professional qualifications.

Finally, all other changes are clarifications of the current language and are not expected to create significant economic effects other than reducing the potential for legal uncertainty and the potential communication costs to clarify the uncertainty. For example, it is clarified that all compensated employees of personal care, respite care, and adult day health care providers must comply with the Code of Virginia regarding criminal background checks. Similarly, it is clarified that personal care recipients may continue to work and attend post-secondary school while receiving services.

Businesses and entities affected. The proposed changes will make the PERS services available to 9,316 personal care recipients under the E&D waiver program. Approximately 10% of these recipients receive supervision services and may elect to use a PERS unit in lieu of aide supervision. Since March 2002, only 10 recipients have elected to use a PERS unit, but this figure likely greatly underestimates the long-run potential of the system. There are 261 providers of PERS services, which include certified home health or personal care agencies, durable medical equipment providers, hospitals, or PERS manufacturers.

Localities particularly affected. The proposed regulations apply to all localities throughout Virginia.

Projected impact on employment. The proposed use of PERS services in lieu of aide services is expected to reduce the demand for aides. As the department points out, reduced demand is likely to reduce the shortage of personal care aides. Also, if there are reductions in need for long-term care, inpatient services, and emergency room visits, there is likely to be a decrease in the demand for these services and employees in these areas. Likewise, fewer supervisory visits are expected to reduce provider demand for registered nurses and reduce the shortage of nurses. On the other hand, the proposed desk reviews will increase provider demand for labor to fill out the assessment forms. The department's need

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for additional staff is expected to increase by two to three positions, but there are no current plans to hire additional employees at this time.

Effects on the use and value of private property. The proposed changes have the potential to affect the value of firms providing services under the E&D waiver program. However, some changes are expected to increase costs and some other changes are expected to reduce costs, or revenues. Since the net effect on profitability is not known, no conclusive statements can be made about the potential impact on the value of provider firms. Additionally, if a PERS unit improves the security of the home the recipient lives in, there is likely to be a positive effect in terms of lower likelihood of personal property losses.

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Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with

the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Home and Community Based Waiver Services for the Elderly and Disabled Individuals.

Summary:

The proposed amendments (i) make personal emergency response system (PERS) services available to eligible recipients in lieu of supervision services provided under personal care; (ii) require the department to perform annual desk reviews to assess waiver recipients' ongoing need for Medicaid-funded long-term care; (iii) decrease the minimum frequency of supervisory visits conducted by a registered nurse supervisor for recipients without a cognitive impairment from every 30 days to every 90 days with the consent of the recipient; (iv) allow family members of the recipient other than the parents of minor children receiving services, the recipient's spouse, or the legal guardian to provide care for the recipient under the waiver program; and (v) make clarifying changes.

12 VAC 30-120-10. Definitions.

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

"Activities of daily living" means assistance with personal care tasks (i.e., bathing, dressing, toileting, etc.).

"Adult day health care ~~centers~~ center" means a participating provider which offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and physically disabled individuals at risk of placement in a nursing facility.

"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and *coordination* of rehabilitation services in a congregate daytime setting.

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

"Designated preauthorization contractor" means the entity that has been contracted by DMAS to perform preauthorization of services.

"Direct marketing" means either (i) directly or indirectly conducting door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible recipients as inducements to use their services; (v) continuous, periodic marketing activities to the same prospective recipient, e.g., monthly, quarterly, or annual giveaways, as inducements to use their services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of their services or other benefits as a means of influencing recipients' use of providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DSS" means the Department of Social Services.

"*Episodic respite care*" means relief of the *primary unpaid* caregiver for a nonroutine, short-term period of time for a specified reason (i.e., respite care offered for seven days, 24 hours a day while the caregiver takes a vacation).

"*Home and community-based care*" means a variety of in-home and community-based services reimbursed by DMAS (personal care, adult day health care ~~and~~, respite care, and *personal emergency response systems (PERS)*) authorized under a § 1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid nursing facility placement. (*PERS may only be provided in conjunction with personal care, respite care, or adult day health care services.*) The Nursing Home Preadmission Screening Team or Department of Medical Assistance Services shall give prior authorization for any Medicaid-reimbursed home and community-based care.

"*Medication monitoring*" means an electronic device that enables certain recipients at high risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"*Nursing home preadmission screening*" means the process to: (i) evaluate the ~~medical~~ functional, nursing, and social ~~needs~~ supports of individuals referred for preadmission screening; (ii) analyze what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) authorize Medicaid funded nursing home or community-based care for those individuals who meet nursing facility level of care ~~and require that level of care.~~

"*Nursing Home Preadmission Screening Committee/Team*" means the entity contracted with ~~the~~ DMAS ~~which that~~ is responsible for performing nursing home preadmission screening. For individuals in the community, this entity is a committee comprised of ~~staff~~ a nurse from the local health department and a *social worker from the local DSS department of social services*. For individuals in an acute care facility who require screening, the entity is a team of nursing and social work staff. A physician must be a member of both the local committee ~~or~~ and an acute care team.

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

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

"*Personal care services*" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a nursing care facility. Personal care services include assistance with personal hygiene, nutritional support, and the environmental

maintenance necessary for recipients to remain in their homes.

"*Personal emergency response system (PERS)*" means an electronic device that enables certain recipients at high risk of institutionalization to secure help in an emergency.

"*PERS provider*" means a certified home health or personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"*Plan of Care*" means the ~~written plan of services certified by the screening team physician as needed by the individual~~ developed by the provider related solely to the specific services required by the recipient to ensure optimal health and safety for the delivery of home and community-based care.

~~"*Professional staff*" means the director, activities director, registered nurse, or therapist of an adult day health care center.~~

"*Respite care*" means services specifically designed to provide a temporary, but periodic or routine, relief to the primary unpaid caregiver of an individual who is incapacitated or dependent due to frailty or physical disability. Respite care services include assistance with personal hygiene, nutritional support, and environmental maintenance authorized as either episodic, temporary relief, or as a routine periodic relief of the caregiver.

"*Respite care agency*" means a participating provider which renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with respite care aides who provide respite care services.

"*Routine respite care*" means relief of the *primary unpaid* caregiver on a periodic basis over an extended period of time to allow the caregiver a routine break from continuous care (i.e., respite care offered one day a week for six hours).

"*Service plan*" means the written plan certified by the screening team as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

~~"*Staff*" means professional and aide staff of an adult day health care center.~~

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

12 VAC 30-120-20. General coverage and requirements for all home and community-based care waiver services.

A. Coverage statement.

1. Coverage shall be provided under the administration of the DMAS for elderly and disabled individuals who would otherwise require the level of care provided in a nursing facility.

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2. These services shall be medically appropriate and necessary to maintain these individuals in the community.

3. Under this § 1915(c) waiver, DMAS waives §§ 1902(a)(10)(B) and 1902(a)(10)(C)(4)(iii) of the Social Security Act related to comparability and state-wideness of services.

B. Patient qualification and eligibility requirements.

1. ~~Virginia will apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.234 and 435.217. The income level used for 435.211, 435.234 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person low income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR § 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver groups under 42 CFR § 435.217; and the medically needy under 42 CFR §§ 435.320, 435.322, 435.324, and 435.330.~~

a. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

b. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the deductions listed below:

(1) For individuals to whom § 1924(d) applies (Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B)), deduct the following in the respective order:

(a) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual-;

(b) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act-;

(c) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act-; and

(d) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

(2) For individuals to whom § 1924(d) does not apply, deduct the following in the following order:

(a) An amount for the maintenance needs of the individual which is equal to the categorically needy income standards for a noninstitutionalized individual-;

(b) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size-; and

(c) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

2. Reserved.

C. Assessment and authorization of home and community-based care services.

1. To ensure that Virginia's home and community-based care waiver programs serve only individuals who would otherwise be placed in a nursing facility, home and community-based care services shall be considered only for individuals who are seeking nursing facility admission or for individuals who are at imminent risk of nursing facility admission. Home and community-based care services shall be the critical service that enables the individual to remain at home rather than being placed in a nursing facility.

2. The individual's ~~status as an individual in need of eligibility for~~ home and community-based care services shall be determined by the Nursing Home Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support. ~~Screening and preauthorization of home and community-based care services by the Nursing Home Preadmission Screening Committee Team or DMAS staff is mandatory before Medicaid will assume payment responsibility of home and community-based care services.~~

3. *Before Medicaid will assume payment responsibility of home and community based care services, preauthorization must be obtained from the designated preauthorization contractor.*

~~3.~~ 4. An essential part of the Nursing Home Preadmission Screening Team's assessment process is determining the *required* level of care ~~required~~ by applying existing criteria for nursing facility care according to *the* established Nursing Home Preadmission Screening process.

4. 5. The team shall explore alternative settings and/or services to provide the care needed by the individual. If nursing facility placement or a combination of other services is determined to be appropriate, the screening team shall initiate referrals for service. If Medicaid-funded home and community-based care services are determined to be the critical service to delay or avoid nursing facility placement, the screening team shall develop an appropriate *service plan of care* and initiate referrals for service.

~~5. Reserved.~~

6. Home and community-based care services shall not be offered to any individual who resides in a nursing facility, an intermediate facility for the mentally retarded, a hospital, or an adult home licensed *or certified* by the DSS.

7. Medicaid will not pay for any home and community-based care services delivered prior to the authorization date approved by the Nursing Home Preadmission Screening Committee/Team *and the physician signature on the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96). If services have not begun within 180 days of the preadmission screening, a new preadmission screening must be completed or an update to the original preadmission screening must be completed prior to the beginning of services.*

~~8. Any authorization and Plan of Care for home and community-based care services will be subject to the approval of the DMAS prior to Medicaid reimbursement for waiver services.~~

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

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

1. Immediately notify DMAS, in writing, of any change in the information which the provider previously submitted to DMAS, *to include the provider's physical and mailing addresses, executive staff and officers, and contact person's name, telephone number, and fax number.*

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

3. Assure the recipient's freedom to reject medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color,

religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 *and the Americans with Disabilities Act*, which ~~prohibits~~ *prohibit* discrimination on the basis of a handicap.

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of eligibility.

9. Accept as payment in full the amount established by ~~the~~ DMAS.

10. Use Program-designated billing forms for submission of charges.

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of storage, location, and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Hold confidential and use for authorized DMAS purposes only all medical assistance information regarding recipients.

15. Change of ownership. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days.

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

C. Provider participation standards. For DMAS to approve contracts with home and community-based care providers ~~the following standards shall be met~~, *providers must meet staffing, financial solvency, disclosure of ownership and*

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assurance of comparability of services requirements as specified in DMAS' Elderly and Disabled Waiver Services Manual published July 1, 2002.

- ~~1. Staffing requirements,~~
- ~~2. Financial solvency,~~
- ~~3. Disclosure of ownership, and~~
- ~~4. Assurance of comparability of services.~~

D. Adherence to provider contract and special participation conditions. In addition to compliance with the general conditions and requirements, all providers enrolled by the Department of Medical Assistance Services shall adhere to the conditions of participation outlined in their individual provider contracts.

E. Recipient choice of provider agencies. If there is more than one approved provider agency offering services in the community, the individual will have the option of selecting the provider agency of their his choice from among those agencies that can appropriately meet the individual's needs.

F. Termination of provider participation. DMAS may administratively terminate a provider from participation upon ~~60 days'~~ 30 days written notification. DMAS may also cancel a contract immediately or may give notification in the event of a breach of the contract by the provider as specified in the DMAS contract. ~~Subsection precludes further~~ Payment by DMAS is prohibited for services provided to recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions. Adverse actions may include, but shall not be limited to: disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, caseload restrictions, and contract limitations or termination. The following procedures will be available to all providers when DMAS takes adverse action:

1. The reconsideration process shall consist of three phases:
 - a. A written response and reconsideration to the preliminary findings;
 - b. The informal conference; and
 - c. The formal evidentiary hearing.
2. The provider shall have 30 days to submit information for written reconsideration, ~~45~~ 30 days from the date of the notice to request the informal conference, and ~~45~~ 30 days to request the formal evidentiary hearing.
3. An appeal of adverse actions shall be heard in accordance with ~~the Administrative Process Act (§ 9-6-14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act 12 VAC 30-10-1000 and Part XII (12 VAC 30-20-500 et seq.) of 12 VAC 30-20.~~

H. Participating provider agency's responsibility for the recipient Patient Information Form (DMAS-122). It is the

responsibility of the provider agency to notify DMAS, or the designated preauthorization contractor, and the DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented;
2. A recipient dies;
3. A recipient is discharged or terminated from services; or
4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care.

1. Decreases in the amount of authorized care by the provider agency.

a. The provider agency may decrease the amount of authorized care only if the recipient and the participating provider both agree that a decrease in care is needed and that the amount of care in the revised plan of care is appropriate, based on the needs of the individual. If the recipient disagrees with the proposed decrease, DMAS, or the designated preauthorization contractor, shall conduct a review of the recipient's service needs as part of the reconsideration process.

b. The participating provider is responsible for devising the new plan of care and calculating the new hours of service delivery.

c. The individual responsible for supervising the recipient's care shall discuss the decrease in care with the recipient or family, or both, document the conversation in the recipient's record, and shall notify the recipient or family of the change by letter. This letter shall give the right to reconsideration.

~~d. If the recipient disagrees with the decrease proposed, the DMAS shall be notified to conduct a special review of the recipient's service needs.~~

2. Increases in the amount of authorized care. If a change in the recipient's condition (physical, mental, or social) necessitates an increase in care, the participating provider shall assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in hours without approval from DMAS as long as, or the designated preauthorization contractor, if the amount of service does not exceed the amount established by DMAS, or the designated preauthorization contractor, as the maximum for the level of care designated for that recipient. Any increase to a recipient's plan of care which exceeds the number of hours allowed for that recipient's level of care or any change in the recipient's level of care must be preapproved by the DMAS utilization review analyst assigned to the provider, or the designated preauthorization contractor.

3. Nonemergency termination of home and community-based care services by the participating provider. The participating provider shall give the recipient or family, or both, five days written notification of the intent to terminate services. The letter shall provide the reasons

for and *the* effective date of the termination. The effective date of ~~services~~ the termination of services shall be at least five days from the date of the termination notification letter.

4. Emergency termination of home and community-based care services by the participating provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered ~~the~~, DMAS, or *the designated preauthorization contractor*, must be notified prior to termination. The five-day written notification period shall not be required.

5. DMAS, or *the designated preauthorization contractor*, termination of home and community-based care services. The effective date of termination will be at least 10 days from the date of the termination notification letter. DMAS, or *the designated preauthorization contractor*, has the responsibility and the authority to terminate home and community-based care services to the recipient for any of these reasons:

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

J. Suspected abuse or neglect. Pursuant to § ~~63-1-55.3~~ 63.2-1606 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation *abuse, neglect, or exploitation* shall report this to the local DSS.

K. DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring ~~of~~ and compliance with provider participation standards and DMAS policies and ~~annually recertify each provider for contract renewal with DMAS to provide home and community-based services~~. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a ~~written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited retraction of Medicaid payment or termination of the provider agreement~~.

L. *Waiver desk reviews*. DMAS will request, on an annual basis, information on every recipient, which is used to assess the recipient's ongoing need for Medicaid funded long-term care. With this request, the provider will receive a list that specifies the information that is being requested.

12 VAC 30-120-40. Adult day health care services.

The following are specific requirements governing the provision of adult day health care:

A. General. Adult day health care services may be offered to individuals in a congregate daytime setting as an alternative to

more costly institutional care. Adult day health care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with personal care ~~or~~, respite care, or ~~both~~ *PERS*. ~~When the individual referred for adult day health care is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the need for the additional home and community-based care service and authorize the service if it is deemed necessary to avoid institutionalization.~~

B. Special provider participation conditions. In order to be a participating provider, the adult day health care center shall:

1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to ~~the~~ DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review ~~prior to yearly contract renewal~~;
2. Adhere to ~~the~~ DSS adult day care center standards. ~~The~~ DMAS special participation conditions included here are standards imposed in addition to DSS standards which shall be met in order to provide Medicaid adult day health care services-;
3. The center shall ~~be able to~~ provide a separate room or *an* area equipped with one bed ~~or~~, cot, or *recliner* for every ~~six~~ 12 Medicaid adult day health care participants-; and
4. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant.

The following staff are required by DMAS:

- a. The ~~adult day health care~~ center shall maintain a minimum staff-to-participant ratio of one staff member to every six participants ~~(. This includes Medicaid and other participants)~~;
- b. There shall be at least two staff ~~persons~~ *members* at the center at all times when there are Medicaid participants in attendance-;
- c. In the absence of the director, ~~a professional staff member~~ *the Activities Director, Registered Nurse or therapist* shall be designated to supervise the program-;
- d. Volunteers ~~shall can~~ be included in the staff-to-participant ratio ~~only when they conform to the same standards and requirements as paid staff and meet the job description standards of the organization. if these volunteers meet the qualifications and training requirements for compensated employees; and, for each volunteer, there shall be at least one compensated employee included in the staff-to-participant ratio;~~
- e. Any center that is collocated with another facility shall count only its own separate identifiable staff in the center's ~~staff/participant~~ staff-to-participant ratio.
- f. The adult day health care center shall employ the following:

- (1) A director who shall be responsible for overall management of the center's programs. This individual

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shall be the provider contact person for DMAS staff and the designated preauthorization contractor, and shall be responsible for ~~contracting, and receipt and response~~ responding to communication from DMAS and the designated preauthorization contractor. The director shall be responsible for assuring the ~~initial~~ development of the plan of care for adult day health care participants. The director has ultimate responsibility for directing the center program and supervision of its employees. The director can also serve as the activities director ~~also~~ if those qualifications are met.

(2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants.

(3) Program aides who shall be responsible for overall assistance with care and maintenance of the participant (assistance with activities of daily living, recreational activities, and other health and therapeutic related activities).

g. The ~~adult day health care~~ center shall employ or subcontract with a registered nurse who shall be responsible for administering and monitoring the health needs of the ~~adult day health care~~ participants. The nurse shall be responsible for the planning, organization, and management of ~~a treatment~~ the plan of care involving multiple services where specialized health care knowledge ~~shall be applied~~ is needed. The nurse shall be present a minimum of ~~one day~~ eight hours each month at the ~~adult day health care center to render direct services to Medicaid adult day health care participants.~~ The DMAS may require the nurse's presence at the adult day health care center for more than this minimum standard depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although ~~the~~ DMAS does not require that the nurse be a full-time staff position, there shall be a nurse available, either in person or by telephone ~~at a minimum~~, to the center's participants during all times that the center is in operation.

h. The director shall assign ~~a professional staff member himself, the activities director, registered nurse or therapist~~ to act as adult day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.

C. Minimum qualifications of adult day health care staff. Documentation of all staffs' credentials shall be maintained in the provider agency's personnel ~~file~~ files for review by DMAS staff *who are authorized by the agency to review these files.*

1. Program aide. Each program aide hired by the provider agency shall be screened to ensure compliance with ~~minimum~~ qualifications as required by DMAS. The aide shall, at a minimum, have the following qualifications:

a. Be able to read and write: *in English to the degree necessary to perform the tasks expected;*

b. Be physically able to do the work-;

c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of ~~possible~~ abuse, neglect, or exploitation of incapacitated or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*

d. Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculum are offered by educational institutions, nursing facilities, and hospitals. *Training consistent with DMAS training guidelines may also be given by the center's professional staff. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by the DMAS staff who are authorized by the agency to review these files. Training consistent with DMAS training guidelines may also be given by the center's professional staff. The content of the training shall be approved by DMAS prior to assignment of the aide to a Medicaid participant. Prior to assigning a program aide to a participant, the center shall ensure that the aide has satisfactorily completed a training program consistent with DMAS' Elderly and Disabled Waiver Services Manual published July 1, 2002.*

2. Registered nurse. The registered nurse shall:

a. Be registered and licensed to practice nursing in the Commonwealth of Virginia-;

b. Have two years of related clinical experience (which may include work in an acute care hospital, *public health clinic, home health agency, rehabilitation hospital, or nursing facility, or as an LPN*); and

c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of ~~possible~~ abuse or, neglect, or exploitation of ~~incompetent or~~ incapacitated individuals or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*

3. Activities director. The activities director shall:

a. Have a minimum of 48 semester hours or 72 quarter hours of post secondary education from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education-;

b. Have one year of related experience which may include work in an acute care hospital, rehabilitation hospital, nursing facility, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education-; and

c. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of possible abuse, neglect, or exploitation of incapacitated or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*

4. Director. The director shall meet the qualifications specified in the DSS standards for adult day care for directors. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.*

D. Service responsibilities of the adult day health care center and staff duties are:

1. Aide responsibilities. The aide shall be responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's plan of care.

2. Nursing responsibilities. These services shall include:

a. Periodic evaluation of the nursing needs of each participant;

b. Provision of the indicated nursing care and treatment; and

c. Monitoring, recording, and administering of prescribed medications, if no other individual is designated by the individual's physician to administer medications in the adult day care center, or supervising the individual in self-administered medication.

3. Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and speech-language therapy. Rendering of the specific Rehabilitative Therapy is not included in the ADHC center's fee for service but must be rendered as a separate service by a DMAS-approved rehabilitative provider.

~~4. Transportation responsibilities. Every DMAS approved adult day health care center shall provide transportation when needed in emergency situations (i.e., primary caregiver has an accident and cannot transport the participant home) for all Medicaid participants to and from their homes. Any adult day health care center which is able to provide participants with transportation routinely to and from the center can be reimbursed by DMAS based on a per trip (to and from the participant's residence) fee. This reimbursement for transportation shall be preauthorized by either the Nursing Home Preadmission Screening Team or DMAS utilization review staff.~~

~~5.~~ 4. Nutrition responsibilities. The adult day health care center shall provide one meal per day, which supplies one-third of the daily nutritional requirements. Special diets

and counseling shall be provided to Medicaid participants as necessary.

~~6.~~ 5. Adult day health care coordination. The designated adult day health care coordinator shall coordinate the delivery of the activities as prescribed in the participants' ~~Plans~~ plan of care and keep it updated, record 30-day progress notes, and review the participants' daily ~~logs~~ records each week.

~~7.~~ 6. Recreation and social activities responsibilities. The ~~adult day health care~~ center shall provide planned recreational and social activities suited to the participants' needs and designed to encourage physical exercise, prevent deterioration, and stimulate social interaction.

E. Documentation required. The ~~adult day health care~~ center shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff *who are authorized by the agency to review these files.* At a minimum, these records shall contain:

1. ~~The~~ Long-Term Care ~~Information~~ Uniform Assessment Instrument, the ~~Nursing Home Preadmission Screening Medicaid Long-Term Care Service Authorization form (DMAS-96)~~, and the Screening Team ~~Service Plan of for Medicaid-Funded Long-term Care;~~

2. Interdisciplinary ~~Plan plans~~ of care developed by ~~adult day health care center professional staff and the center's director, activities director, registered nurse, or therapist;~~ the participant; and relevant support persons;

3. Documentation of interdisciplinary staff meetings which shall be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care plan of care and make any necessary revisions;

4. At a minimum, 30-day goal oriented progress notes recorded by the individual *who is* designated as the adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes shall be written more frequently than every 30 days;

5. The ~~adult day health care~~ center shall obtain a rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care every 30 days (physical therapy, speech therapy, occupational therapy, home health and others);

6. Daily ~~log~~ records of services provided. The daily ~~log~~ record shall contain the specific services delivered by ~~adult day health care~~ center staff. The ~~log~~ record shall also contain the arrival and departure time of the participant and be signed weekly by the participant or representative and an adult day health care center professional staff member ~~director, activities director, registered nurse, or therapist employed by the center.~~ The daily ~~log~~ record shall be completed on a daily basis, neither before nor after the date of service delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly ~~log~~ record, that staff member shall sign the weekly comments. *A copy of this record must be given to the participant or representative weekly; and*

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~~7. All correspondence to the participant and to, DMAS, and the designated preauthorization contractor.~~

~~8. All DMAS utilization review forms and plans of care.~~

12 VAC 30-120-50. Personal care services.

The following requirements govern the provision of personal care services.

A. General. Personal care services may be offered to individuals ~~in their homes~~ as an alternative to ~~more costly~~ institutional care. Personal care may be offered either as the sole home and community-based care service that avoids institutionalization or in conjunction with adult day health care ~~or, respite care, or both PERS. When the individual referred for personal care is already receiving another home and community-based care service, the DMAS utilization review staff shall assess the need for the additional home and community-based care service and authorize the service if it is deemed necessary to avoid institutionalization.~~

Recipients may continue to work or attend post-secondary school, or both, while they receive services under this waiver. The personal care attendant who assists the recipient may accompany that person to work or school or both and may assist the person with personal needs while the individual is at work or school or both. DMAS will also pay for any personal care services that the attendant gives to the enrolled recipient to assist him in getting ready for work or school or both or when he returns home.

DMAS will review the recipient's needs and the complexity of the disability when determining the services that will be provided to the recipient in the workplace or school or both.

DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973. For example, if the recipient's only need is for assistance during lunch, DMAS would not pay for the attendant to be with the recipient for any hours extending beyond lunch. For a recipient whose speech is such that they cannot be understood without an interpreter (not translation of a foreign language), or the recipient is physically unable to speak or make himself understood even with a communication device, the attendant's services may be necessary for the length of time the recipient is at work or school or both. DMAS will reimburse for the attendant's services unless the attendant is required to assist the recipient for the length of time the recipient is at work or school or both as a part of the ADA or the Rehabilitation Act.

The provider agency must develop an individualized plan of care that addresses the recipient's needs at home and work and in the community.

DMAS will not pay for the attendant to assist the enrolled recipient with any functions related to the recipient completing his job or school functions or for supervision time during work or school or both.

B. Special provider participation conditions. The personal care provider shall:

~~1. Demonstrate a prior successful health care delivery.~~

~~2. 1. Operate from a business office;~~

~~3. 2. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all personal care aides.~~

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

b. ~~The~~ registered nurse shall have a satisfactory work record, as evidenced by two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.

~~b. c.~~ The ~~RN~~ registered nurse supervisor shall make an initial home assessment ~~home~~ visit ~~prior to~~ on or before the start of care for all new recipients admitted to personal care, when a recipient is readmitted after being discharged from services, or if he is transferred to another provider or ADHC.

~~e. d.~~ The ~~RN~~ registered nurse supervisor shall make supervisory visits as often as needed, but no fewer visits than provided as follows, to ensure both quality and appropriateness of services.

(1) A minimum frequency of these visits is every 30 days for recipients with a cognitive impairment and every 90 days for recipients who do not have a cognitive impairment.

(2) Cognitive impairment is defined as a severe deficit in mental capability that affects areas such as thought processes, problem-solving, judgement, memory, or comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

(3) The initial home assessment visit by the registered nurse shall be conducted to create the plan of care and assess the recipient's needs. The registered nurse shall return for a follow-up visit within 30 days after the initial visit to assess the recipient's needs and make a final determination that there is no cognitive impairment. This determination must be documented in the recipient's record by the registered nurse. Recipients who are determined to have a cognitive impairment will continue to have supervisory visits every 30 days.

(4) If there is no cognitive impairment, the registered nurse may give the recipient or caregiver or both the option of having the supervisory visit every 90 days or any increment in between, not to exceed 90 days. The registered nurse must document in the recipient's

record this conversation and the option that was chosen.

(5) The provider agency has the responsibility of determining if 30-day registered nurse supervisory visits are appropriate for the recipient. The provider agency may offer the extended registered nurse visits, or the agency may choose to continue the 30-day supervisory visits based on the needs of the individual. The decision must be documented in the recipient's record.

(6) If a recipient's personal care aide is supervised by the provider's registered nurse less often than every 30 days and DMAS or the designated preauthorization contractor determines that the recipient's health, safety or welfare is in jeopardy, DMAS, or the designated preauthorization contractor, may require the provider's registered nurse to supervise the personal care aide every 30 days or more frequently than what has been determined by the registered nurse. This will be documented and entered in the recipient's record.

~~d.~~ e. During visits to the recipient's home, ~~the RN a~~ registered nurse shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the recipient's current functioning status, medical, and social needs. The personal care aide's record shall be reviewed and the recipient's (or family's) satisfaction with the type and amount of service discussed. The ~~RN~~ registered nurse summary shall note:

- (1) Whether personal care services continue to be appropriate,
- (2) Whether the plan is adequate to meet the ~~need~~ recipient's needs or if changes ~~are indicated~~ need to be made in the plan; of care;
- (3) Any special tasks performed by the aide and the aide's qualifications to perform these tasks;
- (4) Recipient's satisfaction with the service;
- (5) Hospitalization or change in ~~the~~ medical condition or functioning status; of the recipient;
- (6) Other services received by the recipient and ~~their~~ the amount; and
- (7) The presence or absence of the aide in the home during the ~~RN's~~ registered nurse's visit.

~~e.~~ ~~The~~ f. A registered nurse shall be available to the personal care aide for conference pertaining to individuals being served by the aide and shall be available to aides by telephone at all times that the aide is providing services to personal care recipients. Any change in the identity of the RN providing coverage shall be reported immediately to DMAS.

~~f.~~ g. The ~~RN~~ registered nurse supervisor shall evaluate the aides' performance and the recipient's individual needs to identify any ~~gaps~~ insufficiencies in the aides' abilities to function competently and shall provide training as indicated.

h. If there is a delay in the registered nurses' supervisory visits, because the recipient was unavailable, the reason for the delay must be documented in the recipient's record.

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

- a. Be able to read and write- *in English to the degree necessary to perform the expected tasks;*
- b. Complete a *minimum* of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards;
- c. Be physically able to do the work;
- d. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of ~~possible~~ abuse, neglect, or exploitation of incapacitated or older adults and children. *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files;*
- e. Not be a member of the recipient's family (e.g., family is defined as: (i) the parents of minor children who are receiving waiver services, spouses of individuals who are receiving waiver services, children, ~~siblings, grandparents, and grandchildren~~), or legal guardians of the individuals who are receiving waiver services; and
- f. Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.

~~C. Provider inability to render services and substitution of aides.~~

1. When a personal care aide is absent and the agency has no other aide available to provide services, the provider agency is responsible for ensuring that services continue to recipients. The agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient to another agency. If no other provider agency is available, the provider agency shall notify the recipient or family so they may contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.

2. During temporary, short-term lapses in coverage (not to exceed two weeks in duration), the following procedure shall apply:

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~~a. The personal care agency having recipient responsibility shall provide the registered nurse supervision for the substitute aide.~~

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

~~c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide.~~

~~3. If a provider agency secures a substitute aide, the provider agency shall be responsible for ensuring that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.~~

~~D. C. Required documentation in for recipients' records. The provider agency shall maintain all records of each personal care recipient. *These records shall be separate from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by the agency to review these files.* At a minimum ~~these records~~ the record shall contain:~~

~~1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Preadmission Screening Medicaid-Funded Long-Term Care Service Authorization form (DMAS-96), the Screening Team Service Plan of for Medicaid-Funded Long-Term Care (DMAS-97), all provider agency plans of care, and all DMAS-122's. Patient Information forms (DMAS-122);~~

~~2. All DMAS utilization review forms and plans of care.~~

~~3. 2. The initial assessment by the RN supervisory a registered nurse completed prior to or on the date that services are initiated;~~

~~4. 3. Registered nurses' notes recorded and dated during any significant contacts with the personal care aide and during supervisory visits to the recipient's home;~~

~~5. 4. All correspondence to the recipient and to, DMAS, and the designated preauthorization contractor;~~

~~6. 5. Reassessments made during the provision of services;~~

~~7. 6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal, informal service providers and all professionals concerning the recipient, related to the recipient's Medicaid services or medical care;~~

~~8. 7. All personal care aide records. The personal care aide record shall contain:~~

~~a. The specific services delivered to the recipient by the aide and the recipient's responses; to this service;~~

~~b. The aide's daily arrival and departure times;~~

~~c. The aide's weekly comments or observations about the recipient to include, including observations of the recipient's physical and emotional condition, daily activities, and responses to services rendered;~~ and

~~d. The aide's and recipient's or responsible caregiver's weekly signatures, including the date, to verify that personal care services have been rendered during that week have been rendered as documented in the record. An employee of the provider cannot sign for the recipient unless he is a family member of the recipient;~~

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

~~9. 8. All recipient progress reports.~~

~~E. Recipient progress report. The provider is required to submit to DMAS annually for every recipient a recipient progress report, an updated Long-Term Care Assessment and four aide log sheets. This information is used to assess the recipient's ongoing need for Medicaid-funded long-term care and appropriateness and adequacy of services rendered.~~

12 VAC 30-120-55. Personal emergency response system (PERS) services.

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

B. Criteria. PERS services are limited to those recipients, ages 14 and older, who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. PERS may only be provided in conjunction with personal care, respite care, or adult day health care.

PERS can be authorized when there is no one else, other than the recipient, in the home who is competent and continuously available to call for help in an emergency. If the recipient's caregiver has a business in the home, such as, but not limited to, a day care center, PERS will only be approved if the recipient is evaluated as being dependent in the categories of "Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

Medication monitoring units must be physician ordered. In order to receive medication monitoring services, a recipient must also receive PERS services.

C. Service units and service limitations.

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

installation shall also include the cost of the removal of the PERS equipment.

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

In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12 VAC 30-120-20 and 12 VAC 30-120-30, providers must also meet the following qualifications:

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

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

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

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

5. The PERS provider must properly install all PERS equipment into a PERS recipient's functioning telephone line within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the

telephone be off the hook or in use when the unit is activated;

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

a. Delivery and installation date of the PERS;

b. Recipient/caregiver signature verifying receipt of the PERS device;

c. Verification by a test that the PERS device is operational, monthly or more frequently if needed;

d. Updated and current recipient responder and contact information, as provided by the recipient or the recipient's care provider; and

e. A case log documenting the recipient's utilization of the system, all contacts, and all communications with the recipient, caregiver, and responders;

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

9. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) Safety Standard Number 1635 for Digital Alarm Communicator System Units (copyright 2002) and Number 1637 for Home Health Care Signaling Equipment (copyright 2002). The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring a manual reset by the recipient;

10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor to familiarize staff with the service, allow for ongoing evaluation and refinement of the program, and must instruct the recipient, caregiver, and responders in the use of the PERS service;

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

12. Monitoring agencies must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the monitoring

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agency's equipment meets the following requirements. The monitoring agency must be capable of simultaneously responding to multiple signals for help from recipients' PERS equipment. The monitoring agency's equipment must include the following:

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

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

14. The PERS provider shall document and furnish within 30 days (of the action taken) a written report for each emergency signal that results in action being taken on behalf of the recipient. This excludes test signals or activations made in error. This written report shall be furnished to the personal care provider, the respite care provider, or in cases where the recipient only receives ADHC services, to the ADHC provider;

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid recipients; and

16. The provider must obtain and keep on file a copy of the most recently completed Patient Information form (DMAS-122). Until the provider obtains a copy of the DMAS-122, the provider must clearly document efforts to obtain the completed DMAS-122 from the personal care, respite care, or the ADHC provider.

12 VAC 30-120-60. Respite care services.

These requirements govern the provision of respite care services.

A. General. Respite care services may be offered to individuals in their homes as an alternative to ~~more costly~~ institutional care. Respite care is distinguished from other services in the continuum of long-term care because it is specifically designed to focus on the need of the *unpaid* caregiver for temporary relief. Respite care may only be offered to individuals who have a primary caregiver living in the home who requires temporary relief to avoid

institutionalization of the individual. The authorization of respite care is limited to ~~30 24-hour days over a 12-month period~~ 720 hours per calendar year per recipient. A recipient who transfers to a different provider or is discharged and readmitted into the Elderly and Disabled Individuals Waiver program within the same calendar year will not receive an additional 720 hours of respite care. DMAS cannot be billed for more than 720 respite care hours in a calendar year for a waiver recipient. Reimbursement shall be made on an hourly basis ~~for any amount authorized up to eight hours within a 24-hour period. Any amount over an eight-hour day will be reimbursed on a per diem basis, not to exceed a total of 720 hours per calendar year.~~ The option of respite care may be offered either as a secondary home and community-based care service to those individuals who receive either personal care or adult day health care or as the sole home and community-based care service ~~received in lieu of nursing facility placement, or in conjunction with PERS.~~

B. Special provider participation conditions. To be approved for respite care contracts with DMAS, the respite care provider shall:

~~1. Demonstrate a prior successful health care delivery.~~

~~2. 1. Operate from a business office.~~

~~3. 2. Employ (or subcontract with) and directly supervise a registered nurse (RN) who will provide ongoing supervision of all respite care aides.~~

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

b. The registered nurse shall have a satisfactory work record, as evidenced by two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files.

~~b. c.~~ Based on continuing evaluations of the aides' performance and the recipients' individual needs, the ~~RN~~ registered nurse supervisor shall identify any ~~gaps~~ insufficiencies in the aides' abilities to function competently and shall provide training as indicated.

~~c. d.~~ The ~~RN~~ registered nurse supervisor shall make an initial home assessment visit ~~prior to~~ on or before the start of care for any recipient admitted to respite care.

~~d. The RN e.~~ A registered nurse shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

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

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

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

~~e. f.~~ During visits to the recipient's home, the ~~RN registered nurse~~ shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the recipient's current functioning status, medical, and social needs. The respite care aide's record shall be reviewed ~~and along with~~ the recipient's or family's satisfaction with the type and amount of service discussed. The ~~RN registered nurse~~ shall document in a summary note:

- (1) Whether respite care services continue to be appropriate;
- (2) Whether the plan of care is adequate to meet the recipient's needs or if changes need to be made, *to the plan of care*;
- (3) The recipient's satisfaction with the service;
- (4) Any hospitalization or change in *the* medical condition or functioning status, *of the recipient*;
- (5) Other services received *by the recipient* and ~~their~~ *the amount, of the services received*; and
- (6) The presence or absence of the aide in the home during the *registered nurse's* visit.

~~f. In all cases, the RN shall be available to the respite care aide to discuss the recipient's being served by the aide.~~

~~g. The RN providing supervision to respite care aides shall be available to them by telephone at all times that services are being provided to respite care recipients. Any lapse in RN coverage shall be reported immediately to DMAS.~~

g. A registered nurse shall be available to the respite care aide for conference pertaining to individuals being served by the aide and shall be available to aides by telephone at all times that aides are providing services to respite care recipients.

h. If there is a delay in the registered nurse's supervisory visits, because the recipient is unavailable, the reason for the delay must be documented in the recipient's record.

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

- a. Be able to read and write: *in English to the degree necessary to perform the tasks expected*;
- b. Have completed a *minimum* of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to a recipient, the provider agency shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards;
- c. Be evaluated in his job performance by the ~~RN registered nurse supervisor~~;
- d. ~~Have the physical ability~~ *Be physically able to do the work*;
- e. Have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of ~~possible abuse or neglect or exploitation of incompetent and/or incapacitated individuals or older adults and children.~~ *Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record checks shall be available for review by DMAS staff who are authorized by the agency to review these files.*

~~f. Not be a member of a recipient's family (e.g., family is defined as: (i) the parents of minor children who are receiving waiver services, (ii) the spouses of individuals receiving waiver services, siblings, grandparents, and grandchildren) or (iii) legal guardians of individuals who are receiving waiver services.~~

g. Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers available to provide the care. These family members must meet the same requirements as aides who are not family members.

5- 4. The Respite Care Agency may employ a licensed ~~practice~~ *practical* nurse to ~~deliver~~ *perform* respite care services, which shall be reimbursed by DMAS under the following circumstances:

- a. *The licensed practical nurse (LPN) shall be currently licensed to practice in the Commonwealth. The LPN must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers shall be responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record checks shall be available for review by DMAS staff who are authorized by the agency to review these files;*

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~~a. b. The individual receiving care recipient has a need for routine skilled care which cannot be provided by unlicensed personnel. These individuals would typically require a skilled level of care if in a nursing facility (i.e., recipients on a ventilator, recipients requiring nasogastric, or gastrostomy feedings, etc.);~~

~~b. c. No other individual in the recipient's support system is able to supply the skilled component of the recipient's care during the caregiver's absence;~~

~~c. d. The recipient is unable to receive skilled nursing visits from any other source which could provide the skilled care usually given by the caregiver, unless such skilled nursing visits would be more costly than the respite care requested; and~~

~~d. e. The agency can must document in the recipient's record the circumstances which require the provision of services by an LPN.~~

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

~~1. If a provider agency cannot supply a respite care aide to render authorized services, the agency may either obtain a substitute aide from another agency, if the lapse in coverage is to be less than two weeks in duration, or may transfer the recipient's care to another agency.~~

~~2. If no other provider agency is available who can supply an aide, the provider agency shall notify the recipient or family so that they may contact the local health department to request a Nursing Home Preadmission Screening if nursing home placement is desired.~~

~~3. During temporary, short-term lapses in coverage, which shall not exceed two weeks in duration, a substitute aide may be secured from another respite care provider agency or other home care agency. Under these circumstances, the following procedures apply:~~

~~a. The respite care agency having recipient responsibility shall be responsible for providing the RN supervision for the substitute aide;~~

~~b. The agency providing the substitute aide shall send to the respite care agency having recipient care responsibility a copy of the aide's daily records signed by the recipient and the substitute aide. All documentation of services rendered by the substitute aide shall be in the recipient's record. The documentation of the substitute aide's qualifications shall also be obtained and recorded in the personnel files of the agency having recipient care responsibility.~~

~~c. The provider agency having recipient responsibility shall bill DMAS for services rendered by the substitute aide. The two agencies involved shall negotiate the financial arrangements of paying the substitute aide.~~

~~4. Substitute aides obtained from other agencies may be used only in cases where no other arrangements can be~~

~~made for recipient respite care services coverage and may be used only on a temporary basis. If a substitute aide is needed for more than two weeks, the case shall be transferred to another respite care provider agency that has the aide capability to serve the recipient(s).~~

~~5. If a provider agency secures a substitute aide it is the responsibility of the provider agency having recipient care responsibility to ensure that all DMAS requirements continue to be met, including documentation of services rendered by the substitute aide and documentation that the substitute aide's qualifications meet DMAS requirements.~~

~~D. C. Required documentation for recipients recipients' records. The provider agency shall maintain all records of each respite care recipient. These records shall be separated from those of other nonhome and community-based care services, such as companion services or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by the agency to review these files. At a minimum these records shall contain:~~

~~1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Nursing Home Preadmission Screening Medicaid-Funded Long-Term Care Service Authorization form (DMAS-96), the Screening Team Service Plan for Medicaid-Funded Long-Term Care (DMAS-97), all respite care assessment and plans of care, and all DMAS-122's. Patient Information forms (DMAS-122);~~

~~2. All DMAS utilization review forms and plans of care.~~

~~3. 2. The initial assessment by the RN supervisory a registered nurse completed prior to or on the date services are initiated;~~

~~4. 3. Registered nurse's notes recorded and dated during significant contacts with the respite care aide and during supervisory visits to the recipient's home;~~

~~5. 4. All correspondence to the recipient and to, DMAS, and the designated preauthorization contractor;~~

~~6. 5. Reassessments made during the provision of services;~~

~~7. 6. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal service providers, and all professionals concerning the recipient. related to the recipient's Medicaid services or medical care; and~~

~~8. 7. All respite care aide record of services rendered and recipient's responses records. The respite care aide record shall contain:~~

~~a. The specific services delivered to the recipient by the respite care aide or LPN, and the recipient's response, to this service;~~

~~b. The daily arrival and departure time times of the aide or LPN for respite care services only;~~

~~c. Comments or observations recorded weekly about the recipient. Aide or LPN comments shall include but not be limited to observation of the recipient's physical and~~

emotional condition, daily activities, and the recipient's response to services rendered; and

d. ~~The signature by~~ *signatures of the aide or LPN, and the recipient, once each week to verify that respite care services have been rendered. Signature, times, and dates shall not be placed on the aide record prior to the last date of the week that the services are delivered. If the recipient is unable to sign the aide record, it must be documented in the recipient's record how or who will sign in his place. An employee of the provider shall not sign for the recipient unless he is a family member of the recipient.*

~~9. Copies of all aide records shall be subject to review by state and federal Medicaid representatives.~~

~~10. If a respite care recipient is also receiving any other service (meals on wheels, companion, home health services, etc.) the respite care record shall indicate that these services are also being received by the recipient.~~

~~E. Authorization of combined services. Respite care, when offered in conjunction with another home and community-based care service, is considered by DMAS a secondary home and community-based care service necessary for the recipients' continued maintenance in the community. Respite care is only available to caregivers as an adjunct to another primary home and community-based care service under the following conditions:~~

~~1. The individual has been authorized to receive a primary home and community-based care service by the Nursing Home Preadmission Screening Team and such care has been initiated.~~

~~2. The primary home and community-based care services offered to the individual are determined to be insufficient to prevent the breakdown of the caregiver due to the physical burden and emotional stress of providing continuous support and care to the dependent individual.~~

~~F. Provider responsibility. The provider of the primary home and community-based care service shall contact the DMAS utilization review staff when the need for respite care as a secondary home and community-based care service has been identified according to the criteria above. DMAS shall conduct an assessment of the individual caregiver's need for respite care and, if appropriate, authorize respite care.~~

~~8. All recipient progress reports.~~

NOTICE: The forms used in administering 12 VAC 30-120, Waivered Services, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Virginia Uniform Assessment Instrument (UAI) (1994).

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 8/97).

Service Coordinator Plan of Care, DMAS-97B (rev. 6/97).

Patient Information, DMAS-122 (rev. 12/98).

Level of Care Eligibility Review Instrument (rev. 5/02).

Questionnaire: Assessing a Recipient's Ability to Independently Manage Personal Attendant Services (2/98).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

DD Waiver Enrollment Request, DMAS-453 (eff. 1/01).

DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/01).

DD Medicaid Waiver--Level of Functioning Survey--Summary Sheet, DMAS-458 (eff. 1/01).

Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).

LEVEL OF CARE ELIGIBILITY REVIEW INSTRUMENT

ASSESSMENT & WAIVER INFORMATION

1. Waiver: E&D (*Specific service(s), check all that apply*): Personal Care ADHC Respite Care PERS
 CD-PAS
 AIDS (*Specific service, check all that apply*): Case Management Nutritional Supplements PDN
 Personal Care Respite Care

2. Date of last assessment (*DMAS-99; DMAS-301; DMAS-99B; AIDS Waiver home visit*): _____

PROVIDER INFORMATION

1. Provider name: _____ Provider #: _____
 2. Contact person (*Print*): _____ Phone: _____ Fax: _____
 3. Admission date: _____

RECIPIENT IDENTIFICATION / BACKGROUND INFORMATION

1. Recipient Name: _____ Medicaid #: _____
(Last) (First)
 Address: _____
(Street) (City) (State) (Zip Code) (City/County Code)

2. Age: _____ SSN#: _____ DOB: _____ Sex: Male Female

3. Marital Status: Married Widowed Divorced Single Unknown

4. Race White Black/African Amer. Indian Asian Hispanic Alaskan Native Other

5. Communication of Needs: Verbally, Verbal Sign Language (specify): _____
 Sign Language (specify): _____ Does Not Communicate Hearing Impaired

CAREGIVER INFORMATION

1. Does the recipient have an informal caregiver? Yes No

2. The caregiver's help is: Adequate to meet the recipient's need. Not adequate to meet the recipient's needs.

RECIPIENT ELIGIBILITY INFORMATION - FUNCTIONAL STATUS

ADLs	Needs No Help	MH Only	Human Help		MH & Human Help		Performed	
			Supervise	Phys. Assist	Supervise	Phys. Assist	By Others	Not By Others
Bathing								
Dressing								
Toileting								
Transferring								
Eating/Feeding								

Continenence	Continent	Incontinent (Less than weekly)	External Device/ Indwelling/Ostomy (Self care)	Incontinent (Weekly or more)	External Device (Not self care)	Indwelling Catheter (Not self care)	Ostomy
Bowel							
Bladder							

Mobility	Needs No Help	MH Only	Human Help		MH & Human Help		Confined Moves About	Confined - Does Not Move About
			Supervise	Phys. Assist.	Supervise	Phys. Assist.		

Orientation	Oriented	Disoriented-Some Spheres/Sometime	Disoriented-Some Spheres/All Times	Disoriented-All Spheres/Sometimes	Disoriented-All Spheres/All Times	Semi-Comatose /Comatose

Behavior	Appropriate	Wandering/Passive Less than Weekly	Wandering/Passive Weekly or more	Abusive/Aggressive /Disruptive Less than Weekly	Abusive/Aggressive /Disruptive Weekly or more	Semi-Comatose to Comatose

Joint Motion <input type="checkbox"/> Within normal limits or instability corrected <input type="checkbox"/> Limited motion <input type="checkbox"/> Instability uncorrected or immobile	Med. Administration <input type="checkbox"/> Without assistance <input type="checkbox"/> Administered/monitored by lay person <input type="checkbox"/> Administered/monitored by professional nursing staff
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DMAS-?????? (Revised 5/02)

Recipient's Name: _____ Medicaid #: _____

RECIPIENT ELIGIBILITY INFORMATION – MEDICAL / NURSING NEED(S)

1. Current Health Status/Condition: _____

2. Current Medical Nursing Need(s) – Check all that apply:

- Application of aseptic dressings (a)
- Routine catheter care (b)
- Respiratory therapy (c)
- Therapeutic exercise and positioning (d)
- Chemotherapy (e)
- Radiation (f)
- Dialysis (g)
- Suctioning (h)
- Tracheotomy care (i)
- Infusion Therapy (j)
- Oxygen (k)
- Routine skin care to prevent pressure ulcers for individuals who are immobile. (l)
- Care of small uncomplicated pressure ulcers, and local skin care. (m)
- Use of physical (e.g., side rails, poseys, locked wards) and/or chemical restraints. (n)
- Management of those with sensory, metabolic, or circulatory impairment with demonstrated clinical evidence of medical instability (o)
- Routine care of colostomy or ileostomy or management of neurogenic bowel and bladder (p)
- Supervision for adequate nutrition and hydration for individuals who show clinical evidence of malnourishment or dehydration or have a recent history of weight loss or inadequate hydration which, if not supervised-would be expected to result in malnourishment or dehydration (q)
- Other: (r) _____

DRAFT

AIDS Waiver Only:

1. AIDS/HIV diagnoses: Yes No

2. The Karnofsky Performance Status Scale Acuity Assessment
 Stage of disease (Check one): I II III IV

3. Total Rating (Score): _____

 Signature Date

 Print Name & Title

This form contains patient-identifiable information and is intended for review and use of no one except authorized parties. Misuse or disclosure of this information is prohibited by State and Federal Laws. If you have obtained this form by mistake, please send it to: DMAS, 600 East Broad Street, Suite 1300, Richmond, VA 23219

DMAS-?????? (Revised 5/02)

Proposed Regulations

DOCUMENTS INCORPORATED BY REFERENCE

The Art of Readable Writing, Rudolf Flesch, Ph.D., 1949, revised 1962, Collier Books.

Elderly and Disabled Waiver Services Manual, Department of Medical Assistance Services, published July 1, 2002.

UL1635, Standard for Safety for Digital Alarm Communicator System Units, copyright 2002.

UL1637, Standard for Safety for Home Health Care Signaling Equipment, copyright 2002.

VA.R. Doc. No. R02-126; Filed July 30, 2002, 12:26 p.m.

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: 13 VAC 10-20. Rules and Regulations for Multi-Family Housing Developments (amending 13 VAC 10-20-20, 13 VAC 10-20-40 and 13 VAC 10-20-90).

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

Public Hearing Date: September 5, 2002 - 10 a.m.

Public comments may be submitted until September 6, 2002.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll free 1-800-968-7837, or e-mail judson.mckellar@vdha.com.

Summary:

The proposed amendments (i) authorize the authority's Board of Commissioners by resolution to adopt procedures that provide for its review and consideration of the recommendations of the executive director and that, upon compliance with such procedures, authorize the executive director to approve, and to authorize the issuance of commitments for, mortgage loans without further approval or authorization by resolution of the board; (ii) authorize the authority's executive director, in the commitment for mortgage loans to finance multi-family rental housing developments, to impose lower income limits than are provided in such rules and regulations and to prescribe any maximum annual rate of distributions by the housing sponsors with respect to the multi-family rental housing developments; (iii) permit the board by resolution to authorize the executive director to approve mortgage loan increases for multi-family rental housing; and (iv) make other related changes.

13 VAC 10-20-20. Income limits and general restrictions.

All of the units in each development financed under this chapter shall be occupied or held available for occupancy by persons and families whose adjusted family incomes, as of the date of their initial occupancy of such units, do not exceed 150% of the area median gross income as determined by the authority; provided, however, that in the case of any development which is subject as of April 30, 1998, to the income limit of seven times the rents, including utilities except telephone, applicable to the units therein (or the lesser of such income limit and any other income limit), all of the units in such development shall be occupied or held available for occupancy by persons and families whose adjusted family incomes, as of the date of their initial occupancy of such units, do not exceed seven times the rents, including utilities except telephone, applicable to the units therein, unless the authority and the mortgagor shall agree to apply the income limit of 150% of the area median gross income as described above. The applicable income limit set forth in the preceding sentence shall also apply to persons and families at the time of reexamination and redetermination of their adjusted family incomes and eligibility subsequent to their initial occupancy. The foregoing income limits shall apply to all developments for which the board or the executive director approves mortgage loans on or after May 1, 1998, and all developments for which the board has approved mortgage loans prior to May 1, 1998, notwithstanding the inclusion of other income limits in the resolutions authorizing such mortgage loans or in any agreements executed prior to May 1, 1998, by and between the authority and the mortgagors of such developments.

The board may establish, in the resolution authorizing any mortgage loan to finance a development under this chapter, or the executive director may require, in the commitment for such mortgage loan, income limits lower than those provided herein or in the authority's rules and regulations for the occupants of the units in such development.

Furthermore, in the case of developments which are subject to federal mortgage insurance or assistance or are financed by notes or bonds exempt from federal income taxation, federal regulations may establish lower income limitations which in effect supersede the authority's income limits as described above.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in a development, the adjusted family incomes of applicants for occupancy of all of the units in the development shall be computed, for the purpose of determining eligibility for occupancy thereof hereunder and under the authority's rules and regulations, in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all developments and the processing thereof under the terms hereof must comply with (i) the Act; (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such developments; (iii) in the case of developments subject to

federal mortgage insurance or other assistance, all applicable federal laws and regulations relating thereto; and (iv) the requirements set forth in the resolutions pursuant to which the notes or bonds are issued by the authority to finance the developments. Copies of the authority's note and bond resolutions are available upon request.

13 VAC 10-20-40. Application and acceptance for processing.

Application for a mortgage loan 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, together with such documents and additional information as may be requested by the authority. The applicant shall complete a previous participation certificate, in such form as the executive director shall require, which shall provide information about rental housing projects in which the principal participants (or their affiliates) in the proposed development have previously had any interest or participation, all as more fully specified by the executive director.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience, financial capacity and predisposition to regulatory compliance of the applicant;
3. A preliminary evaluation of the estimated construction costs and the proposed design and structure of the proposed development;
4. A preliminary review of the estimated operating expenses and proposed rents and a preliminary evaluation of the adequacy of the proposed rents to sustain the proposed development based upon the assumed occupancy rate and estimated construction and financing costs; and
5. A preliminary evaluation of the need for such housing at rentals or prices which persons and families of low and moderate income can afford within the general housing market area to be served by the proposed development.

Based on the authority's review of the applications, previous participation certificates, documents, and any additional information submitted by the applicants or obtained from other sources by the authority in its review of the proposed developments, the executive director shall accept for processing those applications which he determines satisfy the following criteria:

1. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

2. Subject to further review and evaluation by the authority's staff under 13 VAC 10-20-50, the estimated construction costs and operating expenses appear to be complete, reasonable and comparable to those of similar developments.

3. Subject to further review and evaluation by the authority's staff under 13 VAC 10-20-50, the proposed rents appear to be at levels which will: (i) be affordable by the persons and families intended to be assisted by the authority; (ii) permit the successful marketing of the units to such persons and families; and (iii) sustain the operation of the proposed development.

4. The applicant and other principal participants in the proposed development have the experience, ability, financial capacity and predisposition to regulatory compliance necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development and will fully and properly perform all of their respective duties and obligations relating to the proposed development under law, regulation and the applicable mortgage loan documents of the authority.

5. The proposed development will contribute to the implementation of the policies and programs of the authority in providing decent, safe and sanitary rental housing for low and moderate income persons and families who cannot otherwise afford such housing and will assist in meeting the need for such housing in the market area of the proposed development.

6. It appears that the proposed development and applicant will be able to meet the requirements for feasibility and commitment set forth in 13 VAC 10-20-50 and that the proposed development will otherwise continue to be processed through initial closing and will be completed and operated, all in compliance with the Act, the documents and contracts executed at initial closing, applicable federal laws, rules and regulations, and the provisions of this chapter and without unreasonable delay, interruptions or expense.

The executive director's determinations with respect to the above criteria shall be based on the documents and information received or obtained by him at that time from any source and are subject to modification or reversal upon his receipt of additional documents or information at a later time. If the executive director determines that the above criteria are satisfied, he will recommend ~~to the board that the application be approved for further processing and shall present his recommendation to the board.~~ *to the board that the application be approved for further processing* and that the mortgage loan and issuance of the commitment therefor be *approved and* authorized subject to satisfaction of such criteria in such manner and within such time period as he shall deem appropriate. The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it ~~shall~~ *may* by resolution approve the application and authorize the mortgage loan and the issuance of a commitment therefor, subject to the further

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review in 13 VAC 10-20-50 and such terms and conditions as the board shall require in such resolution. *However, the board may by resolution adopt procedures that provide for its review and consideration of the recommendations of the executive director and that, upon compliance with such procedures, authorize the executive director to approve, and to authorize the issuance of commitments for, mortgage loans without further approval or authorization by resolution of the board. If such procedures are then in effect and if the requirements therein for the authorization of the executive director to approve the mortgage loan and authorize the issuance of a commitment therefor have been satisfied, the executive director may approve and authorize the mortgage loan and the issuance of a commitment therefor without further approval or authorization by the board, subject to the further review in 13 VAC 10-20-50 and such terms and conditions as the executive director may require.*

A resolution authorizing, or a commitment for, a mortgage loan to a for-profit housing sponsor ~~shall~~ may prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the development, expressed as a percentage of such for-profit housing sponsor's equity in such development (such equity being established in accordance with 13 VAC 10-20-80), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board or the executive director shall not prescribe differing or discriminatory rates with respect to substantially similar developments. The resolution or commitment shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative and shall establish the manner, if any, for adjusting the equity in accordance with 13 VAC 10-20-80.

The executive director may impose such terms and conditions with respect to acceptance for processing as he shall deem necessary or appropriate. If any proposed development is so accepted for processing, the executive director shall notify the sponsor of such acceptance and of any terms and conditions imposed with respect thereto. If the executive director determines not to recommend approval of the application, he shall so notify the applicant.

13 VAC 10-20-90. Mortgage loan increases.

The authority may consider and, where appropriate, approve a mortgage loan increase if determined by the authority to be in its best interests in protecting its security for the mortgage loan. Any such mortgage loan increase shall require the approval of the board, or if authorized by resolution of the board, the executive director, and shall be subject to such terms and conditions as the board or the executive director may require. Nothing contained in this section shall impose any duty or obligation on the authority to increase any mortgage loan, as the decision as to whether to grant a mortgage loan increase shall be within the sole and absolute discretion of the authority.

VA.R. Doc. No. R02-328; Filed August 7, 2002, 9 a.m.

* * * * *

Title of Regulation: **13 VAC 10-40. Rules and Regulations for Single-Family Mortgage Loans to Persons and Families of Low and Moderate Income (amending 13 VAC 10-40-20).**

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

Public Hearing Date: September 5, 2002 - 10 a.m.

Public comments may be submitted until September 6, 2002.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll free 1-800-968-7837, or e-mail judson.mckellar@vdha.com.

Summary:

The proposed amendments delete the provisions that require the authority's board to approve or ratify commitments for mortgage loans financed under this chapter.

13 VAC 10-40-20. Origination and servicing of mortgage loans.

A. The originating of mortgage loans and the processing of applications for the making or financing thereof in accordance herewith shall, except as noted in subsection G of this section, be performed through commercial banks, savings and loan associations, private mortgage bankers, redevelopment and housing authorities, and agencies of local government approved as originating agents ("originating agents") of the authority. The servicing of mortgage loans shall, except as noted in subsection H of this section, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority.

To be initially approved as an originating agent or as a servicing agent, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;
2. Have a net worth equal to or in excess of \$250,000 or such other amount as the executive director shall from time to time deem appropriate, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;
3. Have a staff with demonstrated ability and experience in mortgage loan origination and processing (in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant); and
4. Such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each originating agent approved by the authority shall enter into an originating agreement ("originating agreement"), with the authority containing such terms and conditions as the

executive director shall require with respect to the origination and processing of mortgage loans hereunder. Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans.

An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into both an originating agreement and a servicing agreement.

For the purposes of this chapter, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans.

Originating agents and servicing agents shall maintain adequate books and records with respect to mortgage loans which they originate and process or service, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents and servicing agents for originating and processing or for servicing mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements and servicing agreements applicable to such originating agents and servicing agents.

B. The executive director shall allocate funds for the making or financing of mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis, (ii) to originating agents and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants and/or (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or rehabilitated by them and to be sold to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;
2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;
3. The cost and difficulty of administration of the allocation of funds;
4. The capability, history and experience of any originating agents, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and
5. Housing conditions in the Commonwealth.

In the event that the executive director shall determine to make allocations of funds to builders as described above, the following requirements must be satisfied by each such builder:

1. The builder must have a valid contractor's license in the Commonwealth;
2. The builder must have at least three years' experience of a scope and nature similar to the proposed construction or rehabilitation; and
3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. 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 as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

C. This chapter constitutes a portion of the originating guide of the authority. The processing guide and all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of this chapter. The executive director is authorized to prepare and from time to time revise a processing guide and a servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the origination, closing and servicing of mortgage loans under the applicable originating agreements and servicing agreements. Copies of the processing guide and the servicing guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide (including the processing guide) and the servicing guide.

D. The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating agents and (ii) agree to purchase individual mortgage loans from its originating agents or servicing agents upon the consummation of the closing thereof. The review and processing of applications for such mortgage loans, the issuance of mortgage loan commitments therefor, the closing and servicing (and, if applicable, the purchase) of such mortgage loans, and the terms and conditions relating to such mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement or servicing agreement, the originating guide, the servicing guide, the Act and this chapter.

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If the applicant and the application for a mortgage loan meet the requirements of the Act and this chapter, the executive director may issue on behalf of the authority a mortgage loan commitment to the applicant for the financing of the single family dwelling unit, ~~subject to the approval or ratification thereof by the board.~~ Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan commitment. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the mortgage loan commitment issued on behalf of the authority with respect to such mortgage loan.

E. The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate ~~and subject to the approval or ratification by the board.~~ Upon satisfaction of the terms of the commitments, the executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the servicing guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.

F. The executive director may, in his discretion, delegate to one or more originating agents all or some of the responsibility for underwriting, issuing commitments for mortgage loans and

disbursing the proceeds hereof without prior review and approval by the authority. ~~The issuance of such commitments shall be subject to ratification thereof by the board of the authority.~~ The executive director may delegate to one or more servicing agents all or some of the responsibility for underwriting and issuing commitments for the assumption of existing authority mortgage loans without prior review and approval by the authority. If the executive director determines to make any such delegation, he shall establish criteria under which originating agents may qualify for such delegation. If such delegation has been made, the originating agents shall submit all required documentation to the authority at such time as the authority may require. If the executive director determines that a mortgage loan does not comply with any requirement under the originating guide, the applicable originating agreement, the Act or this chapter for which the originating agent was delegated responsibility, he may require the originating agents to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

G. The authority may utilize financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority for the purpose of receiving applications for mortgage loans. To be approved as a field originator, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;
2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;
3. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and
4. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each field originator approved by the authority shall enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. Field originators shall perform such of the duties and responsibilities of originating agents under this chapter as the authority may require in such agreement.

Field originators shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the field originators for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

In the case of mortgage loans for which applications are received by field originators, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of this chapter requiring the performance of any action by originating agents shall not be applicable to the origination and processing by the authority of

such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

H. The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.

VA.R. Doc. No. R02-329; Filed August 7, 2002, 8:59 a.m.

* * * * *

Title of Regulation: 13 VAC 10-50. Rules and Regulations for Home Rehabilitation Loans (amending 13 VAC 10-50-90).

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

Public Hearing Date: September 5, 2002 - 10 a.m.
Public comments may be submitted until September 6, 2002.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll free 1-800-968-7837, or e-mail judson.mckellar@vdha.com.

Summary:

The proposed amendments delete the provisions that require the authority's board to approve or ratify commitments for mortgage loans financed under this chapter.

13 VAC 10-50-90. Application and processing.

The applicant shall submit such forms, documents, and information as the authority may require in order to apply for a home rehabilitation loan.

If the home rehabilitation loan is to be originated through a mortgage lender, the application shall be initially reviewed by the mortgage lender for compliance with the Act and these rules and regulations, and any applicable federal law, rules and regulations. If the mortgage lender determines that the application so complies, the application shall be forwarded to the authority for its review and approval.

The executive director shall review the application, and if he determines that the application complies with the Act and these rules and regulations, and any applicable federal law, rules and regulations, he may issue on behalf of the authority a commitment to the applicant with respect to such home rehabilitation loan, ~~subject to the ratification thereof by the board of the authority.~~ The principal amount, amortization period and interest rate on the home rehabilitation loan, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth in the commitment. The closing of the home rehabilitation loan shall be consummated in accordance with the terms of the commitment. The improvements to be financed by the home rehabilitation loan shall be completed in accordance with the agreements and documents executed

and submitted at the closing and within such period of time as the executive director may deem necessary therefor. The authority shall have the right from time to time to enter upon the property on which the residence is located in order to inspect the improvements. Any such inspections shall be made for the sole and exclusive benefit and protection of the authority.

The executive director may, in his discretion, delegate to any mortgage lenders the responsibility for issuing commitments for home rehabilitation loans and disbursing the proceeds thereof without prior review and approval by the authority. ~~The issuance of such commitments shall be subject to ratification thereof by the board of the authority.~~ If the executive director determines to make any such delegation, he shall establish criteria under which mortgage lenders may qualify for such delegation. If such delegation has been made, the mortgage lender shall submit all required documentation to the authority after closing of the home rehabilitation loan. If the executive director determines that the home rehabilitation loan does not comply with the Act or these rules and regulations, or any applicable federal law, rules or regulations, he may require the mortgage lender to purchase the home rehabilitation loan, subject to such terms and conditions as he may prescribe.

VA.R. Doc. No. R02-330; Filed August 7, 2002, 8:58 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14 VAC 5-170. Rules Governing Minimum Standards for Medicare Supplement Policies (amending 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-60, 14 VAC 5-170-70, 14 VAC 5-170-105, 14 VAC 5-170-120, 14 VAC 5-170-130, 14 VAC 5-170-150, and 14 VAC 5-170-180)

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Date: Hearing will be scheduled if requested.
Public comments may be submitted until September 10, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Ann Colley, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9813, FAX (804) 371-9944, toll-free 1-800-552-7945 or e-mail acolley@scc.state.va.us.

Proposed Regulations

Summary:

The proposed revisions incorporate changes required by federal law pursuant to the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). Changes in 14 VAC 5-170-120 and 14 VAC 5-170-130 are included to clarify loss ratio requirements. Changes reflect the 2002-deductible and co-payment amounts under Medicare.

AT RICHMOND, AUGUST 2, 2002

COMMONWEALTH OF VIRGINIA

CASE NO. INS-2002-00173

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Minimum Standards for
Medicare Supplement Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 170 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Minimum Standards for Medicare Supplement Policies," which amend the rules at 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-60, 14 VAC 5-170-70, 14 VAC 5-170-105, 14 VAC 5-170-120, 14 VAC 5-170-130, 14 VAC 5-170-150, and 14 VAC 5-170-180.

The proposed revisions incorporate changes required by federal law pursuant to the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, clarify loss ratio requirements in 14 VAC 5-170-120 and 14 VAC 5-170-130, and reflect the 2002 deductible and co-payment amounts under Medicare.

The Commission is of the opinion that the proposed revisions submitted by the Bureau of Insurance should be considered for adoption with an effective date of October 24, 2002.

ACCORDINGLY, IT IS ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Minimum Standards for Medicare Supplement Policies," which amend the rules at 14 VAC 5-170-20, 14 VAC 5-170-30, 14 VAC 5-170-60, 14 VAC 5-170-70, 14 VAC 5-170-105, 14 VAC 5-170-120, 14 VAC 5-170-130, 14 VAC 5-170-150, and 14 VAC 5-170-180, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before September 10, 2002, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-00173.

(3) If no written request for a hearing on the proposed revisions is filed on or before September 10, 2002, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Gerald A. Milsky, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with the proposed revisions, to all insurers, health services plans, and health maintenance organizations licensed by the Commission to write Medicare supplement insurance in the Commonwealth of Virginia.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) On or before August 9, 2002, the Commission's Division of Information Resources shall make available this Order and the attached proposed revisions on the Commission's website, <http://www.state.va.us/scc/caseinfo/orders.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

14 VAC 5-170-20. Applicability and scope.

A. Except as otherwise specifically provided in 14 VAC 5-170-60, 14 VAC 5-170-110, 14 VAC 5-170-120, 14 VAC 5-170-150 and 14 VAC 5-170-200, this chapter shall apply to:

1. All Medicare supplement policies delivered or issued for delivery in this Commonwealth on or after ~~September 1, 2004~~ October 24, 2002; and
2. All certificates issued under group Medicare supplement policies for which certificates have been delivered or issued for delivery in this Commonwealth.

B. This chapter shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

14 VAC 5-170-30. Definitions.

For purposes of this chapter (14 VAC 5-170-40 ~~et seq.~~):

"Anticipated loss ratio" means the ratio of the present value of the future benefits to the present value of the future premiums of a policy form over the entire period for which rates are computed to provide coverage.

"Applicant" means:

1. In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and
2. In the case of a group Medicare supplement policy, the proposed certificateholder.

"Attained age rating" means a premium structure under which premiums are based on the covered individual's age at the time of application of the policy or certificate, and for which premiums increase based on the covered individual's increase in age during the life of the policy or certificate.

"Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in this Commonwealth.

"Certificate" means any certificate delivered or issued for delivery in this Commonwealth under a group Medicare supplement policy.

"Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

"Community rating" means a premium structure under which premium rates are the same for all covered individuals of all ages in a given area.

"Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual did not have a break in coverage greater than 63 days.

"Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

1. A group health plan;
2. Health insurance coverage;
3. Part A or Part B of Title XVIII of the Social Security Act of 1935 (Medicare) (42 USC § 1395 et seq.);
4. Title XIX of the Social Security Act of 1935 (Medicaid) (42 USC § 1396 et seq.), other than coverage consisting solely of benefits under § 1928;
5. Chapter 55 of Title 10 of the United States Code (CHAMPUS) (10 USC §§ 1071--1107);
6. A medical care program of the Indian Health Service or of a tribal organization;
7. A state health benefits risk pool;
8. A health plan offered under the Federal Employees Health Benefits Act of 1959 (5 USC §§ 8901--8914);
9. A public health plan as defined in federal regulation; and
10. A health benefit plan under § 5(e) of the Peace Corps Act of 1961 (22 USC § 2504(e)).

"Creditable coverage" shall not include one or more, or any combination of, the following:

1. Coverage only for accident or disability income insurance, or any combination thereof;
2. Coverage issued as a supplement to liability insurance;
3. Liability insurance, including general liability insurance and automobile liability insurance;
4. Workers' compensation or similar insurance;
5. Automobile medical expense insurance;
6. Credit-only insurance;
7. Coverage for on-site medical clinics; and
8. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

"Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

1. Limited scope dental or vision benefits;
2. Benefits for long-term care, nursing home care, home health care, community-based care or any combination thereof; and
3. Such other similar, limited benefits as are specified in federal regulations.

"Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:

1. Coverage only for a specified disease or illness; and
2. Hospital indemnity or other fixed indemnity insurance.

"Creditable coverage" shall not include the following if it is offered as a separate policy, certificate or contract of insurance:

1. Medicare supplement health insurance as defined under § 1882(g)(1) of the Social Security Act of 1935 (42 USC § 1395ss);
2. Coverage supplemental to the coverage provided under Chapter 55 of Title 10 of the United States Code (10 USC §§ 1071--1107); and
3. Similar supplemental coverage provided to coverage under a group health plan.

"Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in the Employee Retirement Income Security Act of 1974 (29 USC § 1002).

"Insolvency" means when an issuer, duly licensed to transact an insurance business in this Commonwealth in accordance with the provisions of Chapter 10, 41, 42 or 43, respectively, of Title 38.2 of the Code of Virginia, is determined to be insolvent and placed under a final order of liquidation by a court of competent jurisdiction.

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"Issue age rating" means a premium structure based upon the covered individual's age at the time of purchase of the policy or certificate. Under an issue age rating structure, premiums do not increase due to the covered individual's increase in age during the life of the policy or certificate.

"Issuer" includes insurance companies, fraternal benefit societies, corporations licensed pursuant to Chapter 42 of Title 38.2 of the Code of Virginia to offer health services plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this Commonwealth Medicare supplement policies or certificates.

"Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965 (Public Law 89-97, 79 Stat. 286 (July 30, 1965)), as then constituted or later amended.

"Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in § 1859 (42 USC § 1395w-28(b)(1) of the Social Security Act, and includes:

1. Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;
2. Medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and
3. Medicare+Choice private fee-for-service plans.

"Medicare supplement policy" means a group or individual policy of accident and sickness insurance or a subscriber contract of health service plans or health maintenance organizations, other than a policy issued pursuant to a contract under § 1876 of the federal Social Security Act of 1935 (42 USC § 1395 et seq.) or an issued policy under a demonstration project specified in 42 USC § 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

"Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

"Secretary" means the Secretary of the United States Department of Health and Human Services.

14 VAC 5-170-60. Minimum benefit standards for policies or certificates issued for delivery prior to July 30, 1992.

A. No policy or certificate may be advertised, solicited or issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

B. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this chapter.

1. A Medicare supplement policy or certificate shall not exclude or limit benefits for a loss incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

4. A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

- a. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
- b. Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

5. a. Except as authorized by the State Corporation Commission, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

b. If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subdivision 5 d of this subsection, the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(1) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(2) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in subsection C of this section.

c. If membership in a group is terminated, the issuer shall:

(1) Offer the certificateholder the conversion opportunities described in subdivision 5 b of this subsection; or

(2) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

d. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

6. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

C. Minimum benefit standards.

1. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

2. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

3. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

4. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

5. Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

6. Coverage for the coinsurance amount, *or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount* of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible \$100;

7. Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

14 VAC 5-170-70. Benefit standards for policies or certificates issued or delivered on or after July 30, 1992.

A. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this Commonwealth on or after July 30, 1992. No policy or certificate may be advertised, solicited, delivered or

issued for delivery in this Commonwealth as a Medicare supplement policy or certificate unless it complies with these benefit standards.

B. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this chapter.

1. A Medicare supplement policy or certificate shall not exclude or limit benefits for a loss incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

2. A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

3. A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes provided that loss ratios are being met.

4. No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

5. Each Medicare supplement policy shall be guaranteed renewable.

a. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

b. The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

c. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under subdivision 5 e of this subsection, the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

(1) Provides for continuation of the benefits contained in the group policy; or

(2) Provides for benefits that otherwise meet the requirements of this subsection.

d. If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(1) Offer the certificateholder the conversion opportunity described in subdivision 5 c of this subsection; or

Proposed Regulations

- (2) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
- e. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
6. Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.
7. a. A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed 24 months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act of 1935 (42 USC § 1396 et seq.), but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.
- b. If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, the policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.
- c. Each Medicare supplement policy or certificate shall provide that benefits and premiums under the policy shall be suspended (for ~~the any period that may be provided by federal regulation~~) at the request of the policyholder if the policyholder or certificateholder is entitled to benefits under § 226 (b) of the Social Security Act (42 USC § 426) and is covered under a group health plan (as defined in § 1862(b)(1)(A)(v) of the Social Security Act (42 USC§ 1395y)). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder or certificateholder provides notice of loss of coverage within 90 days after the date of ~~such the loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.~~
- d. Reinstatement of ~~such~~ coverages as described in subdivisions 7 b and c of this subsection:
- (1) Shall not provide for any waiting period with respect to treatment of preexisting conditions;
- (2) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of such suspension; and
- (3) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.
- C. Standards for basic (core) benefits common to all benefit plans. Every issuer shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.
1. Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
 2. Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
 3. Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
 4. Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
 5. Coverage for the coinsurance amount, or in the case of hospital outpatient department services under a prospective payment system, the copayment amount, of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.
- D. Standards for additional benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 14 VAC 5-170-80.
1. Medicare Part A deductible. Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.
 2. Skilled nursing facility care. Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.
 3. Medicare Part B deductible. Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

4. Eighty percent of the Medicare Part B excess charges. Coverage for 80% of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

5. One hundred percent of the Medicare Part B excess charges. Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

6. Basic outpatient prescription drug benefit. Coverage for 50% of outpatient prescription drug charges, after a \$250 calendar year deductible, to a maximum of \$1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

7. Extended outpatient prescription drug benefit. Coverage for 50% of outpatient prescription drug charges, after a \$250 calendar year deductible to a maximum of \$3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare.

8. Medically necessary emergency care in a foreign country. Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of \$250, and a lifetime maximum benefit of \$50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

9. Preventive medical care benefit. Coverage for the following preventive health services:

a. An annual clinical preventive medical history and physical examination that may include tests and services from subdivision 9 b of this subsection and patient education to address preventive health care measures.

b. Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

- (1) Digital rectal examination;
- (2) Dipstick urinalysis for hematuria, bacteriuria, and proteinuria;
- (3) Pure tone (air only) hearing screening test, administered or ordered by a physician;
- (4) Serum cholesterol screening (every five years);
- (5) Thyroid function test;
- (6) Diabetes screening.

c. Tetanus and Diphtheria booster (every 10 years).

d. Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement

shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of \$120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

10. At-home recovery benefit. Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

a. For purposes of this benefit, the following definitions shall apply:

"Activities of daily living" include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

"Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

"Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

"At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

b. Coverage requirements and limitations:

(1) At-home recovery services provided must be primarily services which assist in activities of daily living.

(2) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare; and

(3) Coverage is limited to:

(a) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(b) The actual charges for each visit up to a maximum reimbursement of \$40 per visit;

(c) One thousand six hundred dollars per calendar year;

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- (d) Seven visits in any one week;
- (e) Care furnished on a visiting basis in the insured's home;
- (f) Services provided by a care provider as defined in this section;
- (g) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;
- (h) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

c. Coverage is excluded for:

- (1) Home care visits paid for by Medicare or other government programs; and
- (2) Care provided by family members, unpaid volunteers or providers who are not care providers.

11. New or innovative benefits. An issuer may, with the prior approval of the State Corporation Commission, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

14 VAC 5-170-105. Guaranteed issue for eligible persons.

A. Guaranteed issue provisions follow:

- 1. Eligible persons are those individuals described in subsection B of this section who, ~~subject to subdivision B-2 b of this section, apply seek to enroll under the policy not later than 63 days after the date of the termination of enrollment described during the period specified in subsection B C of this section,~~ and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.
- 2. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in subsection ~~C~~ E of this section that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. An eligible person is an individual described in any of the following subdivisions:

- 1. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare, and the plan terminates, or the

plan ceases to provide substantially all such supplemental health benefits to the individual;

2. ~~a.~~ The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under § 1894 of the Social Security Act (42 USC § 1395eee), and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan:

~~(1) a.~~ The certification of the organization or plan has been terminated ~~or the organization or plan has notified the individual of an impending termination of such certification;~~ or

~~(2) b.~~ The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides, ~~or has notified the individual of an impending termination or discontinuance of such plan;~~ or

~~(3) c.~~ The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in § 1851(g)(3)(B) of the federal Social Security Act (42 USC § 1395w-21) (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under § 1856 of the Social Security Act (42 USC § 1395w-26)), or the plan is terminated for all individuals within a residence area; or

~~(4) d.~~ The individual demonstrates, in accordance with guidelines established by the Secretary, that:

~~a.~~ (1) The organization offering the plan substantially violated a material provision of the organization's contract under § 1859 of the Social Security Act (42 USC §§ 1395w-21 et seq.) in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

~~b.~~ (2) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

~~(5) e.~~ The individual meets such other exceptional conditions as the Secretary may provide.

~~b.~~ (1) An individual described in subdivision 2 a of this subsection may elect to apply subsection A of this section by substituting, for the date of termination of enrollment, the date on which the individual was notified by the Medicare+Choice organization of the impending termination or discontinuance of the Medicare+Choice plan it offers in the area in which the individual resides, but only if the individual disenrolls from the plan as a result of such notification.

~~(2) In the case of an individual making the election in subdivision 2 b (1) of this subsection, the issuer involved shall accept the application of the individual submitted before the date of termination of enrollment, but the coverage under subsection A of this section shall only become effective upon termination of coverage under the Medicare+Choice plan involved.~~

3. a. The individual is enrolled with:

(1) An eligible organization under a contract under § 1876 of the Social Security Act (Medicare risk or cost);

(2) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(3) An organization under an agreement under § 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(4) An organization under a Medicare Select policy; and

b. The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under subdivision B 2 of this section.

4. The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

a. (1) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(2) Of other involuntary termination of coverage or enrollment under the policy;

b. The issuer of the policy substantially violated a material provision of the policy; or

c. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

5. a. The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under Part C of Medicare, any eligible organization under a contract under § 1876 of the Social Security Act (Medicare risk or cost), any similar organization operating under demonstration project authority, any PACE program provider under § 1894 of the Social Security Act (42 USC § 1395eee), ~~an organization under an agreement under § 1833(a)(1)(A) of the Social Security Act (42 USC § 1395) (health care prepayment plan), or a Medicare Select policy; and~~

b. The subsequent enrollment under subdivision 5 a of this subsection is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under § 1851(e) of the federal Social Security Act) (42 USC § 1395w-21); or

6. The individual, upon first becoming eligible for benefits under Part A of Medicare at age 65, enrolls in a Medicare+Choice plan under Part C of Medicare, or with a

PACE program provider under § 1894 of the Social Security Act (42 USC§ 1395eee) and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

C. Guaranteed issue time periods.

1. In the case of an individual described in subdivision B 1 of this section, the guaranteed issue period begins on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice.

2. In the case of an individual described in subdivisions B 2, 3, 5 or 6 of this section whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated.

3. In the case of an individual described in subdivision B 4 a of this section, the guaranteed issue period begins on the earlier of (i) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, or (ii) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

4. In the case of an individual described in subdivisions B 2, B 4 b, B 4 c, B 5 or B 6 of this section who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of disenrollment and ends on the date that is 63 days after the effective date of the disenrollment.

5. In the case of an individual described in subsection B of this section but not described in the subdivisions C 1 through 4 of this subsection the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date of disenrollment.

D. Extended medigap access for interrupted trial periods.

1. In the case of an individual described in subdivision B 5 of this section (or deemed to be so described pursuant to this subdivision) whose enrollment with an organization or provider described in subdivision B 5 a of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in subdivision B 5 of this section.

2. In the case of an individual described in subdivision B 6 of this section (or deemed to be so described pursuant to this subdivision) whose enrollment with a plan or in a program described in subdivision B 6 of this section is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in subdivision B 6 of this section.

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3. For purposes of subdivisions B 5 and 6 of this section, no enrollment of an individual with an organization or provider described in subdivision B 5 a of this section, or with a plan or in a program described in subdivision B 6 of this section, may be deemed to be an initial enrollment under this subdivision after the two-year period beginning on the date on which the individual first enrolled with such an organization provider, plan or program.

⊖ E. The Medicare supplement policy to which eligible persons are entitled under:

1. Subdivisions B 1, 2, 3, and 4 of this section is a Medicare supplement policy which has a benefit package classified as Plan A, B, C or F offered by any issuer.

2. Subdivision B 5 of this section is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or; if not so available, a policy described in subdivision 1 of this subsection.

3. Subdivision B 6 of this section shall include any Medicare supplement policy offered by any issuer.

⊖ F. Notification provisions are:

1. At the time of an event described in subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection A of this section. Such notice shall be communicated in writing contemporaneously with the notification of termination.

2. At the time of an event described in subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his rights under this section, and of the obligations of issuers of Medicare supplement policies under subsection A of this section. Such notice shall be communicated in writing within 10 working days of the issuer receiving notification of disenrollment.

14 VAC 5-170-120. Loss ratio standards and refund or credit of premium; annual filing; public hearing.

A. 1. Loss ratio standards. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

a. At least 75% of the aggregate amount of premiums earned in the case of group policies; or

b. At least 65% of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices.

2. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section *and meet the originally filed anticipated loss ratio* when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the ~~appropriate requirements of this section~~ *and the originally filed anticipated loss ratio standards*.

3. For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:

a. The originally filed anticipated loss ratio when combined with the actual experience since inception;

b. The *greater of the originally filed anticipated loss ratio or the* appropriate loss ratio requirement from subdivisions 1 a and 1 b of this subsection when combined with actual experience beginning with July 1, 1991, to date; and

c. The *greater of the originally filed anticipated loss ratio or the* appropriate loss ratio requirement from subdivisions 1 a and 1 b of this subsection over the entire future period for which the rates are computed to provide coverage.

B. 1. Refund or credit calculation. An issuer shall collect and file with the State Corporation Commission by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

2. If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), ~~then~~ a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

3. For the purposes of this section, for policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after April 28, 1996. The first such report shall be due by May 31, 1998.

4. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit

at a rate specified by the Secretary, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Annual filing of premium rates. An issuer of Medicare supplement policies and certificates issued before or after July 30, 1992, in this Commonwealth shall file annually its rates, rating schedule, and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the State Corporation Commission in accordance with the filing requirements and procedures prescribed by the State Corporation Commission. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the ~~appropriate requirements of this section and the originally filed anticipated loss ratio standards~~ can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

The supporting documentation shall also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the following items are true with respect to the filing:

1. The assumptions present the actuary's best judgment as to the reasonable value for each assumption and are consistent with the issuer's business plan at the time of the filing;
2. The anticipated ~~lifetime~~ loss ratio, ~~future loss ratios~~, and except for policies issued prior to July 30, 1992, ~~the~~ third-year loss ratios ~~all~~, exceed the ~~applicable requirements of this section and the originally filed anticipated loss ratio~~;
3. Except for policies issued prior to July 30, 1992, the filed rates maintain the proper relationship between policies which had different rating methodologies;
4. The filing was prepared based on the current standards of practices as promulgated by the Actuarial Standards Board, including the data quality standard of practice, as described at www.actuary.org;
5. The filing is in compliance with the applicable laws and regulations in this Commonwealth; and
6. The premiums are reasonable in relation to the benefits provided.

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this Commonwealth shall file with the State Corporation Commission, in accordance with the applicable filing procedures of this Commonwealth:

1. a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents as necessary to justify the adjustment shall accompany the filing.

b. An issuer shall make such premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

c. If an issuer fails to make premium adjustments acceptable to the State Corporation Commission, the State Corporation Commission may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

2. Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public hearings. The State Corporation Commission may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after July 30, 1992, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the State Corporation Commission.

14 VAC 5-170-130. Filing and approval of policies and certificates and premium rates.

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this Commonwealth unless the policy form or certificate form has been filed with and approved by the State Corporation Commission in accordance with filing requirements and procedures prescribed by the State Corporation Commission.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the State Corporation Commission in accordance with the filing requirements and procedures prescribed by the State Corporation Commission.

The filing shall also include a certification by a qualified actuary that to the best of the actuary's knowledge and judgment, the following items are true with respect to the filing:

1. The assumptions present the actuary's best judgment as to the reasonable value for each assumption and are consistent with the issuer's business plan at the time of the filing;

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2. The anticipated ~~lifetime~~ loss ratio, ~~future loss ratios~~, and except for policies issued prior to July 30, 1992, ~~the~~ third-year loss ratio ~~all~~ exceed the ~~applicable appropriate~~ loss ratio requirement from subdivisions A 1 a and b of 14 VAC 5-170-120 and the originally filed anticipated loss ratio;
 3. The filing was prepared based on the current standards or practices as promulgated by the Actuarial Standards Board including the data quality standard of practice as described at www.actuary.org;
 4. The filing is in compliance with applicable laws and regulations in this Commonwealth; and
 5. The premiums are reasonable in relation to the benefits provided.
- C. 1. Except as provided in subdivision 2 of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.
2. An issuer may offer, with the approval of the State Corporation Commission, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:
 - a. The inclusion of new or innovative benefits;
 - b. The addition of either direct response or agent marketing methods;
 - c. The addition of either guaranteed issue or underwritten coverage;
 - d. The offering of coverage to individuals eligible for Medicare by reason of disability.
 3. For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy or a group Medicare Select policy.
- D. 1. Except as provided in subdivision 1 a of this subsection, an issuer shall continue to make available for purchase any policy form or certificate form issued after July 30, 1992, that has been approved by the State Corporation Commission. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.
- a. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the State Corporation Commission in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate.
 - b. An issuer that discontinues the availability of a policy form or certificate form pursuant to subdivision 1 a of this subsection shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the State Corporation Commission of the discontinuance. The period of discontinuance may be reduced if the State Corporation Commission determines that a shorter period is appropriate.
2. The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.
 3. A change in the rating structure or methodology shall be considered a discontinuance under subdivision 1 of this subsection unless the issuer complies with the following requirements:
 - a. The issuer provides an actuarial memorandum, in a form and manner prescribed by the State Corporation Commission, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.
 - b. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The State Corporation Commission may approve a change to the differential which is in the public interest.
- E. 1. Except as provided in subdivision 2 of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in 14 VAC 5-170-120.
2. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.
- 14 VAC 5-170-150. Required disclosure provisions.**
- A. General rules.
1. Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age. Medicare supplement policies or certificates which are attained age rated shall include a clear and prominent statement, in at least 14 point type, disclosing that premiums will increase due to changes in age and the frequency under which such changes will occur.
 2. Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in

writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

3. Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

4. If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

5. Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have all premiums made for the policy refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

6. Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person or persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this chapter. Except in the case of direct response issuers, delivery of the guide shall be made to the applicant at the time of application and acknowledgement of receipt of the guide shall be obtained by the issuer. Direct response issuers shall deliver the guide to the applicant upon request but not later than at the time the policy is delivered.

For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice requirements.

1. As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement

insurance policies or certificates in a format acceptable to the State Corporation Commission. The notice shall:

a. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

b. Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

2. The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

3. Such notices shall not contain or be accompanied by any solicitation.

C. Outline of coverage requirements for Medicare Supplement Policies.

1. Issuers shall provide an outline of coverage to all applicants at the time the application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of the outline from the applicant; and

2. If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

3. The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12 point type. All plans A - J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

4. The following items shall be included in the outline of coverage in the order prescribed in the following table.

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[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plan(s) _____ [insert letter(s) of plan(s) being offered]

Medicare supplement insurance can be sold in only ten standard plans plus two high deductible plans.* This chart shows the benefits included in each plan. Every company must make available Plan "A." Some plans may not be available in your state.

Basic Benefits: Included in all Plans.

Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.

Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses) or in the case of hospital outpatient department services under a prospective payment system, applicable copayments.

Blood: First three pints of blood each year.

A	B	C	D	E	F	F*	G	H	I	J	J*
Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit	Basic Benefit
		Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance	Skilled Nursing Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible					Part B Deductible	Part B Deductible
					Part B Excess (100%)		Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery				At-Home Recovery		At-Home Recovery	At-Home Recovery	At-Home Recovery
								Basic Drug Benefit (\$1,250 Limit)	Basic Drug Benefit (\$1,250 Limit)	Extended Drug Benefit (\$3,000 Limit)	
				Preventive Care						Preventive Care	

PREMIUM INFORMATION

Boldface Type

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this Commonwealth. [If the premium is based on attained age of the insured, include the following information:

1. When premiums will change;

2. The current premium for all ages;

3. A statement that premiums for other Medicare Supplement policies that are issue age or community rated do not increase due to changes in your age; and

4. A statement that while the cost of this policy at the covered individual's present age may be lower than the cost of a Medicare supplement policy that is based on issue age or community rated, it is important to compare the potential cost of these policies over the life of the policy.]

* Plans F and J also have an option called a high deductible Plan F and a high deductible Plan J. These high deductible plans pay the same or offer the same benefits as Plans F and J after one has paid a calendar year \$4500 ~~\$1,620~~ deductible. Benefits from high deductible Plans F and J will not begin until out-of-pocket expenses are \$4500 ~~\$1,620~~. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but does not include, in Plan J, the plan's separate prescription drug deductible or, in Plans F and J, the plan's separate foreign travel emergency deductible.

DISCLOSURES

Boldface Type

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY

Boldface Type

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY

Boldface Type

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT

Boldface Type

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE

Boldface Type

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "Medicare & You" for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT

Boldface Type

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to 14 VAC 5-170-80.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the State Corporation Commission.]

Rev. ~~9/04~~ 10/02

PLAN A

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used: Additional 365 days Beyond the Additional 365 days	All but \$792 \$812 All but \$198 \$203 a day All but \$396 \$406 a day \$0 \$0	\$0 \$498 \$203 a day \$396 \$406 a day 100% of Medicare Eligible Expenses \$0	\$792 \$812 (Part A Deductible) \$0 \$0 \$0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days	All approved amounts	\$0	\$0

Proposed Regulations

21st thru 100th day 101st day and after	All but \$99 \$101.50 a day \$0	\$0 \$0	Up to \$99 \$101.50 a day All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

7/92

PLAN A

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$0 Generally 20% \$0	\$100 (Part B deductible) \$0 All Costs
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$0 20%	\$0 \$100 (Part B Deductible) \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$0 20%	\$0 \$100 (Part B Deductible) \$0

Rev. 9/04 10/02

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used:	All but \$792 \$812 All but \$198 \$203 a day All but \$396 \$406 a day	\$792 \$812 (Part A Deductible) \$198 \$203 a day \$396 \$406 a day	\$0 \$0 \$0

Proposed Regulations

Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
Beyond the Additional 365 days	\$0	\$0	All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$99 \$101.50 a day	\$0	Up to \$99 \$101.50 a day
101st day and after	\$0	\$0	All Costs
BLOOD			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

7/92

PLAN B

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	\$0
Part B Excess Charges (Above Medicare Approved Amounts)	\$0	\$0	All Costs
BLOOD			
First 3 pints	\$0	All Costs	\$0
Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

Rev. 9/04 10/02

PLAN C

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Proposed Regulations

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used: Additional 365 days Beyond the Additional 365 days	All but \$792 \$812 All but \$498 \$203 a day All but \$396 \$406 a day \$0 \$0	\$792 \$812 (Part A Deductible) \$498 \$203 a day \$396 \$406 a day 100% of Medicare Eligible Expenses \$0	\$0 \$0 \$0 \$0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

7/92

PLAN C

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$100 (Part B Deductible) Generally 20% \$0	\$0 \$0 All Costs
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$100 (Part B Deductible) 20%	\$0 \$0 \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$100 (Part B Deductible) 20%	\$0 \$0 \$0

Proposed Regulations

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
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Rev. 9/04 10/02

PLAN D

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used: Additional 365 days Beyond the Additional 365 days	All but \$792 \$812 All but \$198 \$203 a day All but \$396 \$406 a day \$0 \$0	\$792 \$812 (Part A Deductible) \$198 \$203 a day \$396 \$406 a day 100% of Medicare Eligible Expenses \$0	\$0 \$0 \$0 \$0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

Proposed Regulations

7/92

PLAN D

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$0 Generally 20% \$0	\$100 (Part B Deductible) \$0 All Costs
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$0 20%	\$0 \$100 (Part B Deductible) \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$0 20%	\$0 \$100 (Part B Deductible) \$0
AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan Benefit for each visit Number of visits covered (must be received within 8 weeks of last Medicare Approved visit) Calendar year maximum	\$0 \$0 \$0	Actual charges to \$40 a visit Up to the number of Medicare-approved visits not to exceed 7 each week \$1,600	Balance

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL – NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
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Rev. 9/04 10/02

PLAN E

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used: Additional 365 days Beyond the Additional 365 days	All but \$792 \$812 All but \$198 \$203 a day All but \$396 \$406 a day \$0 \$0	\$792 \$812 (Part A Deductible) \$198 \$203 a day \$396 \$406 a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

7/92

PLAN E

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$0 Generally 20% \$0	\$100 (Part B Deductible) \$0 All Costs
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$0 20%	\$0 \$100 (Part B Deductible) \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

Proposed Regulations

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies			
Durable medical equipment	100%	\$0	\$0
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

Rev. 1/99

PLAN E

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
PREVENTIVE MEDICAL CARE BENEFIT* - NOT COVERED BY MEDICARE Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All Costs

* Medicare benefits are subject to change. Please consult the latest Guide to Insurance for People with Medicare.

Rev. 9/04 10/02

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year ~~\$1580~~ \$1620 deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are ~~\$1580~~ \$1620. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1580 \$1620 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1580 \$1620 DEDUCTIBLE,** YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$792 \$812	\$792 \$812 (Part A Deductible)	\$0
61st thru 90th day	All but \$198 \$203 a day	\$198 \$203 a day	\$0
91st day and after: While using 60 lifetime reserve days	All but \$396 \$406 a day	\$396 \$406 a day	\$0
Once lifetime reserve days are used: Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
Beyond the Additional 365 days	\$0	\$0	All Costs

Proposed Regulations

SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

Rev. 9/04 10/02

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year ~~\$1580~~ \$1620 deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are ~~\$1580~~ \$1620. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1580 \$1620 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1580 \$1620 DEDUCTIBLE,** YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$100 (Part B Deductible) Generally 20% 100%	\$0 \$0 \$0
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$100 (Part B Deductible) 20%	\$0 \$0 \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1580 \$1620 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1580 \$1620 DEDUCTIBLE,** YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$100 (Part B Deductible) 20%	\$0 \$0 \$0

Proposed Regulations

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
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Rev. 9/04 10/02

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used: Additional 365 days Beyond the Additional 365 days	All but \$792 \$812 All but \$198 \$203 a day All but \$396 \$406 a day \$0 \$0	\$792 \$812 (Part A Deductible) \$198 \$203 a day \$396 \$406 a day 100% of Medicare Eligible Expenses \$0	\$0 \$0 \$0 \$0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

7/92

PLAN G

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$0 Generally 20% 80%	\$100 (Part B Deductible) \$0 20%

Proposed Regulations

BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$0 20%	\$0 \$100 (Part B Deductible) \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$0 20%	\$0 \$100 (Part B Deductible) \$0
AT HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan Benefit for each visit Number of visits covered (must be received within 8 weeks of last Medicare approved visit) Calendar year maximum	\$0 \$0 \$0	Actual Charges to \$40 a visit Up to the number of Medicare approved visits not to exceed 7 each week \$1,600	Balance

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
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Rev. 9/04 10/02

PLAN H

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used: Additional 365 days Beyond the Additional 365 days	All but \$792 \$812 All but \$198 \$203 a day All but \$396 \$406 a day \$0 \$0	\$792 \$812 (Part A Deductible) \$198 \$203 a day \$396 \$406 a day 100% of Medicare Eligible Expenses \$0	\$0 \$0 \$0 \$0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved			

Proposed Regulations

facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

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PLAN H

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$0 Generally 20% \$0	\$100 (Part B Deductible) \$0 All Costs
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$0 20%	\$0 \$100 (Part B Deductible) \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$0 20%	\$0 \$100 (Part B Deductible) \$0

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE First \$250 each calendar year Next \$2,500 each calendar year	\$0 \$0	\$0 50% - \$1,250 calendar	\$250 50%

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Over \$2,500 each calendar year	\$0	year maximum benefit \$0	All Costs
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PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: While using 60 lifetime reserve days Once lifetime reserve days are used: Additional 365 days Beyond the Additional 365 days	All but \$792 \$812 All but \$198 \$203 a day All but \$396 \$406 a day \$0 \$0	\$792 \$812 (Part A Deductible) \$198 \$203 a day \$396 \$406 a day 100% of Medicare Eligible Expenses \$0	\$0 \$0 \$0 \$0 \$0 All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

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PLAN I

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$0 Generally 20% 100%	\$100 (Part B Deductible) \$0 \$0
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$0 20%	\$0 \$100 (Part B Deductible) \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

Proposed Regulations

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE-APPROVED SERVICES			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
Durable medical equipment			
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
AT HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan	\$0	Actual charges to \$40 a visit	
Benefit for each visit			
Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare Approved visits not to exceed 7 each week	Balance
Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges*	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50% - \$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All Costs

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PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year ~~\$1580~~ \$1620 deductible. Benefits from high deductible Plan J will not begin until out-of-pocket expenses are ~~\$1580~~ \$1620. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1580 \$1620 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1580 \$1620 DEDUCTIBLE,** YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$792 \$812	\$792 \$812 (Part A Deductible)	\$0
61st thru 90th day	All but \$198 \$203 a day	\$198 \$203 a day	\$0
91st day and after:			
While using 60 lifetime reserve days	All but \$396 \$406 a day	\$396 \$406 a day	\$0
Once lifetime reserve days are used:			
Additional 365 days	\$0	100% of Medicare Eligible	\$0

Proposed Regulations

Beyond the Additional 365 days	\$0	Expenses \$0	All Costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$99 \$101.50 a day \$0	\$0 Up to \$99 \$101.50 a day \$0	\$0 \$0 All Costs
BLOOD First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

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PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year (~~\$1580~~ \$1620) deductible. Benefits from high deductible Plan J will not begin until out-of-pocket expenses are ~~\$1580~~ \$1620. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1580 \$1620 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1580 \$1620 DEDUCTIBLE,** YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT , such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts Part B Excess Charges (Above Medicare Approved Amounts)	\$0 Generally 80% \$0	\$100 (Part B Deductible) Generally 20% 100%	\$0 \$0 \$0
BLOOD First 3 pints Next \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	\$0 \$0 80%	All Costs \$100 (Part B Deductible) 20%	\$0 \$0 \$0
CLINICAL LABORATORY SERVICES BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1580 \$1620 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1580 \$1620 DEDUCTIBLE,** YOU PAY
HOME HEALTH CARE MEDICARE-APPROVED SERVICES Medically necessary skilled care services and medical supplies Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100% \$0 80%	\$0 \$100 (Part B Deductible) 20%	\$0 \$0 \$0

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AT-HOME RECOVERY SERVICES - NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan Benefit for each visit Number of visits covered (must be received within 8 weeks of last Medicare Approved visit) Calendar year maximum	\$0 \$0 \$0	Actual charges to \$40 a visit Up to the number of Medicare Approved visits not to exceed 7 each week \$1,600	Balance
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OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1580 \$1620 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1580 \$1620 DEDUCTIBLE,** YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year Remainder of Charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
EXTENDED OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE First \$250 each calendar year Next \$6,000 each calendar year Over \$6,000 each calendar year	\$0 \$0 \$0	\$0 50% - \$3,000 calendar year maximum benefit \$0	\$250 50% All costs
PREVENTIVE MEDICAL CARE BENEFIT - NOT COVERED BY MEDICARE*** Some annual physical and preventive tests and services such as: digital rectal exam, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare First \$120 each calendar year Additional charges	\$0 \$0	\$120 \$0	\$0 All costs

***Medicare benefits are subject to change. Please consult the latest "Guide to Health Insurance for People with Medicare."

D. Notice regarding policies or certificates which are not Medicare supplement policies.

1. Any accident and sickness insurance policy or certificate issued for delivery in this Commonwealth to persons eligible for Medicare, other than a Medicare supplement policy, a policy issued pursuant to a contract under § 1876 of the federal Social Security Act (42 USC § 1395 et seq.), a disability income policy, or other policy identified in 14 VAC 5-170-20 B, shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12 point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

2. Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in subdivision 1 of this subsection shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

E. Notice requirements for attained age rated medicare supplement policies or certificates. Issuers of Medicare supplement policies or certificates which use attained age

rating shall provide a notice to all prospective applicants at the time the application is presented, and except for direct response policies or certificates, shall obtain an acknowledgement of receipt of the notice from the applicant. The notice shall be in no less than 12 point type and shall contain the information included in Appendix D. The notice shall be provided as part of, or together with, the application for the policy or certificate.

14 VAC 5-170-180. Standards for marketing.

A. An issuer, directly or through its producers, shall:

1. Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.
2. Establish marketing procedures to assure excessive insurance is not sold or issued.
3. Display prominently by type, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

4. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

5. If the Medicare supplement policy or certificate uses attained age rating, all marketing materials or rate quotations other than the outline of coverage shall display prominently the following notice in close proximity to anywhere the insurer or agent displays a premium:

"Notice: This (policy's/certificate's) premium increases based on your attained age. Please read the Notice For Attained Age Rated Medicare Supplement Policies carefully. *It is available upon request or at the time the application is presented.*"

6. Establish auditable procedures for verifying compliance with subsection A of this section.

B. In addition to the practices prohibited in Chapter 5 (§ 38.2-500 et seq.) of Title 38.2 of the Code of Virginia, the following acts and practices are prohibited:

1. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert an insurance policy or to take out a policy of insurance with another insurer.
2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
3. Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of

marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare supplement," "Medigap," "Medicare Wrap-Around," and words of similar import shall not be used unless the policy is issued in compliance with this chapter.

VA.R. Doc. No. R02-324; Filed August 5, 2002, 1:53 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: **16 VAC 15-10. Public Participation Guidelines (amending 16 VAC 15-10-10, 16 VAC 15-10-20, 16 VAC 15-10-40, 16 VAC 15-10-50, 16 VAC 15-10-80, 16 VAC 15-10-90, and 16 VAC 15-10-100.**

Statutory Authority: §§ 2.2-4007 and 40.1-6 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on October 25, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

Basis: Section 2.2-4007 of the Code of Virginia mandates that the agency will have Public Participation Guidelines and defines policies to be included. The regulation meets the minimum requirements of the state mandate. There is no federal mandate for the regulation.

Purpose: Since this regulation was adopted in 1994, the Administrative Process Act (APA) has been amended several times. Also, last year the APA was included in the recodification of Titles 2.1 and 9. Language in the current regulation includes provisions that are no longer required by the APA. This proposed action will conform the regulation language to the current requirements of the APA and update the cites to the APA. Also, with the advances in information technology since 1994, amendments are necessary to include the agency website and other Internet resources that are now available. These changes will ensure that the public has the maximum opportunity to participate in the regulatory process of the agency.

Substance: Amendments to the regulation conform language to the current APA requirements; correct citations to the APA; include references to the agency website; remove language contained in the APA that is repeated in the regulation; and remove any language that conflicts with the current APA or the Governor's Executive Orders.

Issues: The primary advantage of this proposed action is the increased opportunity to receive information on regulatory actions initiated by the agency through various Internet resources and the increased opportunity for the public to provide comments by the use of e-mail. This will improve the

Proposed Regulations

speed of communication during the process and possibly increase the public participation. If the agency has a sufficient increase in the use of electronic communication, it will reduce mailing costs for the agency. Since the current methods of notification are also being retained, there is no disadvantage to the public or the Commonwealth in implementing the amended provisions.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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 Department of Labor and Industry (department) proposes to amend the current public participation guidelines to (i) state that the NOIRA, proposed regulations, and final regulations will all be published on the department website and on the Virginia Regulatory Town Hall, (ii) state that an electronic public participation notification list will be maintained in addition to the paper mail public participation notification list, (iii) eliminate the requirement that the NOIRA and proposed regulations be published in a newspaper, and (iv) amend language to reflect the current requirements of the Administrative Process act.

Estimated economic impact. Under the Administrative Process Act, all state agencies that promulgate regulations are required to maintain public participation mailing lists containing the names of all parties that have registered an interest in a particular regulation. Membership on these lists typically includes members of the regulated community, public interest groups, law firms, and individual citizens with an interest in a particular area of regulation.

The proposed regulations state that the NOIRA, proposed regulations, and final regulations will all be published on the department website and on the Virginia Regulatory Town Hall. Proposed language also indicates that an electronic public participation notification list will be maintained in addition to the paper mail public participation notification list. These electronic forms of communication, which all are already in place, increase the speed of notification, increase the amount of information readily available to individuals, and provide new electronic avenues for public participation.

The department proposes to eliminate a requirement that the NOIRA and proposed regulations be published in a Virginia newspaper. The agency reports that it stopped publishing such notices some time ago due to their excessive cost, \$300 to \$500 per day.¹ It is noted that § 2.2-4007 of the Code of

Virginia gives agencies the discretion as to whether they will publish such notices in a newspaper. Interested individuals that are aware of the paper and electronic notification lists are not likely to receive benefit from newspaper publication. They can reliably be informed through the notifications list rather than hope they happen to read the right section of the right newspaper on the day the information is published. On the other hand, potentially interested individuals who are not aware of the paper and electronic notification lists will lose a method by which they could first learn of regulatory activity. The department believes that it was uncommon for individuals interested in the board's regulations to first learn of regulatory activity through the newspaper publications. No data is available concerning the frequency that individuals interested in the department's regulations first learn of regulatory activity through the newspaper publications. Hence, the cost to the public of rescinding the newspaper publication requirement cannot be accurately estimated. Since the cost cannot be accurately estimated, it cannot be determined whether the benefit of saving \$300 to \$500 per day plus staff time in placing the ad exceeds the cost. However, the department's experience with newspaper advertisements does give some reason to believe that these changes will result in a net economic benefit.

Businesses and entities affected. The proposed amendments potentially affect the 66 individuals on the department's electronic list maintained through the Virginia Regulatory Town Hall, the 1,510 officers who issue child labor certificates, the 176,000 employers in the Commonwealth and their 3.6 million employees.²

Localities particularly affected. The proposed amendments potentially affect localities throughout Virginia.

Projected impact on employment. The proposed amendments are not expected to significantly affect employment.

Effects on the use and value of private property. There may a small reduction in newspaper advertising.

Agency Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Labor and Industry concurs with the economic impact analysis of the Department of Planning and Budget for the proposed amendments to 16 VAC 15-10.

Summary:

This regulation sets out procedures to be followed by the Department of Labor and Industry to ensure that the public and all parties interested in regulation adopted by the agency have a full and fair opportunity to participate at every stage. The regulation is amended to conform to the current requirements of the Administrative Process Act. Also, with the advances in information technology, amendments include the agency website and other Internet resources.

¹ Source: Department of Labor and Industry.

² All numbers are estimates provided by the Department of Labor and Industry.

16 VAC 15-10-10. Definitions.

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

"*Ad hoc advisory group*" means a task force to develop a new regulation, or review current regulations, or revise current regulations, or advise the commissioner on particular issues under consideration for regulation.

"*Administrative Process Act*" means Chapter 4.1:1 (~~§ 9-6.14:1 et seq.~~) of Title 9 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"*Commissioner*" means the Commissioner of Labor and Industry or his designee.

"*Department*" means the Virginia Department of Labor and Industry.

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

"*Open meeting*" means an informal meeting to provide an opportunity for the commissioner or his designee to hear information, receive views and comments, and to answer questions presented by the public on a particular issue or regulation under consideration by the department. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.

"*Public hearing*" means an informational proceeding conducted pursuant to § 9-6.14:7.1 2.2-4007 of the Code of Virginia.

"*Regulation*" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by the commissioner in accordance with the authority conferred upon him by applicable basic law.

"*Secretary*" means the Secretary of Commerce and Trade or his designee.

16 VAC 15-10-20. Applicability.

This chapter shall apply to all regulations subject to the Administrative Process Act which are adopted by the Commissioner of Labor and Industry. ~~They~~ *The guidelines* shall not apply to regulations adopted on an emergency basis. This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (~~§ 9-6.14:4.1 A and B 2.2-4002~~ of the Code of Virginia) or excluded from the operation of Article 2 of the Administrative Process Act (~~§ 9-6.14:4.1 C 2.2-4006~~).

16 VAC 15-10-40. Identification of interested persons and groups.

The major groups interested in the regulatory process of the commissioner are:

1. Business and labor associations and organizations such as the Virginia Manufacturers Association and the Virginia State AFL-CIO;

2. Persons, groups, businesses, industries, and employees affected by the specific regulation who have previously expressed an interest by writing or participating in public hearings; and

3. Persons or groups who have asked to be placed on a ~~mailing~~ *an electronic or mail notification* list.

16 VAC 15-10-50. Public involvement with formulation of regulations.

A. The commissioner shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The commissioner shall consider the petition and ~~provide a response within 180 days~~ *respond in accordance with the Administrative Process Act.*

B. The petition, at a minimum, shall contain the following information:

1. Name, mailing address and telephone number of petitioner;
2. ~~E-mail address of petitioner, if applicable;~~
- 2- 3. Petitioner's interest in the proposed action;
- 3- 4. ~~Substance and purpose of the requested rulemaking including recommended regulation or addition, deletion or amendment to a specific regulation;~~
- 4- 5. Statement of need and justification for the proposed action;
- 5- 6. Statement of impact on the petitioner and other affected persons; and
7. ~~Reference to legal authority of the agency to take the action requested; and~~
- 6- 8. Supporting documents, as applicable.

16 VAC 15-10-80. Notice of Intended Regulatory Action (NOIRA).

~~A. The department will identify persons or groups, as referred to in 16 VAC 15-10-40, interested in the development of the regulation and assemble the appropriate mailing list.~~

~~B. A. The department shall issue a NOIRA whenever it intends to consider the development, amendment develop, amend or repeal of any regulation subject to the Administrative Process Act (APA). The NOIRA will include: all of the information required by the APA.~~

1. Subject of the proposed regulation;
2. Identification of the persons or groups affected;
3. Summary of the purpose of the proposed regulation and the issues involved;
4. Listing of applicable laws or regulations, and locations where these documents can be reviewed or obtained;
5. ~~Explanation of federal requirements for adoption and specific obligations of the commissioner, if applicable;~~
6. ~~Request for comments from interested parties and deadline for receipt of the written comments;~~

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- ~~7. Notification of time and place of open meetings, if the commissioner intends to hold open meetings;~~
 - ~~8. Name, address and telephone number of staff person to be contacted for further information; and~~
 - ~~9. Statement that the commissioner intends to hold a public hearing on the proposed regulation after it is published.~~
- ~~G. B. If appropriate, the commissioner will appoint an advisory group as outlined in 16 VAC 15-10-60.~~
- ~~D. C. The NOIRA will be disseminated to the public via:~~
- ~~1. Distribution by mail, facsimile, e-mail or other appropriate delivery method to persons on the appropriate mailing list interested in the agency's regulatory process;~~
 - ~~2. Publication in The Virginia Register of Regulations;;~~
 - ~~3. Publication in a newspaper of statewide circulation. Posting on the Regulatory Town Hall website; and~~
 - ~~4. Publication in newspapers in localities particularly affected by the regulation. The localities particularly affected have been identified by the department. Posting on the agency website.~~

16 VAC 15-10-90. Proposed regulations.

- ~~A. After consideration of public comment, the department may prepare a proposed draft regulation and any necessary documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group.~~
- ~~B. The commissioner will present the proposed draft to the secretary's office for review and concurrence prior to the beginning of the 60-day public comment period.~~
- ~~C. B. The department will submit the proposed regulation to a 60-day public hearing/comment period by forwarding the following appropriate documents to the Registrar of Regulations and the Regulatory Town Hall by the established submission date for the desired date of publication in The Virginia Register and the beginning of the 60-day comment period: The proposed regulation will also be posted on the agency's website and distributed by mail, facsimile or e-mail to persons on the appropriate notification list.~~
- ~~1. Notice of public hearing/comment period, which will contain the following:
 - ~~a. The date, time and place of the public hearing (Public hearing is defined in this chapter.)~~
 - ~~b. The legal authority of the commissioner to act.~~
 - ~~c. The name, address and telephone number of an individual to contact for further information and where to submit written comments.~~~~
 - ~~2. Full text of the regulation.~~
 - ~~3. Summary of the regulation.~~
 - ~~4. Statement of the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement~~

- ~~relating the content of the statutory authority to the specific regulation proposed.~~
- ~~5. Statement of the purpose of the regulation, defined as the rationale or justification for the provisions of a new regulation or changes to an existing regulation, from the standpoint of the public's health, safety or welfare.~~
 - ~~6. Statement of the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation.~~
 - ~~7. Statement of the issues of the regulations, defined as the primary advantages and disadvantages for the public, and as applicable for the department or the state, of implementing the new or amended regulatory provisions.~~
 - ~~8. Statement of the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance with the new regulation or amendments, and the identity of any localities particularly affected by the regulation. The estimated impact shall represent the board's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation.~~
 - ~~9. A copy of the written assurance from the Office of the Attorney General which states that the commissioner has the statutory authority to issue the proposed regulation.~~
 - ~~10. An explanation of how clarity and simplicity were assured in drafting the regulations.~~
 - ~~11. A statement describing the alternative approaches that were considered to meet the need the proposed regulations address, and assurance that the proposed regulations are the least burdensome available alternative.~~
 - ~~12. A schedule setting forth when, after the effective date of the regulation, the commissioner will evaluate it for effectiveness and continued need.~~
- ~~D. Concurrently with the preceding step, the commissioner will submit required documentation to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.~~
- ~~E. Upon receipt of the proposed regulation and appropriate documentation, the Registrar of Regulations will publish the summary of the regulation and the public hearing notice in The Virginia Register and in a Richmond area newspaper of general circulation. If applicable, the department will request that the Registrar publish the notice in newspapers in other areas of the state. The department will mail a copy of the notice to persons and groups on the appropriate mailing list.~~
- ~~F. During the public comment period, the regulation will be available for review concurrently by the following:~~
- ~~1. The public;~~
 - ~~2. The Governor;~~
 - ~~3. The General Assembly;~~
 - ~~4. The Secretary of Commerce and Trade; and~~

~~5. The Attorney General:~~

16 VAC 15-10-100. Completion of the adoption process.

A. The department shall prepare a summary of the oral and written comments received during the 60-day public comment period and the department's response to the comments. A draft of the department's summary shall be sent to all parties who commented on the proposed regulation. The summary shall be sent at least five days before final adoption of the regulation.

B. At the end of the 60-day public comment period, the department shall prepare the final proposed regulation.

C. The department shall submit the final regulation to the Registrar of Regulations *and the Regulatory Town Hall* for publication in The Virginia Register at least 30 days prior to the effective date of the regulation. *The final regulation will also be posted on the agency's website and distributed by mail, facsimile or e-mail to persons on the appropriate notification list.*

~~D. The following documents shall be sent to the Registrar's Office. Concurrently, these documents shall be sent to the Governor's Office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.~~

- ~~1. A copy of the final regulation.~~
- ~~2. A current summary and statement as to the basis, purpose, substance, issues, and impact of the regulation.~~
- ~~3. The summary of the oral and written comments received during the 60-day public comment period and the department's response to the comments.~~

VA.R. Doc. No. R02-15; Filed August 6, 2002, 11:07 a.m.

Safety and Health Codes Board

Title of Regulation: **16 VAC 25-10. Public Participation Guidelines (amending 16 VAC 25-10-10, 16 VAC 25-10-20, 16 VAC 25-10-40, 16 VAC 25-10-50, 16 VAC 25-10-80, 16 VAC 25-10-90, 16 VAC 25-10-100, and 16 VAC 25-10-120.**

Statutory Authority: §§ 2.2-4007 and 40.1-22 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on October 25, 2002.

(See Calendar of Events section for additional information)

Agency Contact: Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

Basis: Section 2.2-4007 of the Code of Virginia mandates that the board will have Public Participation Guidelines and defines policies to be included. The regulation meets the minimum requirements of the state mandate. There is no federal mandate for the regulation.

Purpose: Since this regulation was adopted in 1994, the Administrative Process Act (APA) has been amended several times. Also, last year the APA was included in the recodification of Titles 2.1 and 9. Language in the current regulation includes provisions that are no longer required by the APA. This proposed action will conform the regulation language to the current requirements of the APA and update the cites to the APA. Also, with the advances in information technology since 1994, amendments are necessary to include the agency web site and other Internet resources that are now available. These changes will ensure that the public has the maximum opportunity to participate in the regulatory process of the board.

Substance: Amendments to the regulation conform language to the current APA requirements; correct citations to the APA; include references to the agency web site; remove language contained in the APA that is repeated in the regulation; and remove any language that conflicts with the current APA or the Governor's Executive Orders.

Issues: The primary advantage of this proposed action is the increased opportunity for the public to receive information on regulatory actions initiated by the board through various Internet resources and the increased opportunity for the public to provide comments by the use of e-mail. This will improve the speed of communication during the process and possibly increase the public participation. If the board has a sufficient increase in the use of electronic communication, it will reduce mailing costs for the agency. Since the current methods of notification are also being retained, there is no disadvantage to the public or the Commonwealth in implementing the amended provisions.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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 Safety and Health Codes Board (board) proposes to amend the current public participation guidelines to (i) state that the NOIRA, proposed regulations, and final regulations will all be published on the Department of Labor and Industry (department) website and on the Virginia Regulatory Town Hall; (ii) state that an electronic public participation notification list will be maintained in addition to the paper mail public participation notification list; (iii) eliminate the requirement that the NOIRA and proposed regulations be published in a newspaper; and (iv) amend language to reflect the current requirements of the Administrative Process Act.

Proposed Regulations

Estimated Economic Impact. Under the Administrative Process Act, all state agencies that promulgate regulations are required to maintain public participation mailing lists containing the names of all parties that have registered an interest in a particular regulation. Membership on these lists typically includes members of the regulated community, public interest groups, law firms, and individual citizens with an interest in a particular area of regulation.

The proposed regulations state that the NOIRA, proposed regulations, and final regulations will all be published on the department website and on the Virginia Regulatory Town Hall. Proposed language also indicates that an electronic public participation notification list will be maintained in addition to the paper mail public participation notification list. These electronic forms of communication, which all are already in place, increase the speed of notification, increase the amount of information readily available to individuals, and provide new electronic avenues for public participation.

The board proposes to eliminate a requirement that the NOIRA and proposed regulations be published in a Virginia newspaper. The department reports that it stopped publishing such notices some time ago due to their excessive cost, \$300 to \$500 per day.¹ It is noted that § 2.2-4007 of the Code of Virginia gives agencies the discretion as to whether they will publish such notices in the newspaper. Interested individuals who are aware of the paper and electronic notification lists are not likely to receive benefit from newspaper publication. They can reliably be informed through the notifications list rather than hope they happen to read the right section of the right newspaper on the day the information is published. On the other hand, potentially interested individuals who are not aware of the paper and electronic notification lists will lose a method by which they could first learn of regulatory activity. The department believes that it was uncommon for individuals interested in the board's regulations to first learn of regulatory activity through the newspaper publications. No data is available concerning the frequency that individuals interested in the board's regulations first learn of regulatory activity through the newspaper publications. Hence, the cost to the public of rescinding the newspaper publication requirement cannot be accurately estimated. Since the cost cannot be accurately estimated, it cannot be determined whether the benefit of saving \$300 to \$500 per day plus staff time in placing the ad exceeds the cost. However, the department's experience with newspaper advertisements does give some reason to believe that these changes will result in a net economic benefit.

Businesses and entities affected. The proposed amendments potentially affect the 20 individuals on the board's public participation mailing list, the 66 individuals on the board's electronic list maintained through the Virginia Regulatory Town Hall, the 3.2 million employees in Virginia who are covered by the Virginia Occupational Safety and Health program, and the 176,000 employers in the Commonwealth.²

Localities particularly affected. The proposed amendments potentially affect localities throughout Virginia.

Projected impact on employment. The proposed amendments are not expected to significantly affect employment.

Effects on the use and value of private property. There may be a small reduction in newspaper advertising.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Labor and Industry and the Safety and Health Codes Board concur with the economic impact analysis of the Department of Planning and Budget for the proposed amendments to 16 VAC 25-10.

Summary:

This regulation sets out procedures to be followed by the Safety and Health Codes Board and the Department of Labor and Industry to ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate at every stage. The regulation is amended to conform the language to the current requirements of the Administrative Process Act. Also, with the advances in information technology, amendments include the agency website and other Internet resources.

16 VAC 25-10-10. Definitions.

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

"Ad hoc advisory group" means a task force to develop a new regulation, or review current regulations, or revise current regulations, or advise the board on particular issues under consideration for regulation.

"Administrative Process Act" means Chapter 1-1:1 (~~§ 9-6-14:1 et seq.~~) of Title 9 40 (~~§ 2.2-4000 et seq.~~) of Title 2.2 of the Code of Virginia.

"Board" means the Virginia Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry or his designee.

"Department" means the Virginia Department of Labor and Industry.

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

"Open meeting" means an informal meeting to provide an opportunity for the board or their designee to hear information, receive views and comments, and to answer questions presented by the public on a particular issue or regulation under consideration by the board. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.

"OSHA" means the Occupational Safety and Health Administration, U.S. Department of Labor.

¹ Source: Department of Labor and Industry.

² All numbers are estimates provided by the Department of Labor and Industry.

"Public hearing" means an informational proceeding conducted pursuant to § ~~9-6.14:7.1~~ 2.2-4007 of the Code of Virginia.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by the board in accordance with the authority conferred upon it by applicable basic law.

"Secretary" means the Secretary of Commerce and Trade or his designee.

16 VAC 25-10-20. Applicability.

This chapter shall apply to all regulations subject to the Administrative Process Act which are adopted by the Virginia Safety and Health Codes Board and administered by the Commissioner of Labor and Industry. ~~They~~ *The guidelines* shall not apply to regulations adopted on an emergency basis. This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (§ ~~9-6.14:4.1-A~~ and ~~B~~ 2.2-4002 of the Code of Virginia) or excluded from the operation of Article 2 of the Administrative Process Act (§ ~~9-6.14:4.1-C~~ 2.2-4006 of the Code of Virginia).

16 VAC 25-10-40. Identification of interested persons and groups.

The major groups interested in the regulatory process of the board are:

1. Business and labor associations and organizations such as the Virginia Manufacturers Association and the Virginia State AFL-CIO;
2. Persons, groups, businesses, industries, and employees affected by the specific regulation who have previously expressed an interest by writing or participating in public hearings; and
3. Persons or groups who have asked to be placed on a ~~mailing~~ *an electronic or mail notification* list.

16 VAC 25-10-50. Public involvement with formulation of regulations.

A. The board shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The board shall consider the petition and ~~provide a response within 180 days~~ *respond in accordance with the Administrative Process Act*.

B. The petition, at a minimum, shall contain the following information:

1. Name, mailing address and telephone number of petitioner;
2. *E-mail address of petitioner, if applicable;*
- ~~2-~~ 3. Petitioner's interest in the proposed action;
- ~~3-~~ 4. *Substance and purpose of the requested rulemaking including recommended regulation or addition, deletion or amendment to a specific regulation;*
- ~~4-~~ 5. Statement of need and justification for the proposed action;

~~5-~~ 6. Statement of impact on the petitioner and other affected persons; and

~~7-~~ 7. *Reference to the legal authority of the agency to take the action requested; and*

~~6-~~ 8. Supporting documents, as applicable.

16 VAC 25-10-80. Notice of Intended Regulatory Action (NOIRA).

~~A-~~ A. ~~The department, at the direction of the board, will identify persons or groups, as referred to in 16 VAC 25-10-40, interested in the development of the regulation and assemble the appropriate mailing list.~~

~~B-~~ B. A. The board shall issue a NOIRA whenever it intends to ~~consider the development, amendment~~ *develop, amend* or repeal of any regulation *subject to the Administrative Process Act (APA)*. The NOIRA will include: ~~all of the information required by the APA.~~

- ~~1-~~ 1. ~~Subject of the proposed regulation;~~
- ~~2-~~ 2. ~~Identification of the persons or groups affected;~~
- ~~3-~~ 3. ~~Summary of the purpose of the proposed regulation and the issues involved;~~
- ~~4-~~ 4. ~~Listing of applicable laws or regulations, and locations where these documents can be reviewed or obtained;~~
- ~~5-~~ 5. ~~Explanation of federal requirements for adoption and specific obligations of the board, if applicable;~~
- ~~6-~~ 6. ~~Request for comments from interested parties and deadline for receipt of the written comments;~~
- ~~7-~~ 7. ~~Notification of time and place of open meetings, if the board intends to hold open meetings;~~
- ~~8-~~ 8. ~~Name, address and telephone number of staff person to be contacted for further information; and~~
- ~~9-~~ 9. ~~Statement that the board intends to hold a public hearing on the proposed regulation after it is published.~~

~~C-~~ B. If appropriate, the board will appoint an advisory group as outlined in 16 VAC 25-10-60.

~~D-~~ C. The NOIRA will be disseminated to the public via:

1. Distribution by mail, facsimile, *e-mail* or other appropriate delivery method to persons ~~on the appropriate mailing list~~ *interested in the board's regulatory process;*
2. Publication in The Virginia Register of Regulations;
- ~~3-~~ 3. ~~Publication in a newspaper of statewide circulation; or~~
- ~~4-~~ 4. ~~Publication in newspapers in localities particularly affected by the regulation. The localities particularly affected have been identified by the department at the direction of the board.~~
3. *Posting on the Regulatory Town Hall website; and*
4. *Posting on agency website.*

Proposed Regulations

16 VAC 25-10-90. Proposed regulations.

A. After consideration of public comment, the board may prepare a proposed draft regulation and any necessary documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group.

~~B. The commissioner, at the direction of the board, will present the proposed draft to the secretary's office for review and concurrence prior to the formal adoption by the board and the beginning of the 60-day public comment period.~~

C. ~~B.~~ The board will submit the proposed regulation to a 60-day public hearing or comment period by forwarding the following *appropriate* documents to the Registrar of Regulations *and the Regulatory Town Hall* by the established submission date for the desired date of publication in The Virginia Register and the beginning of the 60-day comment period: *The proposed regulation will also be posted on the agency's website and distributed by mail, facsimile or e-mail to persons on the appropriate notification list.*

1. Notice of public hearing or comment period, which will contain the following:

- a. The date, time and place of the public hearing (Public hearing is defined in 16 VAC 25-10-10 of this chapter);
- b. The legal authority of the board to act; and
- c. ~~The name, address and telephone number of an individual to contact for further information and where to submit written comments.~~

2. Full text of the regulation;

3. Summary of the regulation;

4. ~~Statement of the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed;~~

~~5. Statement of the purpose of the regulation, defined as the rationale or justification for the provisions of a new regulation or changes to an existing regulation, from the standpoint of the public's health, safety or welfare;~~

~~6. Statement of the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation;~~

~~7. Statement of the issues of the regulations, defined as the primary advantages and disadvantages for the public, and as applicable for the department or the state, of implementing the new or amended regulatory provisions;~~

~~8. Statement of the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance with the new regulation or amendments, and the identity of any localities particularly affected by the regulation. The estimated impact shall represent the board's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation;~~

~~9. A copy of the written assurance from the Office of the Attorney General which states that the board has the statutory authority to issue the proposed regulation;~~

~~10. An explanation of how clarity and simplicity were assured in drafting the regulations;~~

~~11. A statement describing the alternative approaches that were considered to meet the need the proposed regulations address, and assurance that the proposed regulations are the least burdensome available alternative; and~~

~~12. A schedule setting forth when, after the effective date of the regulation, the board will evaluate it for effectiveness and continued need.~~

~~D. Concurrently with the preceding step, the board will submit required documentation to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.~~

~~E. Upon receipt of the proposed regulation and appropriate documentation, the Registrar of Regulations will publish the summary of the regulation and the public hearing notice in The Virginia Register and in a Richmond area newspaper of general circulation. If applicable, the department will request that the Registrar publish the notice in newspapers in other areas of the state. The department will mail a copy of the notice to persons and groups on the appropriate mailing list.~~

~~F. During the public comment period, the regulation will be available for review concurrently by the following:~~

1. The public;
2. The Governor;
3. The General Assembly;
4. The Secretary of Commerce and Trade; and
5. The Attorney General.

16 VAC 25-10-100. Completion of the adoption process.

A. The board shall prepare a summary of the oral and written comments received during the 60-day public comment period and the board's response to the comments. A draft of the board's summary shall be sent to all parties who commented on the proposed regulation. The summary shall be sent at least five days before final adoption of the regulation.

B. At the end of the 60-day public comment period, the department shall prepare the final proposed regulation.

C. The final regulation shall be submitted to the board for adoption.

D. The board shall submit the final regulation to the Registrar of Regulations *and the Regulatory Town Hall* for publication in The Virginia Register at least 30 days prior to the effective date of the regulation.

~~E. The following documents shall be sent to the Registrar's office. Concurrently, these documents shall be sent to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.~~

1. A copy of the final regulation.

~~2. A current summary and statement as to the basis, purpose, substance, issues, and impact of the regulation.~~

~~3. The summary of the oral and written comments received during the 60-day public comment period and the board's response to the comments.~~

16 VAC 25-10-120. Notice of proposed federal regulatory action.

A. When advised of proposed federal regulatory action, the board will prepare a general notice of the proposed federal regulatory action for publication in ~~The Virginia Register~~ *on the agency website*. The general notice will include:

1. Subject of the proposed regulation;
2. Summary of the issue involved and purpose of the proposed regulation;
3. Timetable for submitting written comments or notification of desire to be heard at hearing or both;
4. Time and place of public hearing;
5. Request that comments be submitted to OSHA with a copy to the Virginia Department of Labor and Industry;
6. Name and address of contact at OSHA; and
7. Copy of proposed regulation *or link to OSHA proposed federal action*.

B. The notice will be disseminated to the appropriate persons or groups identified ~~and placed on a mailing list assembled in accordance with 16 VAC 25-10-40 of this chapter.~~

VA.R. Doc. No. R02-17; Filed August 6, 2002, 11:08 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: 18 VAC 80-20. Board for Hearing Aid Specialists Regulations (amending 18 VAC 80-20-10, 18 VAC 80-20-30, 18 VAC 80-20-40, 18 VAC 80-20-50, 18 VAC 80-20-70, 18 VAC 80-20-80, 18 VAC 80-20-120 through 18 VAC 80-20-160, 18 VAC 80-20-180, and 18 VAC 80-20-200 through 18 VAC 80-20-270; repealing 18 VAC 80-20-60 and 18 VAC 80-20-170).

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

Public Hearing Date: October 7, 2002 - 9 a.m.
Public comments may be submitted until 5 p.m. on October 25, 2002.
(See Calendar of Events section for additional information)

Agency Contact: William H. Ferguson, II, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8310, FAX (804) 367-6295, or e-mail hearingaidspec@dpor.state.va.us.

Basis: Section 54.1-201 of the Code of Virginia describes each regulatory board's power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

Purpose: The intent of the proposed regulatory action is to amend existing regulations governing the licensure and practice of hearing aid specialists. The purpose of the proposed amendments is to clarify entry requirements for licensure, modify the procedures and provisions regarding renewal and reinstatement, and ensure that the standards of practice and conduct meet current laws.

The intent is to protect the health, safety, and welfare of the citizens of the Commonwealth by providing that the standards of practice and conduct meet all current laws and statutes and the board is meeting its statutory mandate to ensure minimal competence of all licensees without burdensome requirements.

Substance: The proposed regulatory action will amend and clarify definitions; clarify the basic qualifications and entry level requirements for licensure by simplifying the language; clarify the qualifications for a temporary permit; change the examination requirements to only require retaking failed sections; remove language allowing delay or withholding of services by the department relating to noncompliance with consent and final orders. Language is being proposed that will require the disclosure of felony or misdemeanor convictions on applications for licensure that is consistent with other board regulations of the department. The proposed regulatory action will also make less restrictive certain requirements pertaining to electronic audiometer calibration and purchase agreements.

Issues: The proposed regulatory action is an advantage to the public in that it will provide clear and effective regulations to ensure competency and integrity by practitioners of hearing aid specialists. There are no disadvantages to the public or the Commonwealth with regards to the amending of the regulations governing the licensure and practice of hearing aid specialists.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 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.

Proposed Regulations

Summary of the proposed regulation. The Board for Hearing Aid Specialists (board) proposes several amendments to the regulations. Substantive changes include (i) allowing the board to extend temporary permits under specified appropriate circumstances, (ii) allowing examinees to retake only the portions of the licensing exam that they have failed, (iii) removing the requirement that speech tests be conducted after hearing aid fittings, and (iv) removing the requirement that specialists refer clients to a physician if tinnitus is detected.

Estimated economic impact. The board proposes to allow, at its discretion, the extension of temporary permits for individuals who have suffered serious personal illness or injury, or death in their immediate family, or obligation of military service or service in the Peace Corps, or for other similar circumstances approved by the board. A licensed sponsor directly supervises temporary permit holders. This proposed change clearly benefits temporary permit holders who have had their training interrupted for legitimate reasons. Since licensed sponsors directly supervise temporary permit holders, it does not appear that public safety is compromised. Thus, this change likely creates net benefit.

Under the current regulations, individuals who fail any portion of the licensing examination must retake the entire exam. The board proposes to require that applicants only retake exam sections that were failed. This is clearly beneficial for applicants; they may be able to pass the exam in fewer attempts and some individuals may eventually pass who otherwise would not have passed. Applicants still must demonstrate sufficient knowledge for all sections, though not necessarily the same sections at the same time. No data is available to determine whether under the proposed examination system individuals who pass who otherwise would not have, and individuals who pass sooner than they otherwise would, are any less competent or competent enough for public safety as licensed hearing aid specialists. Since this information is unavailable, it cannot be determined whether this proposed amendment creates a net benefit.

Under the current regulations, hearing aid specialists are required to conduct speech tests both before and after the fitting of a hearing aid to a client. The board's proposed language implies that post-fitting tests used to evaluate the fitting are no longer required. The chairman of the board has indicated that that is not the board's intent. The board's intent is to continue to require post-fitting tests, but no longer to require that those tests are speech tests. According to the chairman, other post-fitting tests, such as sound field testing, are at least as effective as speech tests in measuring the quality of the fit. The board chairman and agency staff have agreed to recommend to the board that, before the final regulatory stage, language be added to the regulation clarifying that effective post-fitting tests are required.

Speech tests involve the specialist speaking to the client and evaluating their responses. Sound field testing involves the specialist operating calibrated equipment that produces various controlled sounds and evaluating the clients' responses in a soundproof room. Thus, it seems likely that permitting specialists to use sound field testing and other effective post-fitting tests in place of speech tests will not

decrease the effectiveness of the specialists' evaluations and may perhaps improve the evaluations. Thus, assuming the board does add language that clarifies that effective post-fitting tests are required, this proposed change will most likely not produce a net cost, and may produce a net benefit.

The board proposes to remove the requirement that hearing aid specialists check for tinnitus and if found refer the person to a licensed physician. (Tinnitus is a ringing or roaring sound that is caused by a bodily condition, e.g., as a disturbance of the auditory nerve or wax in the ear, and can usually be heard only by the one affected.) The board reports that it believes this provision represents good practice, but that it is proposing to remove it because someone at the Virginia Society for Hearing Aid Specialists expressed belief that it conflicts with federal law (21 CFR 801.420). However, staff from both the Department of Planning and Budget and the Attorney General's office have determined that there is no direct conflict with federal law, and in matters of health and safety states often give greater protection than federal law. An audiologist with whom DPB consulted states that as many as 10% of all unilateral cases of tinnitus as a primary symptom are highly suspect for a tumor of the acoustic nerve. Since checking for tinnitus only involves the specialist asking whether the client has ringing in the ears or similar symptoms,¹ and the detection of tinnitus may help individuals with serious health problems be diagnosed and treated in perhaps more than rare circumstances, eliminating the requirement to check for tinnitus and the subsequent referral is likely to produce a net economic loss for the Commonwealth.

Businesses and entities affected. The proposed regulations affect the 473 hearing aid specialists and their clients.

Localities particularly affected. The proposed regulations potentially affect individuals in all localities.

Projected impact on employment. Permitting examinees to only retake portions of the licensing examination that they have failed may allow some individuals to eventually pass the exam who otherwise would not have passed. This may increase the number of licensed hearing aid specialists.

Effects on the use and value of private property. Changing the requirement that speech tests be conducted after the fitting of a hearing aid to that effective post-fitting tests are required may result in the purchase of additional equipment for other post-fitting evaluation procedures. Businesses that sell such equipment increase their sales and value.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency/board concurs with the economic impact analysis.

Summary:

The proposed amendments (i) clarify entry requirements for licensure; (ii) modify the procedures and provisions regarding renewal and reinstatement; and (iii) ensure that

¹ Checking for tinnitus procedure source: chairman of the Board for Hearing Aid Specialists.

the standards of practice and conduct meet all current laws and statutes.

Substantive changes (i) allow the board to extend temporary permits under specified appropriate circumstances; (ii) allow examinees to retake only the portions of the licensing exam that they have failed; (iii) remove the requirement that speech tests be conducted after hearing aid fittings; and (iv) remove the requirement that specialists refer clients to a physician if tinnitus is detected.

18 VAC 80-20-10. Definitions.

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

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

"Audiologist" means any person who ~~accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting hearing and related communicative disorders or who assists persons in the perception of sound and is not authorized by another regulatory or health regulatory board to perform any such services engages in the practice of audiology as defined by § 54.1-2600 of the Code of Virginia.~~

"Board" means ~~the~~ Board for Hearing Aid Specialists.

"Department" means ~~the~~ Department of Professional and Occupational Regulation.

"Hearing aid specialist" means a person who engages in the practice of fitting and dealing in hearing aids or who advertises or displays a sign or represents himself as a person who practices the fitting and dealing of hearing aids.

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

"Licensee" means any person holding a valid license issued by the Board for Hearing Aid Specialists for the practice of fitting and dealing in hearing aids, as defined in § 54.1-1500 of the Code of Virginia.

"Otolaryngologist" means a licensed physician specializing in ear, nose and throat disorders.

~~*"Otologist"* means a licensed physician specializing in diseases of the ear.~~

"Reciprocity" means an agreement between two or more states ~~that will~~ to recognize and accept one another's regulations and laws for privileges for mutual benefit.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

18 VAC 80-20-30. Basic qualifications for licensure.

A. Every applicant ~~to the board~~ for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years of age.
2. The applicant has ~~a good reputation for honesty, truthfulness, and fair dealing, and is competent to transact the business of a hearing aid specialist in such a manner as to safeguard the interests of the public successfully completed high school or a high school equivalency course.~~
3. The applicant is ~~in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist which was suspended, revoked, surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist. has training and experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:~~
 - a. Basic physics of sound;
 - b. Basic maintenance and repair of hearing aids;
 - c. The anatomy and physiology of the ear;
 - d. Introduction to psychological aspects of hearing loss;
 - e. The function of hearing aids and amplification;
 - f. Visible disorders of the ear requiring medical referrals;
 - g. Practical tests utilized for selection or modification of hearing aids;
 - h. Pure tone audiometry, including air conduction, bone conduction, and related tests;
 - i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;
 - j. Masking when indicated;
 - k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;
 - l. Taking earmold impressions;
 - m. Proper earmold selection;
 - n. Adequate instruction in proper hearing aid orientation;
 - o. Necessity of proper procedures in after-fitting checkup; and
 - p. Availability of social service resources and other special resources for the hearing impaired.

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4. The applicant has ~~successfully completed high school or a high school equivalency course, provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:~~

~~a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or~~

~~b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.~~

5. The applicant is fit and suited to engage in the practice of fitting and dealing in hearing aids. The applicant must disclose if he has been convicted in any jurisdiction of a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession or of any felony shall not have been convicted or found guilty of any crime directly related to the practice of fitting and dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. The applicant review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

6. The applicant has training and experience which covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:

~~a. Basic physics of sound;~~

~~b. Basic maintenance and repair of hearing aids;~~

~~c. The anatomy and physiology of the ear;~~

~~d. Introduction to psychological aspects of hearing loss;~~

~~e. The function of hearing aids and amplification;~~

~~f. Visible disorders of the ear requiring medical referrals;~~

~~g. Practical tests of proficiency in the required techniques as they pertain to the fitting of hearing aids;~~

~~h. Pure tone audiometry, including air conduction, bone conduction, and related tests;~~

~~i. Live voice or recorded voice speech audiometry, including speech reception, threshold testing and speech discrimination testing.~~

~~j. Masking when indicated;~~

~~k. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;~~

~~l. Taking earmold impressions;~~

~~m. Proper earmold selection;~~

~~n. Adequate instruction in proper hearing aid orientation;~~

~~o. Necessity of proper procedures in after fitting checkup; and~~

~~p. Availability of social service resources and other special resources for the hearing impaired.~~

7. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 6 of this subsection:

~~a. An affidavit on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met; or~~

~~b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training.~~

6. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.

8. 7. The applicant has disclosed his physical address. A post office box is not acceptable.

9. 8. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in the Commonwealth Virginia.

10. 9. The applicant has submitted the required application with the proper fee as referenced in 18 VAC 80-20-70 and signed, as part of the application, an affidavit certifying a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview with the applicant or both. Failure of an applicant to comply with a written request from the board for additional information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application. The board may refuse initial licensure due to the applicant's failure to comply with entry requirements. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

18 VAC 80-20-40. Qualifications for a temporary permit.

~~Any~~ A. Any individual seeking may apply for a temporary permit shall submit an application and the proper fees as listed in ~~18 VAC 80-20-70~~, which is to be used solely for the purpose of gaining the training and experience required to become a licensed hearing aid specialist in Virginia. ~~On the application for a temporary permit,~~ The licensed sponsor shall certify that he assumes full responsibility for the competence and proper conduct of the temporary permit holder and will not assign the permit holder to carry out independent field work without on-site direct supervision until he is adequately trained for such independent activity be identified on the application for a temporary permit and the licensed sponsor shall comply strictly with the provisions of subdivision 2 of this subsection.

1. A temporary permit shall be issued for a period of 12 months and may be extended once for not longer than six months. After a period of 18 months an extension is no longer possible and the former temporary permit holder shall sit for the examination in accordance with this section. *The board may, at its discretion, extend the temporary permit for a temporary permit holder who suffers serious personal illness or injury, or death in his immediate family, or obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation of these circumstances must be received by the board no later than 12 months after the date of the expiration of the temporary permit or within six months of the completion of military or Peace Corps service, whichever is later.*

2. ~~The temporary permit holder's licensed sponsor shall return the temporary permit to the board should the training program be discontinued for any reason.~~ Every applicant for a temporary permit shall provide information on application establishing that:

- a. The applicant for a temporary permit is at least 18 years of age.
- b. The applicant for a temporary permit has successfully completed high school or a high school equivalency course.

3. The applicant shall not have been convicted or found guilty of any crime directly related to the practice of fitting and dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

4. The applicant for a temporary permit is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant for a temporary permit must

disclose if he has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application, the applicant for a temporary permit must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. The applicant for a temporary permit must also disclose whether he has been licensed previously in Virginia as a hearing aid specialist.

5. The applicant for a temporary permit has disclosed his physical address. A post office box is not acceptable.

6. The applicant for a temporary permit has submitted the required application with the proper fee referenced in 18 VAC 80-20-70 and has signed, as part of the application a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

B. The licensed hearing aid specialist who agrees to sponsor the applicant for a temporary permit shall certify on the application that as sponsor, he:

1. Assumes full responsibility for the competence and proper conduct of the temporary permit holder with regard to all acts performed pursuant to the acquisition of training and experience in the fitting and dealing of hearing aids;

2. Will not assign the temporary permit holder to carry out independent field work without on-site direct supervision by the sponsor until the temporary permit holder is adequately trained for such activity;

3. Will personally provide and make available documentation, upon request by the board or its representative, showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; and

4. Will return the temporary permit to the department should the training program be discontinued for any reason.

C. The licensed sponsor shall provide training and shall ensure that the temporary permit holder under his supervision gains experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories and services:

1. Basic physics of sound;
2. Basic maintenance and repair of hearing aids;
3. The anatomy and physiology of the ear;
4. Introduction to psychological aspects of hearing loss;
5. The function of hearing aids and amplification;
6. Visible disorders of the ear requiring medical referrals;
7. Practical tests utilized for selection or modification of hearing aids;
8. Pure tone audiometry, including air conduction, bone conduction, and related tests;

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9. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

10. Masking when indicated;

11. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

12. Taking earmold impressions;

13. Proper earmold selection;

14. Adequate instruction in proper hearing aid orientation;

15. Necessity of proper procedures in after-fitting checkup; and

16. Availability of social service resources and other special resources for the hearing impaired.

D. The board may make further inquiries and investigations with respect to the qualifications of the applicant for a temporary permit or require a personal interview, or both.

E. All correspondence from the board to the temporary permit holder shall be addressed to both the temporary permit holder and the licensed sponsor and shall be sent to the business address of the licensed sponsor.

18 VAC 80-20-50. Qualifications for licensure by reciprocity.

~~An individual~~ Every applicant for Virginia licensure through reciprocity who is currently licensed as a hearing aid specialist in good standing in another jurisdiction ~~may be granted a Virginia license provided shall provide information upon application establishing that the requirements and standards under which the license was issued are substantially equivalent to and not conflicting with the provisions of this chapter. Upon receipt of the application for reciprocity and fee, and after a review of the application, the board may grant a license upon successful completion of The applicant shall file the application for reciprocity with, and pay a fee to, the board, and must successfully complete the specified sections of the examination.~~

18 VAC 80-20-60. License for physicians. (Repealed.)

~~An individual who is a physician licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification may apply for a hearing aid specialist license. The licensed physician shall not be required to pass an examination as a prerequisite to obtaining a license as a hearing aid specialist. The physician shall submit an application with either verification of certification by the American Board of Otolaryngology or verification of successful completion of residency or training program, and submit the proper fee referenced in 18 VAC 80-20-70.~~

18 VAC 80-20-70. Fees.

A. All fees are nonrefundable and shall not be prorated. The date of receipt by the board or its agent is the date which will be used to determine whether or not it is on time.

B. Application and examination fees must be submitted with the application for licensure.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus the additional processing charge ~~shown below~~ established by the department.

The following fees apply:

Fee Type	Amount Due	When Due
Application Fee	\$130	With application (to be paid by all applicants for initial licensure except reciprocal applicants)
Examination Fee	\$110	With application
Licensure Fee for Reciprocity	\$190	With application (includes exam fee)
Temporary Permit Fee	\$130	With application
Re-examination Fee	\$95	With application (per written or practical part) (Written or practical)
Renewal	\$175	Up to the expiration date on the license plus 30-day grace period
Reinstatement	\$350	30 days - 12 months after the expiration date on the license
Duplicate Wall Certificate	\$25	With written request
Dishonored Check	\$25	Upon notification from the financial institution

18 VAC 80-20-80. Examinations.

A. All examinations required for licensure shall be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental agency or organization.

B. The candidate for examination shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and testing service with regard to conduct at the examination shall be grounds for denial of the application.

C. Applicants for licensure shall pass a two part examination, of which Part I is a written examination and Part II is a practical examination.

1. The applicant shall pass each section of the written and practical examination administered by the board. ~~Candidates failing one section of the written examination~~

~~will be required to retake both sections.~~ Candidates failing one or more sections of the *written* or practical examination will be required to retake only those sections failed.

2. Any candidate failing to achieve a passing score on all sections in three successive scheduled examinations must reapply as a new applicant for licensure and repeat all sections of the written and practical examination.

3. If the temporary permit holder fails to achieve a passing score on any section of the examination in three successive scheduled examinations, the temporary permit shall expire upon receipt of the examination failure letter resulting from the third attempt.

18 VAC 80-20-120. Board discretion to deny renewal.

The board may deny renewal of a license for the same reasons as it may refuse initial licensure *as set forth in Part II* or discipline a licensee *as set forth in Part V of this chapter*. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (~~§ 9-6.14:1 et seq.~~, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia).

~~Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding service provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.~~

18 VAC 80-20-130. Qualifications for renewal.

Applicants for renewal of a license shall continue to meet the standards of entry as set forth in 18 VAC 80-20-30 A 2, 18 VAC 80-20-30 A 3, and 18 VAC 80-20-30 A 5, ~~18 VAC 80-20-30 A 8 and through 18 VAC 80-20-30 A 9 of this chapter.~~

18 VAC 80-20-140. Reinstatement required.

If a licensee fails to meet the requirements for renewal and submit the renewal fee within 30 days after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

1. Applicants for reinstatement shall continue to meet the standards of entry in 18 VAC 80-20-30 A 2, 18 VAC 80-20-30 A 3, and 18 VAC 80-20-30 A 5, ~~18 VAC 80-20-30 A 8 and through 18 VAC 80-20-30 A 9 of this chapter.~~

2. Applicants for reinstatement shall submit the required fee referenced in 18 VAC 80-20-70 ~~of this chapter.~~

3. ~~Twelve months~~ Three years after the expiration date on the license, reinstatement is no longer possible. To resume practice as a hearing aid specialist, the former licensee must apply as a new applicant for licensure, meeting all educational, examination, and experience requirements as listed in the regulations current at the time of reapplication.

4. Any hearing aid specialist activity conducted subsequent to the expiration date of the license may constitute unlicensed activity and may be subject to prosecution by the Commonwealth under §§ 54.1-111 and 54.1-202 of the Code of Virginia.

18 VAC 80-20-150. Board discretion to deny reinstatement.

The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (~~§ 9-6.14:1 et seq.~~, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia).

~~Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.~~

18 VAC 80-20-160. Status of license during the period prior to reinstatement.

A. When a licensee is reinstated, the license shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license, *which is the expiration date assigned to all licenses at the time the license is reinstated.*

B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

18 VAC 80-20-170. Fines; revocation or suspension of license. (Repealed.)

~~The board may fine a licensee, or revoke or suspend a license, or both, when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.~~

18 VAC 80-20-180. Maintenance of licenses.

A. Notice in writing shall be given to the board in the event of any change of business or individual name or address. Such notice shall be mailed to the board within 30 days of the change of the name or location. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board in writing of any change of name or address.

B. All licensees shall operate under the name in which the license is issued.

C. All licenses issued by the board must be visibly displayed *at each physical site of employment* in such a manner that the public can easily read the name of the licensee. *If the individual practices at more than one site, a photocopy of the license is acceptable.*

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18 VAC 80-20-200. Documentation provided to each purchaser.

The licensee shall deliver to each purchaser at the time of a sale, repair or service: ~~4. a receipt signed receipt by the licensee or designee and showing licensee's business address, license number and business telephone number; and:~~

~~1. Licensee's business address, license number and business telephone number;~~

~~a. 2. The make and model of the hearing aid or equipment to be furnished, repaired or serviced and, in addition, serial numbers on models to be repaired and serviced; and~~

~~b. 3. The full terms of the sale transaction clearly stated.~~

~~2. If an aid which is not new is sold or rented, the purchase agreement and the hearing aid container shall be clearly marked "used" or "reconditioned," whichever is applicable, with terms of warranty, if any.~~

18 VAC 80-20-210. Measures to take when first contact is established with any purchaser or potential prospective purchaser.

A. When first contact is established with any purchaser or prospective purchaser outside the hearing aid specialist's office principal place of business, the licensee shall provide a disclosure form prescribed by the board containing information that the ~~person~~ purchaser or prospective purchaser will need to obtain service/maintenance. The disclosure form shall include:

1. Address and telephone number where the hearing aid specialist can be reached.

2. Days and hours contact can be made;

3. Whether service/maintenance will be provided in the office or in the ~~person's~~ home of the purchaser or prospective purchaser; and

~~4. If the hearing aid specialist has an office, name and address of the office as listed with the board; and~~

~~5. 4. If the hearing aid specialist has no office principal place of business in Virginia, a clear statement that there is no office principal place of business in Virginia.~~

B. When first contact is established with any purchaser or prospective purchaser the licensee shall:

1. Advise ~~that person~~ the purchaser or prospective purchaser that hearing aid specialists are not licensed to practice medicine; and

2. Advise ~~that person~~ the purchaser or prospective purchaser that no examination or representation made by the specialist should be regarded as a medical examination, opinion, or advice.

a. A statement that this initial advice was given to the purchaser or prospective purchaser shall be entered on the purchase agreement in print as large as the other printed matter on the receipt.

b. Exemption: Hearing aid specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of this subsection.

18 VAC 80-20-220. Purchase agreement terminology.

The following terminology shall be used on all purchase agreements in accordance with the Model Purchase Agreement provided by the board:

~~1. The undersigned seller agrees to sell and the undersigned purchaser agrees to purchase hearing aid(s) and accessories, according to terms set forth below:~~

~~a. The purchaser was advised that the seller is not a physician licensed to practice medicine; and~~

~~b. No examination or representation made by the seller should be regarded as a medical examination, opinion, or advice.~~

~~2. Exemption: Hearing aid specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of subdivisions 1 a and b of this section.~~

A. Each hearing aid shall be sold through a purchase agreement which shall:

1. Show the licensee's business address, license number and business telephone number and signature;

2. Comply with federal and Virginia laws and regulations, United States Food and Drug Administration (FDA) regulations, the Virginia Home Solicitation Sales Act (Chapter 2.1 of Title 59.1 of the Code of Virginia), and the Virginia Consumer Protection Act (Chapter 17 of Title 59.1 of the Code of Virginia);

3. Clearly state, if the hearing aid is not new and is sold or rented, that it is "used" or "reconditioned," whichever is applicable, including the terms of warranty, if any. The hearing aid container shall be clearly marked with the same information contained in the purchase agreement.

4. Identify the brand names and model of the hearing aid being sold, and the serial number of the hearing aid shall be provided, in writing, to the purchaser or prospective purchaser at the time of delivery of the hearing aid;

5. Disclose the full purchase price;

6. Disclose the down payment and periodic payment terms in cases where the purchase price is not paid in full at delivery;

7. Disclose any nonrefundable fees;

8. Disclose any warranty;

9. Explain the provisions of § 54.1-1505 of the Code of Virginia, which entitles the purchaser to return the hearing aid, in the 10-point bold face type that is bolder than the type in the remainder of the purchase agreement; and

10. Disclose that the licensee or temporary permit holder is not a physician licensed to practice medicine in Virginia and that no examination or representation made shall be regarded as a medical examination, opinion or advice;

B. Subdivision A 10 of this section shall not apply to sales made by a licensed hearing aid specialist who is a physician licensed to practice medicine in Virginia.

18 VAC 80-20-230. Fitting and sale of hearing aids for children.

Any person engaging in the fitting and sale of hearing aids for a child under 18 years of age shall:

1. Ascertain whether such child has been examined by a ~~otolaryngologist~~ *licensed physician* for recommendation within six months prior to fitting; and
2. No child shall be fitted ~~without such recommendation~~ *with a hearing aid unless the licensed hearing aid specialist has been presented with a written statement signed by the licensed physician stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.*

18 VAC 80-20-240. Physician statement regarding adult client's medical evaluation of hearing loss.

A. Each licensee or holder of a temporary permit, in counseling and instructing adult clients and prospective adult clients related to the testing, fitting, and sale of hearing aids, shall be required to recommend that the client obtain a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid.

B. Should the client decline the recommendation: ~~4.~~, a statement of such declination shall be obtained from the client over his signature. *Medical waivers that are a part of purchase agreements shall be in a separate section, which shall be signed by the client indicating his understanding of the medical waiver. A separate, additional client signature space shall be provided in all purchase agreements for the client to sign acknowledging his understanding of the purchase terms and conditions established by 18 VAC 80-20-200.*

- ~~2-~~ 1. Fully informed adult patients (18 years of age or older) may waive the medical evaluation ~~because of personal or religious beliefs.~~
- ~~3-~~ 2. The hearing aid specialist is prohibited from actively encouraging a prospective user to waive a medical examination.

~~B-~~ C. The information provided in ~~subdivisions 1 and 2 of~~ subsection A of this section must be made a part of the client's record kept by the hearing aid specialist.

18 VAC 80-20-250. Testing procedures.

It shall be the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements shall be:

1. Air Conduction Tests A.N.S.I. standard frequencies of 500-1000-2000-4000 Hertz. *Intermediate frequencies shall*

be tested if the threshold difference between octaves exceeds 15dB. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.

2. Bone Conduction Tests are to be made on every client--A.N.S.I. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test ear at any one frequency differ by 15 dB or if lateralization occurs.

3. Speech testings shall be made before ~~and after~~ fittings, ~~and the type of test(s), method of presentation, and results noted.~~ *Tests used to evaluate the fitting shall be recorded with type of test, method of presentation and the test results.*

4. The specialist shall check for the following conditions and, if they are found to exist, shall refer the client to a *licensed physician unless the client can show that his present condition is under treatment or has been treated:*

- a. Visible congenital or traumatic deformity of the ear.
- b. History of active drainage from the ear within the previous 90 days.
- c. History of sudden or rapidly progressive hearing loss within the previous 90 days.
- d. Acute or chronic dizziness.
- e. Unilateral hearing loss.
- f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.
- g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.
- ~~h. Tinnitus as a primary symptom.~~
- ~~h.~~ Pain or discomfort in the ear.

5. All tests shall have been conducted no more than six months prior to the fitting.

18 VAC 80-20-260. Calibration statement required.

A. Audiometers used in testing the hearing impaired must be in calibration.

B. Calibration must be done once a year or more often, if needed.

C. A certified copy of an electronic audiometer calibration ~~made within the past 12 months must be submitted to the board annually no later than November 1 of each year shall be maintained for three years and shall be made available to the department upon request.~~

18 VAC 80-20-270. Grounds for discipline.

The board may fine any licensee or suspend ~~or~~, revoke, or deny any license issued under the provisions of Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board, ~~or both pursuant to the provisions of.~~ *Disciplinary procedures are governed by the Administrative Process Act, Chapter 4-4 40 (§ 2.2-4000 et seq.) of Title 9 2.2 of the Code of Virginia when the licensee has been found*

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~~in violation of.~~ *In exercising its disciplinary function, the board will consider the totality of the circumstances of each case. Any licensee is subject to board discipline for any of the following:*

1. Improper conduct, including but not limited to:
 - a. Obtaining or renewing a license by false or fraudulent representation;
 - b. Obtaining any fee or making any sale by fraud or misrepresentation;
 - c. Employing to fit and sell hearing aids *a person* who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;
 - d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;
 - e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;
 - f. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true; or using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate;
 - g. Directly or indirectly giving, or offering to give, favors, paid referrals, or anything of value to any person who in his professional capacity uses his position to influence third parties to purchase products offered for sale by a hearing aid specialist; or
 - h. Failing to provide expedient, reliable and dependable services when requested by a client or client's guardian.
2. Failure to include on the ~~sales contract~~ *purchase agreement* a statement regarding home solicitation, ~~as when~~ required by federal and state law.
3. Incompetence or negligence, *as those terms are generally understood in the profession*, in fitting or selling hearing aids.
4. Failure to provide required or appropriate training resulting in incompetence or negligence, *as those terms are generally understood in the profession*, by a temporary permit holder under the licensee's sponsorship.
- ~~5. Violation of any other requirement or prohibition of Part IV of these rules.~~
- ~~6.~~ 5. Violating or cooperating with others in violating any provisions of ~~Chapter~~ *Chapters 1, 2, 3, and 15* of Title 54.1 of the Code of Virginia or any regulation of the board.
- ~~7.~~ Having ~~6.~~ *The applicant shall not have been convicted or found guilty of any crime directly related to the practice of fitting and dealing in hearing aids, regardless of the manner*

of adjudication, in any jurisdiction of the United States of any felony or of a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having elapsed. Except for misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any pleas of nolo contendere shall be considered a conviction for the purpose of this paragraph subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

NOTICE: The forms used in administering 18 VAC 80-20, Board for Hearing Aid Specialists Regulations, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

~~Application For A Hearing Aid Specialists License (eff. 7/24/95).~~

~~Application For Reinstatement of License (eff. 7/24/95).~~

~~Application For Reexamination (eff. 7/24/95).~~

License Application, 21LIC (rev. 9/00).

Temporary Permit Application, 21TPER (eff. 10/99).

Reinstatement Application, 21REI (rev. 10/99).

Reexamination Application, 21REEX (rev. 12/00).

Commonwealth of Virginia
 Department of Professional and Occupational Regulation
 3600 West Broad Street
 Post Office Box 11066
 Richmond, Virginia 23230-1066
 (804) 367-8509



Board for Hearing Aid Specialists
 LICENSE APPLICATION

A check or money order payable to the TREASURER OF VIRGINIA, or a completed credit card insert must be mailed with your application package.
 APPLICATION FEES ARE NOT REFUNDABLE.

NOTE If you wish to obtain a Temporary Permit, you must also submit a separate TEMPORARY PERMIT APPLICATION.

Select the **one** method of licensure you are using on this application.

Licensure...	Fee	<input checked="" type="checkbox"/>
of a physician	\$ 130	<input type="checkbox"/>
by reciprocity *	\$ 190	<input type="checkbox"/>
by examination *	\$ 240	<input type="checkbox"/>
* Includes \$110 Examination Fee		

- Name _____
 First Middle Last Generation (SR, JR, III)
- Social Security Number + - -
- Date of Birth _____
- Street Address (PO Box not accepted) _____
 City, State, Zip Code _____
- E-mail Address _____
- Telephone & Facsimile Numbers
 () - Telephone () - Facsimile () - Beeper/Cellular
- Current Employer _____
 Street Address _____
 City, State, Zip Code _____
- Do you have a current or expired temporary permit issued by the Virginia Board for Hearing Aid Specialists?
 No If no, skip to question #10.
 Yes Virginia Permit Number 2102 Expiration Date _____

9. Sponsor Verification of Training and Experience
 I, _____, a fully licensed Hearing Aid Specialist in the Commonwealth of Virginia, do hereby certify that _____ has completed the training and experience specified in 18 VAC 18-20-30 of the Board for Hearing Aid Specialists Rules and Regulations.
 Sponsor's Signature _____ VA License Number 2101

NOTE A certified copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training may be substituted for the Sponsor Verification of Training and Experience statement. Attach these documents to your completed application.

OFFICE USE ONLY	DATE	FEE	CLASS OF FEE	LICENSE NUMBER	ISSUE DATE
				2101	

Proposed Regulations

10. Do you have an expired hearing aid specialist license issued by the Virginia Board for Hearing Aid Specialists?
 No
 Yes Virginia License Number 2101 Expiration Date _____

11. Do you have a current or expired hearing aid specialist license, certification or registration from another state?
 No
 Yes If yes, list all the licenses, certificates and registrations in the following table *and* attach a Certification of Licensure/Letter of Good Standing, dated within the last 60 days, from each state.

State/Jurisdiction	License Number	Expiration Date

12. Have you ever been subject to a disciplinary action imposed by any (including Virginia) local, state or national regulatory body?
 No
 Yes If yes, list the jurisdiction in which the disciplinary action took place and the license number. Provide an explanation of events, including a description of the disciplinary proceeding and the type of sanctions that were imposed (i.e., suspension, revocation, voluntary surrender of license, monetary penalty, fine, reprimand, etc.). Attach copies of any correspondence or documentation (including a copy of the final order, decree or case decision) related to this matter. If necessary, you may attach a separate sheet of paper.

13. A. Have you ever been convicted in any jurisdiction of **any felony**? *Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.*
 No Yes If yes, please provide the information requested in #13.C.
- B. Have you ever been convicted in any jurisdiction of **any misdemeanor**? *Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.*
 No Yes If yes, please provide the information requested in #13.C.
- C. If you answered "yes" to either question 13.A. or 13.B., list the felony and/or misdemeanor conviction(s). Attach a copy of all applicable criminal conviction, state police and court records; information on the current status of incarceration, parole, probation, etc.; and any other information you wish to have considered with this application (i.e., reference letters, documentation of rehabilitation, etc.). If necessary, you may attach a separate sheet of paper.

14. Are you a physician who is licensed to practice in Virginia **and** certified by the American Board of Otolaryngology or eligible for this certification?
 No
 Yes If yes, skip to #18 and attach a copy of your current certificate, or a letter verifying completion of a residency/training program.

15. Did you pass the National Institute of Hearing Instruments Specialist (NIHIS) exam?
 No
 Yes If yes, attach a copy of your current NIHIS certificate.

16. Did you pass a practical exam in any other state?
 No
 Yes If yes, list the state and date of exam. _____

17. Professional hearing aid-related experience. If necessary, you may attach a separate sheet of paper.

Dates		Employer's Name and Address	Description of Duties	Supervisor's Name and Title
From	To			

By signing this application, you acknowledge that if you are not a Virginia resident, or move outside of Virginia while you hold a Virginia Hearing Aid Specialist License, you understand that this application serves as a written power of attorney, whereby you appoint the Director of the Department of Professional and Occupational Regulation, and his/her successors in office, to be your true and lawful agent and attorney-in-fact, in your stead, upon whom all legal process against and notice to you may be served and who is hereby authorized to enter an appearance in your behalf in any case or proceedings arising out of the trade or profession practiced; and that by submitting this application you hereby agree that any lawful process against you which is duly served on said agent and attorney-in-fact shall be of the same legal force and validity as if served upon you.

18. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. I will notify the Department if I am subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that I understand, and have complied with, all the laws of Virginia related to hearing aid specialist licensure under the provisions of Title 54.1, Chapter 15, of the Code of Virginia, and the Virginia Board for Hearing Aid Specialists Rules and Regulations. I also certify that I understand this affidavit.

Signature _____ Date _____

Notarization

In the State of _____, City/County of _____, subscribed and sworn before me, the undersigned Notary Public in and for the City/County aforesaid this ____ day of _____, _____.

My commission expires the ____ day of _____, _____.

Affix official seal here.

Signature of Notary Public

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

Please attach proof of your successful completion of high school or high school equivalency course.

11. Have you ever been subject to a disciplinary action imposed by any (including Virginia) local, state or national regulatory body?

No

Yes If yes, list the jurisdiction in which the disciplinary action took place and the license number. Provide an explanation of events, including a description of the disciplinary proceeding and the type of sanctions that were imposed (i.e., suspension, revocation, voluntary surrender of license, monetary penalty, fine, reprimand, etc.). Attach copies of any correspondence or documentation (including a copy of the final order, decree or case decision) related to this matter. If necessary, you may attach a separate sheet of paper.

12. A. Have you ever been convicted in any jurisdiction of **any felony**? *Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.*

No Yes If yes, please provide the information requested in #12.C.

B. Have you ever been convicted in any jurisdiction of **any misdemeanor**? *Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.*

No Yes If yes, please provide the information requested in #12.C.

C. If you answered "yes" to either question 12.A. or 12.B., list the felony and/or misdemeanor conviction(s). Attach a copy of all applicable criminal conviction, state police and court records; information on the current status of incarceration, parole, probation, etc.; and any other information you wish to have considered with this application (i.e., reference letters, documentation of rehabilitation, etc.). If necessary, you may attach a separate sheet of paper.

13. Professional hearing aid-related experience. If necessary, you may attach a separate sheet of paper.

Dates		Employer's Name and Address	Description of Duties	Supervisor's Name and Title
From	To			

Proposed Regulations

14. Sponsor Statement

I hereby certify that I am a licensed practicing Hearing Aid Specialist in the Commonwealth of Virginia and assume full responsibility for the competence and proper conduct of _____

Name of Temporary Permit Applicant

and will not assign him/her to carry out independent field work without on-site direct supervision until he/she is adequately trained for such independent activity.

Sponsor's Signature _____

Date _____

Sponsor's License Number 2 1 0 1

By signing this application, you acknowledge that if you are not a Virginia resident, or move outside of Virginia while you hold a Virginia Hearing Aid Specialist License, you understand that this application serves as a written power of attorney, whereby you appoint the Director of the Department of Professional and Occupational Regulation, and his/her successors in office, to be your true and lawful agent and attorney-in-fact, in your stead, upon whom all legal process against and notice to you may be served and who is hereby authorized to enter an appearance in your behalf in any case or proceedings arising out of the trade or profession practiced; and that by submitting this application you hereby agree that any lawful process against you which is duly served on said agent and attorney-in-fact shall be of the same legal force and validity as if served upon you.

15. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. I will notify the Department if I am subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that I understand, and have complied with, all the laws of Virginia related to hearing aid specialist licensure under the provisions of Title 54.1, Chapter 15, of the *Code of Virginia*, and the *Virginia Board for Hearing Aid Specialists Rules and Regulations*. I also certify that I understand this affidavit.

Signature _____

Date _____

Notarization

In the State of _____, City/County of _____, subscribed and sworn before me, the undersigned Notary Public in and for the City/County aforesaid this ____ day of _____, _____.

My commission expires the ____ day of _____, _____.

Affix official seal here.

Signature of Notary Public

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

Please attach proof of your successful completion of high school or high school equivalency course.

Proposed Regulations

10. A. Have you ever been convicted in any jurisdiction of **any felony**? *Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.*

No Yes If yes, please provide the information requested in #10.C.

B. Have you ever been convicted in any jurisdiction of **any misdemeanor**? *Any guilty plea or plea of nolo contendere must be disclosed on this application. Do not disclose violations that were adjudicated as a minor in the juvenile court system.*

No Yes If yes, please provide the information requested in #10.C.

C. If you answered "yes" to either question 10.A. or 10.B., list the felony and/or misdemeanor conviction(s). Attach a copy of all applicable criminal conviction, state police and court records; information on the current status of incarceration, parole, probation, etc.; and any other information you wish to have considered with this application (i.e., reference letters, documentation of rehabilitation, etc.). If necessary, you may attach a separate sheet of paper.

11. Update of professional hearing aid-related experience since your last renewal. **Please attach written verification of this experience.**

Dates		Employer's Name and Address	Description of Duties	Supervisor's Name and Title
From	To			

12. I, the undersigned, certify that the foregoing statements and answers are true, and I have not suppressed any information that might affect the Board's decision to approve this application. I will notify the Department if I am subject to any disciplinary action or convicted of any felony or misdemeanor charges (in any jurisdiction) prior to receiving the requested license. I certify that I understand, and have complied with, all the laws of Virginia related to hearing aid specialist licensure under the provisions of Title 54.1, Chapter 15, of the *Code of Virginia*, and the *Virginia Board for Hearing Aid Specialists Rules and Regulations*. I also certify that I understand this affidavit.

Signature _____ Date _____

Notarization

In the State of _____, City/County of _____, subscribed and sworn before me, the undersigned Notary Public in and for the City/County aforesaid this _____, day of _____, _____.

My commission expires the _____, day of _____, _____.

Affix official seal here.

 Signature of Notary Public

* State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

Commonwealth of Virginia
 Department of Professional and Occupational Regulation
 3600 West Broad Street
 Post Office Box 11066
 Richmond, Virginia 23230-1066
 (804) 367-8509



**Board for Hearing Aid Specialists
 RE-EXAMINATION APPLICATION**

**A check or money order payable to the TREASURER OF VIRGINIA, or
 a completed credit card insert must be mailed with your application package.
 APPLICATION FEES ARE NOT REFUNDABLE.**

Select the sections you are requesting.
 The fee for both Part I and Part II is \$110.

Part I	Written Examination \$95		Part II	Practical Examination \$95	
<input type="checkbox"/>	Section I	Theory Licensing Exam	<input type="checkbox"/>	Section I	Audiogram
<input type="checkbox"/>	Section II	Virginia Rules, Regulations, & Statutes	<input type="checkbox"/>	Section II	Speech Testing
			<input type="checkbox"/>	Section III	Earmold Impressions
			<input type="checkbox"/>	Section IV	Hearing Modification & Repair

1. Name _____
First
Middle
Last
Generation (SR, JR, III)

2. Social Security Number + --

3. Date of Birth _____

4. Street Address (PO Box not accepted) _____
 City, State, Zip Code _____

5. E-mail Address _____

6. Telephone & Facsimile Numbers _____
Telephone
Facsimile
Beeper/Cellular

7. Requested examination date _____

8. Date of your last examination _____

9. Signature _____ Date _____

+ State law requires every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to provide a social security number or a control number issued by the Virginia Department of Motor Vehicles.

OFFICE USE ONLY	DATE	FEES	CLASS OF FEES	LICENSE NUMBER	ISSUE DATE
				2101	

21REEX (12/01/00)

Board for Hearing Aid Specialists/RE-EXAM APP

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-610. Pertaining to Commercial Fishing and Mandatory Harvest Reporting (amending 4 VAC 20-610-60).

Statutory Authority: §§ 28.2-201, 28.2-204, 28.2-242, and 28.2-243 of the Code of Virginia.

Effective Date: August 1, 2002.

Summary:

The amendment requires the submission of Captain's Daily Fishing Reports by all owners of purse seine and snapper rig vessels licensed under § 28.2-402 of the Code of Virginia. This action has been taken in order to maintain compliance with the ASMFC Atlantic Menhaden Fisheries Management Plan-Amendment 1.

Agency Contact: Deborah R. Cawthon, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-610-60. Mandatory harvest reporting.

A. It shall be unlawful for any person holding a Commercial Fisherman Registration License to fail to fully report their catches and related information as set forth in this chapter.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§ 28.2-302.7 through 28.2-302.9 of the Code of Virginia to fail to report recreational catches upon request to those authorized by the commission.

C. All registered commercial fishermen and all holders of a Seafood Landing License shall complete a daily form accurately and legibly describing that day's harvest from Virginia tidal and federal waters. The forms used to record daily harvest shall be those provided by the commission or another form approved by the commission. Registered commercial fishermen may use more than one form when selling to more than one buyer.

D. Registered commercial fishermen shall submit a monthly catch report to the commission no later than the fifth day of

the following month. This report shall be accompanied by the daily catch records described in subsection C of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

E. The monthly catch report and daily catch records shall include the name and signature of the registered commercial fisherman and his license registration number, buyer or private sale information, date of harvest, city or county of landing, water body fished, gear type and amount used, number of hours gear fished, number of hours watermen fished, number of crew on board including captain, species harvested, market category, and live weight or processed weight or species harvested, and vessel identification (Coast Guard documentation number, Virginia license number or hull/VIN number). Any information on the price paid for the catch may be provided voluntarily.

F. Registered commercial fishermen not fishing during a month shall so notify the commission no later than the 5th of the following month by postage paid postal card provided by the commission or by calling the commission's toll free telephone line.

G. Any person licensed as a commercial seafood buyer pursuant to § 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily catch record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

H. Registered commercial fishermen shall maintain their daily catch records for one year and shall make them available upon request to those authorized by the commission.

I. Registered commercial fishermen and licensed seafood buyers shall allow those authorized by the commission to sample catch and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner which does not hinder normal business operations.

J. The reporting of oyster harvest and transactions shall be made in accordance with 4 VAC 20-200-40 ~~et seq.~~ and shall be exempted from the procedures described in this section.

K. The reporting of the harvest of federally permitted species from beyond Virginia's tidal waters that are sold to a federally permitted dealer shall be exempt from the procedures described in this section.

L. The owner of any purse seine vessel or bait seine (snapper rig) licensed under the provisions of § 28.2-402 of the Code of Virginia shall submit the Captain's Daily Fishing Reports to the National Marine Fisheries Service, in accordance with provisions of Amendment 1 to the Interstate Fishery Management Plan of the Atlantic States Marine Fisheries Commission for Atlantic Menhaden, which became effective July 2001.

NOTICE: The forms used in administering 4 VAC 20-610, Pertaining to Commercial Fishing and Mandatory Harvest Reporting, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Captain's Daily Fishing Report (eff. 8/02).

CAPTAIN'S DAILY FISHING REPORT											
NET No.		1 PLANT		2 DATE OF SETS		3		4		7	
NAME OF VESSEL		IF DID NOT LEAVE DOCK (CHECK ONE)		IF NO SETS WERE MADE (CHECK ONE)		6		12		14	
LEFT DOCK 5 ANCHORAGE		<input type="checkbox"/> WEATHER UNFIT FOR FISHING <input type="checkbox"/> UNLOADING		<input type="checkbox"/> ROUGH SEAS <input type="checkbox"/> OTHER		<input type="checkbox"/> WEATHER SUFFICIENT CREW <input type="checkbox"/> RADIO		MILES AND 13 DIRECTION TO SHORE		SEA 16 WATER TEMP.	
DATE		<input type="checkbox"/> LACKING SUFFICIENT CREW <input type="checkbox"/> MECHANICAL		<input type="checkbox"/> FOGGY <input type="checkbox"/> NO FISH SHOWING		<input type="checkbox"/> MECHANICAL <input type="checkbox"/> NET		10 FISH PLANE NO.		15	
TIME		<input type="checkbox"/> AM <input type="checkbox"/> PM		<input type="checkbox"/> HOLIDAY		9		11		16	
:		TIME		11		10		12		17	
8		START		END		13		14		15	
SET NO.		1		2		3		4		5	
1		2		3		4		5		6	
2		3		4		5		6		7	
3		4		5		6		7		8	
4		5		6		7		8		9	
5		6		7		8		9		10	
6		7		8		9		10		11	
7		8		9		10		11		12	
8		9		10		11		12		13	
9		10		11		12		13		14	
10		11		12		13		14		15	
11		12		13		14		15		16	
12		13		14		15		16		17	
16 REMARKS & COMMENTS 17											
DATE/TIME RETURN TO DOCK:											
CAPTAIN'S SIGNATURE 18											

This form is required by State Law.

DOCUMENTS INCORPORATED BY REFERENCE

Amendment 1 to the Interstate Fishery Management Plan for Atlantic Menhaden, Atlantic States Marine Fisheries Commission, July 2001.

VA.R. Doc. No. R02-311; Filed July 30, 2002, 10:29 a.m.

Final Regulations

* * * * *

Title of Regulation: **4 VAC 20-670. Pertaining to Recreational Gear Licenses (amending 4 VAC 20-670-30).**

Statutory Authority: §§ 28.2-201, 28.2-226 and 28.2-226.2 of the Code of Virginia.

Effective Date: August 1, 2002.

Summary:

The amendment clarifies the daily time limits for recreational crab pots and the closed season, which are established in § 38.2-704 of the Code of Virginia, and excludes special provisions pertaining to the commercial crab potting industry.

Agency Contact: Deborah R. Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-670-30. Gear restrictions.

A. It shall be unlawful for any person to use any gill net greater than 300 feet in length when licensed for recreational purposes under this chapter. Any person licensed to use a recreational gill net shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter.

B. It shall be unlawful for any person to use more than five crab pots or more than two eel pots when licensed for recreational purposes under this chapter.

C. Any law or chapter applying to the setting or fishing of commercial gill nets, cast nets, dip nets, crab pots, crab traps, or crab trot lines shall also apply to ~~these~~ *the gear licensed under this chapter* when set or fished for recreational purposes, except that (i) certain commercial gear used for recreational purposes shall be marked in accordance with the provisions described in 4 VAC 20-670-40, (ii) *the daily time limits for commercial crab potting and peeler potting established in 4 VAC 20-270-30 shall not apply to the setting and fishing of recreational crab pots licensed under this chapter, and (iii) the closed season and area established in § 28.2-709 of the Code of Virginia shall not apply to the setting and fishing of recreational crab pots licensed under this chapter.*

D. It shall be unlawful for any person to use any recreational gill net, fish cast net, or fish dip net to catch and possess any species of fish whose commercial fishery is regulated by an annual harvest quota.

E. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess more than the recreational possession limit for any species regulated by such a limit. When fishing from any boat, using gear licensed under this chapter, the total possession limit shall be equal to the number of persons on board legally eligible to fish multiplied by the individual possession limit for the regulated species, and the captain or operator of the boat shall be responsible for adherence to the possession limit.

F. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess any fish which is less than the lawful minimum size established for that species. When the taking of any fish is regulated by different size limits for commercial and recreational fishermen, that size limit applicable to recreational fishermen or to hook-and-line fishermen shall apply to the taking of that species by persons licensed under this chapter.

G. It shall be unlawful for any person licensed to use five crab pots under this chapter to fish these crab pots on Sunday.

H. It shall be unlawful for any person to use any ordinary crab trot line greater than 300 feet in length when licensed for recreational purposes under this chapter.

VA.R. Doc. No. R02-312; Filed July 30, 2002, 10:28 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Title of Regulation: **6 VAC 35-60. Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs (amending 6 VAC 35-60-10, 6 VAC 35-60-40, 6 VAC 35-60-170, 6 VAC 35-60-215, 6 VAC 35-60-290, 6 VAC 35-60-320, 6 VAC 35-60-330, 6 VAC 35-60-390, 6 VAC 35-60-410, 6 VAC 35-60-450, 6 VAC 35-60-500, 6 VAC 35-60-580, and 6 VAC 35-60-600; adding 6 VAC 35-60-225, 6 VAC 35-60-236, 6 VAC 35-60-237, 6 VAC 35-60-415, and 6 VAC 35-60-575; repealing 6 VAC 35-60-20, 6 VAC 35-60-30, 6 VAC 35-60-280, 6 VAC 35-60-400, 6 VAC 35-60-440, 6 VAC 35-60-460, 6 VAC 35-60-480, 6 VAC 35-60-490, 6 VAC 35-60-495, and 6 VAC 35-60-605).**

Statutory Authority: §§ 66-10, 66-27 and 66-28 of the Code of Virginia.

Effective Date: November 1, 2002.

Summary:

The amendments provide substantial guidance regarding the operations of offices on youth, stating many requirements in precise detail to increase accountability and to provide a more comprehensive basis for evaluating the effectiveness of programs.

Amendments implement the legislated shift in emphasis for offices on youth adopted by the 2000 Session of the General Assembly. Offices on youth are to focus more on planning and coordination and less on direct service delivery. However, when offices on youth do provide direct services, the amendments set new standards for such services that are consistent with requirements for other nonresidential services in the juvenile justice system.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Donald Carignan, Regulatory Coordinator, Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773 or e-mail carigndr@djj.va.state.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:6 VA.R. 855-868 December 3, 2001, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

6 VAC 35-60-10. Definitions.

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

"Alternative day treatment" or "structured day programs" means nonresidential programs that provide services, which may include counseling, supervision, recreation, and education to referred juveniles at a central facility.

"~~Biennial Operating Annual Plan~~" means a written plan, covering ~~two~~ a single fiscal year, setting forth measurable goals and objectives for developing, coordinating, and evaluating youth services. The ~~Biennial Operating Annual Plan~~ is to be based primarily on the ~~six-year Delinquency Prevention and Youth Development Plan~~ an assessment of the community's needs.

"Background check" means steps taken to ascertain whether various records on a person include criminal acts or other circumstances that would be detrimental to juveniles or their families or to the integrity of a program, in addition to a driving record check where applicable to job function.

"Counseling" means the planned use of interpersonal relationships to promote behavioral change or social adjustment.

~~"Delinquency Prevention and Youth Development Plan" means a document, developed every six years, which analyzes the problems, opportunities and conditions of youth and concludes with a plan of action to meet identified needs.~~

"Department" means the Department of Juvenile Justice.

"Direct service programs or services" means programs or services in which Office on Youth staff or, assigned Youth Services Citizen Board members or both providing substantial Office on Youth volunteers, are the primary providers of a service involving ongoing person-to-person contact with youth or families or both for purposes of instructional or skills development training.

"Individual service or contact plan" means a written plan of action developed and modified at intervals to meet the needs of each juvenile. It specifies short-term and long-term goals, the methods and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Local governing body" means a city council or county board of supervisors. Any ~~Youth Services Citizen Board and Office on Youth~~ that provides services to more than one

~~governmental jurisdiction must have the endorsement and support of all affected governing bodies.~~

"Locality" means the city, county or combination thereof served by a ~~an Office on Youth Services Citizen Board~~.

"Monitoring review" means the written report completed by ~~[the department's prevention specialist designated department personnel]~~ based on an on-site review of the progress made toward goals and objectives identified in the Office on Youth's Annual Plan.

"Office on Youth" means the staff and the place of business of the staff of the ~~Youth Services Citizen Board~~ local entity funded by the authority of the Delinquency Prevention and Youth Development Act (Chapter 3 (§ 66-26 et seq.) of Title 66 of the Code of Virginia).

~~"On-site status report" means the semi-annual written report completed by the department's regional office staff based on a visit to the office on youth to review progress on the office's Biennial Operating Plan.~~

"Sponsoring locality" means the locality that is the fiscal agent or administrator of the grant.

"Supervision" means visiting or making other contact with or about, or providing treatment, rehabilitation or services to, a juvenile as required by the court, court service unit staff, or a designated referral source.

"Time-out" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a juvenile from contact with people or other reinforcing stimuli.

"Volunteer" means any individual or group who of their own free will and without any financial gain provides goods or services to the program without compensation.

"Youth needs assessment" means an objective assessment of the community's youth development and delinquency prevention needs and resources.

"Youth Services Citizen Board" means the board appointed by the county or city governing body or combination thereof in accordance with § 66-34 of the Code of Virginia.

PART II.

YOUTH SERVICES CITIZEN BOARD ADMINISTRATION.

6 VAC 35-60-20 through 6 VAC 35-60-400. [No change from proposed.]

6 VAC 35-60-410. On-site ~~status report~~ monitoring review.

The director of the Office on Youth shall circulate or distribute copies of the on-site ~~status report~~ *monitoring review* received from ~~[the department's] regional program manager [prevention specialist designated department personnel]~~ to all members of the Youth Services Citizen Board and the city manager or county administrator of the sponsoring locality within 45 calendar days of its receipt.

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6 VAC 35-60-415 through 6 VAC 35-60-495. [No change from proposed.]

~~Article 2.
Biennial Operating Plan.~~

6 VAC 35-60-500. 6 VAC 35-60-500. Annual reports.

Annually, the Youth Services Citizen Board shall submit a written report to the local governing body and send copies to the regional office [~~Prevention Specialist of designated personnel at~~] the Virginia Department of Juvenile Justice, ~~the director of the court service unit, and the juvenile judges,~~ regarding progress toward accomplishing the ~~Delinquency Prevention and Youth Development Plan and the Biennial Operating meeting the goals and objectives identified in the Annual Plan.~~

6 VAC 35-60-575 through 6 VAC 35-60-605. [No change from proposed.]

VA.R. Doc. No. R01-270; Filed July 25, 2002, 3:09 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9 VAC 25-31-50 and 9 VAC 25-31-100).

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

Effective Date: September 25, 2002.

Summary:

The amendments require local government review of a permit application prior to State Water Control Board consideration for any new, individual VPDES permit to discharge sewage, industrial waste or other wastes. The amendments also reduce the time allowed for the locality to review the application from 45 days to 30 days.

Agency Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.state.va.us.

9 VAC 25-31-50. Prohibitions.

A. Except in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person 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 use of such waters for domestic or industrial consumption, or for recreation, or for other uses.
- B. Any person ~~required to obtain a permit pursuant to this chapter in violation of 9 VAC 25-31-50 A~~, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters ~~in violation of subsection A of this section~~; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

C. No permit may be issued:

1. When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA or the law, or regulations promulgated under the CWA or the law;
2. When the applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;
3. When the regional administrator has objected to issuance of the permit;
4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines permit issuance to be in the public interest; or

b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the law and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph is to be included in the fact sheet to the permit under 9 VAC 25-31-280.

9 VAC 25-31-100. Application for a permit.

A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned treatment works unless the board requires otherwise, shall submit a complete application to the department in accordance with this section.

B. Who applies. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Storm water discharges from construction activities included in subdivision 10 of the definition of storm water associated with industrial activity and storm water discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9 VAC 25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9 VAC 25-31-120 F.

2. All TWTDS whose sewage sludge use or disposal practices are regulated by 9 VAC 25-31-420 through 9 VAC 25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, and ownership status;

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of subdivision P 8 d of this section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any

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TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

D. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

E. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. ~~Pursuant to § 62.1-44.15:3 of the Code of Virginia~~, No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a *new individual* VPDES permit ~~to authorizing a new discharge of sewage into any water impoundment located in the state~~, *industrial wastes, or other wastes* shall be considered complete unless it contains 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 are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The ~~governing body county, city or town~~ shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than ~~45~~ 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the ~~governing body county, city or town~~ fail to provide such written notification within ~~45~~ 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to

permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections G through K of this section).

1. The activities conducted by the applicant which require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC § 6921);

b. UIC program under SDWA (42 USC § 300h);

c. VPDES program under the CWA and the law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA; and

i. Other relevant environmental permits, including state permits.

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; and

8. A brief description of the nature of the business.

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural

dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9 VAC 25-31-100 H, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for storm water run-off, spillage or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9 VAC 25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2000). When no

analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9 VAC 25-31-120 D may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9 VAC 25-31-120 C 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9 VAC 25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific

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sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2000), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical oxygen demand (BOD sub5)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2000)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2000) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2000) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2000) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2000) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2000) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2000) (the organic toxic pollutants):

- a. For coal mines, a probable total annual production of less than 100,000 tons per year; or
- b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by-product. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;
2. Date of expected commencement of discharge;
3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An

identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2000). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

- (1) Biochemical oxygen demand (BOD sub5).
- (2) Total suspended solids (TSS).
- (3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).
- (4) Total residual chlorine (if chlorine is used).
- (5) Oil and grease.
- (6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).
- (7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).
- (8) Ammonia (as N).
- (9) Discharge flow.
- (10) pH.
- (11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their

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presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);
6. A brief description of any treatment system used or to be used;
7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9 VAC 25-31-230 G;
8. Signature of certifying official under 9 VAC 25-31-110; and
9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:
 - a. The type and number of animals in open confinement and housed under roof;
 - b. The number of acres used for confinement feeding; and
 - c. The design basis for the run-off diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor; and
2. For concentrated aquatic animal production facilities:
 - a. The maximum daily and average monthly flow from each outfall;
 - b. The number of ponds, raceways, and similar structures;
 - c. The name of the receiving water and the source of intake water;
 - d. For each species of aquatic animals, the total yearly and maximum harvestable weight;
 - e. The calendar month of maximum feeding and the total mass of food fed during that month; and
 - f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the

information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:
 - a. Name, mailing address, and location of the facility for which the application is submitted;
 - b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;
 - c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:
 - (1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;
 - (2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);
 - (3) NPDES program under the Clean Water Act (CWA);
 - (4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - (5) Nonattainment program under the Clean Air Act;
 - (6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - (7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;
 - (8) Dredge or fill permits under § 404 of the CWA; and
 - (9) Other relevant environmental permits, including state permits;
 - d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;
 - e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent;

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic.

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements;

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3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

- (1) Outfall number;
- (2) State, county, and city or town in which outfall is located;
- (3) Latitude and longitude, to the nearest second;
- (4) Distance from shore and depth below surface;
- (5) Average daily flow rate, in million gallons per day;
- (6) The following information for each outfall with a seasonal or periodic discharge:
 - (a) Number of times per year the discharge occurs;
 - (b) Duration of each discharge;
 - (c) Flow of each discharge; and
 - (d) Months in which discharge occurs; and
- (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

- (1) Name of receiving water;
- (2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
- (3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
- (4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

- (1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
 - (a) Design biochemical oxygen demand (BOD sub5 or CBOD sub5) removal (percent);
 - (b) Design suspended solids (SS) removal (percent); and, where applicable,
 - (c) Design phosphorus (P) removal (percent);
 - (d) Design nitrogen (N) removal (percent); and
 - (e) Any other removals that an advanced treatment system is designed to achieve.
- (2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

- (1) Biochemical oxygen demand (BOD sub5 or CBOD sub5);
- (2) Fecal coliform;
- (3) Design flow rate;
- (4) pH;
- (5) Temperature; and
- (6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

- (1) Ammonia (as N);
- (2) Chlorine (total residual, TRC);
- (3) Dissolved oxygen;
- (4) Nitrate/Nitrite;
- (5) Kjeldahl nitrogen;
- (6) Oil and grease;
- (7) Phosphorus; and
- (8) Total dissolved solids.

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2000), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

e. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall.

Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivisions 4 b through e of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (2000) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

- (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;
- (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;
- (3) The analytical method used; and
- (4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

- (1) All POTWs with design flow rates greater than or equal to one million gallons per day;
- (2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;
- (3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

- (1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or
- (2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

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h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2000), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9 VAC 25-31-10, that discharges to the POTW:

- (1) Name and mailing address;
- (2) Description of all industrial processes that affect or contribute to the SIU's discharge;
- (3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;
- (4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;
- (5) Whether the SIU is subject to local limits;
- (6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and
- (7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

- (1) An annual report submitted within one year of the application; or
- (2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2000), the applicant must report the following:

- (1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and
- (2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

- (1) The identity and description of the site or facility at which the wastewater originates;
- (2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2000), if known; and
- (3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2000).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

- (1) A map indicating the location of the following:
 - (a) All CSO discharge points;
 - (b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and
 - (c) Waters supporting threatened and endangered species potentially affected by CSOs; and

- (2) A diagram of the combined sewer collection system that includes the following information:

- (a) The location of major sewer trunk lines, both combined and separate sanitary;
- (b) The locations of points where separate sanitary sewers feed into the combined sewer system;
- (c) In-line and off-line storage structures;
- (d) The locations of flow-regulating devices; and
- (e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

- (1) The following information on each outfall:

- (a) Outfall number;
- (b) State, county, and city or town in which outfall is located;
- (c) Latitude and longitude, to the nearest second;
- (d) Distance from shore and depth below surface;
- (e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and
- (f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

- (a) The number of events in the past year;
- (b) The average duration per event, if available;
- (c) The average volume per CSO event, if available; and
- (d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

- (a) Name of receiving water;
- (b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and
- (c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9 VAC 25-31-120 C 1 and this subsection (except as provided by 9 VAC 25-31-120 C 1 b) shall provide

the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9 VAC 25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

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(8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2000) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2000) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2000) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS ±93--76--5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS ±93--72--1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS ±136--25--4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS ±299--84--3);

(5) 2,4,5-trichlorophenol (TCP) (CAS ±95--95--4); or

(6) Hexachlorophene (HCP) (CAS ±70--30--4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2000) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9 VAC 25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the

name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§ 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2000) have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2000).

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit

will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2000) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9 VAC 25 31 420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, and telephone number of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

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2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
- b. UIC program under the Safe Drinking Water Act (SDWA);
- c. NPDES program under the Clean Water Act (CWA);
- d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
- e. Nonattainment program under the Clean Air Act;
- f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
- g. Dredge or fill permits under § 404 of the CWA;
- h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

- a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
- b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9 VAC 25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

- a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
- b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9 VAC 25-31-490 unless an alternative has been specified in an existing sewage sludge permit.

d. The monitoring data provided must include at least the following information for each parameter:

- (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
- (2) The analytical method used; and
- (3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined in 9 VAC 25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

- (1) The name, mailing address, and location of the other facility;
- (2) The total dry metric tons per 365-day period received from the other facility; and
- (3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

- (1) Whether the Class A pathogen reduction requirements in 9 VAC 25-31-710 A or the Class B pathogen reduction requirements in 9 VAC 25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;
- (2) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and
- (3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9 VAC 25-31-540 B 1, the pollutant concentrations in 9 VAC 25-31-540 B 3, the Class A pathogen requirements in 9 VAC 25-31-710 A, and one of the vector attraction reduction requirements in 9 VAC 25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9 VAC 25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9 VAC 25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9 VAC 25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9 VAC 25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9 VAC 25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9 VAC 25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9 VAC 25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

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9. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9 VAC 25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

10. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

11. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 et seq.

12. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

13. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9 VAC 25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

14. All applications must be signed by a certifying official in compliance with 9 VAC 25-31-110.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V--C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2000)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2000)), and testing and reporting for all four fractions in all other subcategories of this industrial category.

c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V--C of the VPDES application Form 2C are suspended as they apply to:

a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2000)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

c. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2000)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

V.A.R. Doc. No. R02-323; Filed August 5, 2002, 9:54 a.m.



EMERGENCY REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Title of Regulation: **4 VAC 20-562. Pertaining to the Hampton Roads Shellfish Relay Area (adding 4 VAC 20-562-10 through 4 VAC 20-562-50).**

Statutory Authority: §§ 28.2-201 and 28.2-816 of the Code of Virginia.

Effective Dates: August 16, 2002, through August 30, 2002.

Summary:

The emergency regulation extends the open harvest season for the Hampton Roads Shellfish Relay Area from Friday, August 16, 2002, through Friday, August 30, 2002.

Agency Contact: Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA, telephone (757) 247-2248, FAX (757) 247-2002.

CHAPTER 562.
PERTAINING TO THE HAMPTON ROADS SHELLFISH
RELAY AREA.

4 VAC 20-562-10. Purpose.

The provisions of this regulation are in response to increased pressure on the hard clam resource by patent tongs in clean clam areas during the month of August.

4 VAC 20-562-20. Hampton Roads Shellfish Relay Area.

A. The Hampton Roads Shellfish Relay Area shall consist of all condemned clamming grounds bounded by a line beginning at the upstream side of the large fishing pier on the southeast side of Old Point Comfort; thence upstream along the shoreline to Newport News Creek; thence to the southeast corner of the Monitor Merrimac Bridge Tunnel island along the downstream side, thence to Fl R "12"; thence to the northeast corner of the Fan Building on the southern island of the bridge tunnel; thence southerly along the downstream side of the bridge tunnel to the south line of Public Ground Number 1, Nansemond County; then easterly along the Public Ground to Craney Island Disposal Area; thence clockwise around the boundaries of the disposal area to its intersection with the shore; thence along the shore to the northeast corner of Craney Island; thence through navigational aid Fl G "21" to the point where it intersects a line drawn from the shoreward end of pier number 6 at Lamberts Point to the southeast corner of Tanner Point; thence along the shore to the point of intersection with the rippapped shoreline of the Hampton Roads Bridge-Tunnel island at Fort Wool; thence easterly around this island to its easternmost point; thence north northwesterly to the intersection of the shoreline and the upstream side of the large fishing pier on the east side of Old Point Comfort at the point of beginning.

4 VAC 20-562-30. Harvest season.

A. The open harvest season for the Hampton Roads Shellfish Relay Area, as specified by § 28.2-816 of the Code of Virginia, shall be extended from Friday, August 16, 2002, through Friday, August 30, 2002. Harvest of hard clams in the Hampton Roads Shellfish Relay Area shall only occur on Mondays through Fridays during the 2002 open harvest season. Thereafter, Hampton Roads Shellfish Relay Area shall be managed by the authority promulgated in § 28.2-816 of the Code of Virginia.

B. It shall be unlawful to harvest hard clams from the Hampton Roads Shellfish Relay Area, except as provided in subsection A of this section.

4 VAC 20-562-40. Harvest restrictions.

A. It shall be unlawful for any person to possess any hard clam which can be passed through a 1-3/8 inch inside diameter culling ring.

B. For the possession limit described in subsection A of this section, there shall be 2.0% tolerance of hard clams, by number, in each bag or container.

C. It shall be unlawful for any person to possess any hard clam which cannot be passed through a 2-7/8 inch inside diameter culling ring.

D. For the possession limit described in subsection C of this section, there shall be a 10% tolerance of hard clams, by number, in each bag or container.

E. It shall be unlawful for any person to harvest clams from the Hampton Roads Shellfish Relay Area before sunrise or after 5 p.m.

4 VAC 20-562-50. Penalty.

A. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor, and a second, or subsequent violation of any provision of this regulation committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

B. The Marine Resources Commission may revoke the relay permit of any person convicted of a violation of this regulation.

VA.R. Doc. No. R02-310; Filed July 30, 2002, 10:28 a.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (adding 12 VAC 30-70-425 and 12 VAC 30-70-426).**

12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-20 and 12 VAC 30-80-30).

12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-19; adding 12 VAC 30-90-18).

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

Effective Dates: August 1, 2002, through July 31, 2003.

Preamble:

Item 325 CC of Chapter 899 of the 2002 Acts of Assembly authorized the Department of Medical Assistance Services (DMAS) to amend the State Plan for Medical Assistance to increase local-government-owned providers' reimbursement consistent with the maximum amount allowed under federal laws and regulations. Item 325 RR gives the department similar authority to increase state-government-owned providers' reimbursement. Item DD gives the department more specific authority in relation to reimbursement to nonstate government-owned hospitals that the department also has under Item 325 CC. Each item shall become effective consistent with approval by the Centers for Medicare and Medicaid of the related state plan amendments. The department also is granted the authority in Chapter 899 to enact emergency regulations for each of these issues. The regulation is not exempt under § 2.2-4006 A 4 of the Code of Virginia.

Agency Contact: William Lessard, Reimbursement Analyst, Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or e-mail blessard.dmas.state.va.us.

12 VAC 30-70-425. Supplemental payments to nonstate-government-owned hospitals for inpatient services.

A. Subject to legislative authorization as required and the availability of local, state, and federal funds, and based upon a transfer agreement and the subsequent transfer of funds, DMAS shall provide quarterly lump sum supplemental payments to participating nonstate-government-owned hospitals for services provided to Medicaid patients on or after December 16, 2001. The supplemental payments are made from a pool of funds, the amount of which is the difference between the Medicaid payments otherwise made to the qualifying hospitals for services to Medicaid patients and the maximum amount allowable under applicable federal regulations in accordance with 42 CFR 447.272.

B. A qualifying hospital is owned or operated by a unit of government other than a state. The payment amount for a qualifying hospital participating according to the provisions in subsection A above is the hospital's proportionate share of the established pool of funds determined by dividing the participating hospital's Medicaid days provided during the most recent fiscal year by the total Medicaid days provided by all qualifying hospitals for the same fiscal year.

C. A payment made to a hospital under this provision when combined with other payments made under the state plan shall not exceed the limit specified in 42 CFR 447.271.

12 VAC 30-70-426. Supplemental payments to state-government-owned hospitals for inpatient services.

A. Subject to legislative authorization as required and the availability of state and federal funds, and based upon a transfer agreement and the subsequent transfer of funds, DMAS shall provide lump sum supplemental payments to participating state-government-owned hospitals for services provided to Medicaid patients on or after July 1, 2002. The supplemental payments are made from a pool of funds, the amount of which is the difference between the Medicaid payments and the maximum allowable under applicable federal regulations in accordance with 42 CFR 447.272.

B. A qualifying hospital is owned or operated by the state. The payment amount for a qualifying hospital participating according to the provisions of subsection A above is the hospital's proportionate share of the established pool of funds determined by dividing the participating hospital's Medicaid days provided during the most recent fiscal year by the total Medicaid days provided by all qualifying hospitals for the same fiscal year.

C. A payment made to a hospital under this provision when combined with other payments made under the state plan shall not exceed the limit specified in 42 CFR 447.271.

12 VAC 30-80-20. Services which are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

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2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and
7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals
2. Outpatient hospital services excluding laboratory.

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

3. Rural health clinic services provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330 and 340.

4. Rehabilitation agencies. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

5. Comprehensive outpatient rehabilitation facilities.

6. Rehabilitation hospital outpatient services.

7. Supplemental payments to nonstate-government-owned hospitals for outpatient services.

a. The department provides supplemental payments to certain nonstate-government-owned hospitals for outpatient services provided to Medicaid patients. The supplemental payments are made from a pool of funds, the amount of which is the difference between the Medicaid payments otherwise made to the qualifying hospitals for outpatient services to Medicaid patients and the maximum amount allowable under applicable federal regulations at 42 CFR 447.321.

b. To qualify for a supplemental payment, a nonstate-government-owned hospital must meet the criteria specified by the department relating to size and Medicaid participation. A qualifying hospital is an eligible facility that is owned or operated by a unit of government other than a state that has entered into an Intergovernmental Transfer Agreement with the Commonwealth. The payment amount for a qualifying hospital is the hospital's proportionate share of the established pool of funds determined by dividing the participating hospital's payments for outpatient services provided to Medicaid patients during the most recent fiscal year by the total payments for outpatient services to Medicaid patients provided by all qualifying hospitals for the same fiscal year.

c. A payment made to a hospital under this provision when combined with other payments made under the state plan shall not exceed the limit specified in 42 CFR 447.325.

8. Supplemental payments to state-government-owned hospitals for outpatient services.

a. Subject to legislative authorization as required and the availability of state and federal funds, and based upon a transfer agreement and the subsequent transfer of funds, DMAS shall provide lump sum supplemental payments to participating state government-owned hospitals for outpatient services provided to Medicaid patients on or after July 1, 2002. The supplemental payments are made from a pool of funds, the amount of which is the difference between the Medicaid payments otherwise made to the qualifying hospitals for outpatient services to Medicaid patients and the maximum amount allowable under applicable federal regulations at 42 CFR 447.321.

b. A qualifying hospital is owned or operated by the state. The payment amount for a qualifying hospital participating according to the provisions in subsection 8 a above is the hospital's proportionate share of the established pool of funds determined by dividing the hospital's payments for outpatient services provided to Medicaid patients during the most recent fiscal year by the total payments for outpatient services to Medicaid patients provided by all qualifying hospitals for the same fiscal year.

c. A payment made to a hospital under this provision when combined with other payments made under the state plan shall not exceed the limit specified in 42 CFR 447.325.

12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

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(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

c. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment which is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services, including services paid to local school districts.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments to government-owned clinics.

a. Subject to legislative authorization as required and the availability of local, state, and federal funds, and based upon a transfer agreement and the subsequent transfer of funds, DMAS shall provide lump sum supplemental payments to participating government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 1, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of their license to an eligible individual.

(1) Supplemental payments for state-government-owned or operated clinics are made from a pool of funds equal to the difference between the Medicaid payments otherwise made to state-government-owned or operated clinics for outpatient services and the maximum amount allowable under applicable federal regulations in accordance with 42 CFR 447.321. Payments are made to clinics that are either owned or operated by the state.

(2) Supplemental payments for nonstate-government-owned or operated clinics are made from a pool of funds equal to the difference between the Medicaid payments otherwise made to nonstate-government-owned or operated facilities for outpatient services and the maximum amount allowable under applicable federal regulations in accordance with 42 CFR 447.321. Payments are made to clinics that are neither owned nor operated by the state.

b. The payment amount for a clinic participating according to the provisions of subsection 16 a is the clinic's proportionate share of the established pool of funds determined by dividing the participating clinic's payments for Medicaid outpatient services provided during the most recent fiscal year by the total payments for Medicaid outpatient services provided by all clinics for the same fiscal year.

c. A payment made to a clinic under this provision when combined with other payments made under the state plan shall not exceed the limit specified in 42 CFR 447.325.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12 VAC 30-90-18. Additional payment to state-government-owned or operated nursing facilities and intermediate care facilities for the mentally retarded.

Subject to legislative authorization as required and the availability of state and federal funds, and based upon an interagency transfer agreement and the subsequent transfer of funds, DMAS makes additional payments to participating state-government-owned or operated nursing facilities or ICFs-MR for services provided to Medicaid patients on or after July 1, 2002. DMAS uses the following methodology to calculate the additional Medicaid payments to state-government-owned or operated nursing facilities or ICFs-MR participating according to the provisions of this section:

A. For each state fiscal year, DMAS calculates the maximum additional payments that it can make to all state-government-owned or operated nursing facilities or ICFs-MR in conformance with 42 CFR 447.272.

B. DMAS determines a total additional payment amount to be made in a manner not to exceed the maximum additional payment amount calculated in paragraph A above.

C. Using the latest fiscal period for which the state-government-owned or operated nursing facilities or ICFs-MR have completed cost reports on file with DMAS, the department determines the total Medicaid days reported by each state-government-owned or operated nursing facility or ICF-MR for that fiscal period.

D. DMAS divides the total Medicaid days for each participating state-government-owned or operated nursing facility or ICF-MR by the total Medicaid days for all state-government-owned or operated nursing facilities or ICFs-MR to determine the supplementation factor for each.

E. For each participating state-government-owned or operated nursing facility or ICF-MR, DMAS multiplies the state-government-owned or operated nursing facility's or ICF-MR's supplementation factor determined in step 4 above by the total additional payment amount identified in step 2 above to determine the additional payment to be made to each state-government-owned or operated nursing facility or ICF-MR.

12 VAC 30-90-19. Additional reimbursement for locally-owned nursing facilities or ICFs-MR.

A. Subject to legislative authorization as required and the availability of local, state, and federal funds, and based upon a transfer agreement and the subsequent transfer of funds, DMAS makes additional payments to participating local

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government nursing facilities or ICFs-MR. A local government nursing facility or ICF-MR is defined as a provider owned or operated by a county, city, or other local government agency, instrumentality, authority or commission.

B. DMAS uses the following methodology to calculate the additional Medicaid payments to local government nursing facilities or ICFs-MR participating according to the provisions in subsection 19 A:

1. For each state fiscal year, DMAS calculates the maximum additional payments that it can make to the all local government nursing facilities or ICFs-MR in conformance with 42 CFR 447.272 (a).
2. DMAS determines a total additional payment amount to be made in a manner not to exceed the maximum additional payment amount calculated in subdivision 1 of this subsection.
3. Using the latest fiscal period for which the local government nursing facilities or ICFs-MR have completed cost reports on file with DMAS, the department determines the total Medicaid days reported by each local government nursing facility or ICF-MR for that fiscal period.
4. DMAS divides the total Medicaid days for each participating local government nursing facility or ICF-MR by the total Medicaid days for all local government nursing facilities or ICFs-MR to determine the supplementation factor for each.
5. For each participating local government nursing facility or ICF-MR, the department multiplies the local government nursing facility's or ICFs-MR's supplementation factor determined in subdivision 4 of this subsection by the total additional payment amount identified in subdivision 2 of this subsection to determine the additional payment to be made to each local government nursing facility or ICF-MR.

/s/ Mark R. Warner
Governor
Date: July 26, 2002

VA.R. Doc. No. R02-314; Filed July 30, 2002, 12:24 p.m.

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

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

Effective Dates: August 1, 2002, through July 31, 2003.

Preamble:

Item 325 EE of Chapter 899 of the 2002 Acts of Assembly authorizes DMAS to reimburse state academic health systems under a state authority for services provided by affiliated physician groups based on the lesser of billed charges or the Medicare fee schedule. This item shall become effective consistent with approval by the Centers for Medicare and Medicaid of the related State Plan

amendments. The department also is granted the authority to enact emergency regulations.

The suggested emergency regulation would create a category of physician (Type I) who is a member of a group affiliated with either a state academic health system or an academic health system that operates under a state authority. These two provider groups include physicians affiliated with UVA Medical Center, VCU's Medical College of Virginia, and Eastern Virginia Medical School. The suggested emergency regulation would provide supplemental reimbursement for Type I physician services equal to the difference between the current Medicaid and Medicare fee schedules.

Because approximately 50% of Medicaid payments are federally funded, by maximizing payments to Type I physicians, the Commonwealth will maximize the federal funding available to Virginia through these increased Medicaid payments. No disadvantages to the public have been identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

Providers affected by this action are Type I physicians receiving the supplemental payments. Localities affected are those with Type I physicians. Other providers and localities are not affected, and recipients are not affected. Supplemental payments will be based upon transfer agreements with the affected public entities to which these providers are associated through the group practices and the subsequent transfer of funds.

Physicians affiliated with academic health centers fulfill an important and unique role within the Virginia health care system as safety net providers. Many safety-net providers incur costs for which they are not currently reimbursed above and beyond the costs incurred by private providers.

Agency Contact: William Lessard, Reimbursement Analyst, Division of Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or e-mail blessard.dmas.state.va.us.

12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

c. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be

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reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment which is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services, including services paid to local school districts.
8. Laboratory services (other than inpatient hospital).
9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).
10. X-Ray services.
11. Optometry services.
12. Medical supplies and equipment.
13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.
14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.
15. Clinic services, as defined under 42 CFR 440.90.
16. Reserved.
17. Supplemental payments for services provided by Type I physicians.

a. Subject to legislative authorization as required and the availability of local, state, and federal funds, and based upon a transfer agreement with a state academic health system or an academic health system that operates under a state authority and the subsequent transfer of funds, DMAS shall provide lump sum supplemental payments to Type I physicians on or after July 1, 2002. Type I physicians are members of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority, who have entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Supplemental payments for Type I physicians are made from a pool of funds equal to the difference between the Medicaid payments otherwise made to Type I physicians and the lesser of billed charges or the Medicare fee schedule.

c. The payment amount for a Type I physician is the physician's proportionate share of the established pool of funds determined by dividing the physician's payments for Medicaid services provided through the practice group referred to in subdivision 17 a of this subsection during the period by the total payments for Medicaid physician services provided by all Type I physicians for the same period.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

/s/ Mark R. Warner
Governor
Date: July 26, 2002

VA.R. Doc. No. R02-313; Filed July 30, 2002, 12:20 p.m.

* * * * *

Title of Regulation: 12 VAC 30-135. Family Planning Demonstration Waiver (adding 12 VAC 30-135-10 through 12 VAC 30-135-80).

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

Effective Dates: October 1, 2002, through September 30, 2003.

Preamble:

Chapter 899 of the 2002 Acts of Assembly (the Acts), Item 325 M, requires that DMAS provide payment for extended family planning services, under the authority of a federally approved 1115 waiver. This is to be a new demonstration waiver program and will be a time limited project consistent with federal requirements. The Acts require that DMAS pay for extended family planning services within 90 days of federal approval of the new demonstration waiver. Since

service payments must begin effective October 1, 2002, it is less than 280 days from the effective date of the Acts thereby rendering the necessity for an emergency regulation. Since the agency intends to continue regulating this subject after the effective period of the emergency regulations, approval for the agency's Notice of Intended Regulatory Action is also being requested.

Agency Contact: Deborah Sprang, Policy Analyst, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-2364, FAX (804) 786-1680 or e-mail dsprang@dmas.state.va.us.

CHAPTER 135.
FAMILY PLANNING DEMONSTRATION WAIVER.

PART I.
FAMILY PLANNING WAIVER SERVICES.

12 VAC 30-135-10. Definitions.

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

"Eligible recipients" means those women who give birth after the effective date of the waiver project, whose deliveries were reimbursed by Medicaid, and who continue to meet the Medicaid eligibility income requirements for a pregnant woman.

"FDA" means the Food and Drug Administration.

"Family planning" means those services necessary to prevent or delay a pregnancy. It shall not include services to promote pregnancy such as infertility treatments. Family planning does not include counseling, recommendations or performance of abortions, or hysterectomies or procedures performed for medical reasons such as removals of intrauterine devices due to infections.

"Third Party" means any individual entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under the State Plan.

"Over-the-counter" means drugs and contraceptives that are available for purchase without requiring a physician's prescription.

12 VAC 30-135-20. Administration and eligibility determination.

A. The Department of Medical Assistance Services shall administer the family planning demonstration waiver services program under the authority of § 1115(a) of the Social Security Act and 42 United States Code §1315.

B. The local departments of social services shall be responsible for family planning waiver eligibility determinations and for enrollment of eligible women in the waiver. Local departments of social services shall also conduct periodic reviews and annual redeterminations of eligibility every twelve months while recipients are enrolled in the waiver program.

C. The local departments of social services shall be responsible for ensuring that during the time of eligibility redeterminations or at any point of self-reported changes that

result in categorical eligibility enrollment for full Medicaid benefits, that the recipients' enrollment in the family planning waiver program is immediately terminated.

D. Recipients will be notified via a cancellation letter prior to 60 days postpartum that their Medicaid benefits will be terminated at the 60th day after the delivery of their baby. This cancellation notice will include: (i) information about possible eligibility for extended family planning (only) services for an additional 22 months postpartum, and (ii) instructions on how to apply. The letter will inform recipients that if they are determined eligible for another Medicaid covered group, they shall not be eligible to receive services under this waiver.

12 VAC 30-135-30. Eligibility.

A. Women whose deliveries were covered by Medicaid, who delivered after the implementation of this waiver, and who continue to meet the Medicaid eligibility requirements for a pregnant woman, shall be eligible for family planning services under this waiver.

B. Women who qualify for Medicaid under a mandatory or optional covered group will not be eligible for family planning services under this waiver.

12 VAC 30-135-40. Covered services.

A. Services provided women under this waiver shall include only the following:

1. Family planning office visits including annual exams (one per 12 months), sexually transmitted diseases "STD" testing (limited to the initial family planning encounter), Pap tests (limited to one every six months);
2. Laboratory services for family planning and STD testing;
3. Family planning education and counseling;
4. FDA approved contraceptives, including diaphragms, contraceptive injectables, and contraceptive implants;
5. Over-the-counter contraceptives; and,
6. Sterilizations, not to include hysterectomies. A completed sterilization consent form, in accordance with the requirements of 42 CFR 441, Subpart F, must be submitted with all claims for payment for this service.

B. Examples of services not covered under the family planning waiver include but are not limited to:

1. Performance of, counseling for, or recommendations of abortions;
2. Infertility treatments;
3. Procedures performed for medical reasons;
4. Performance of a hysterectomy; and
5. Transportation to a family planning service.

12 VAC 30-135-50. Provider qualifications.

Services must be ordered or prescribed and directed or performed within the scope of the licensed practitioner. Any appropriately licensed Medicaid enrolled physician, nurse

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practitioner, or medical clinic may be accessed by the waiver recipient for family planning services.

12 VAC 30-135-60. Quality assurance.

The department shall provide for continuing review and evaluation of the care and services paid through Medicaid including review of utilization of the services by providers and recipients. To ensure a thorough review, trained professionals review cases either through desk audit or through on-site reviews of medical records. Providers will be required to refund payments made by Medicaid if they are found to have billed Medicaid for services that do not meet the policy qualifications, if providers failed to maintain records or documentation to support their claims, or if providers billed for medically unnecessary services.

12 VAC 30-135-70. Reimbursement.

Providers will be reimbursed on a fee-for-service basis.

All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC § 1396(a)(25).

12 VAC 30-135-80. Recipients rights and right to appeal.

Women eligible for family planning services under this waiver will have freedom of choice of providers. Women will be free from coercion or mental pressure and shall be free to choose their preferred methods of family planning. The Client Appeals process at 12 VAC 30-110-10 et seq. shall be applicable to applicants for and recipients of family planning services under this waiver.

/s/ Mark R. Warner
Governor
Date: July 18, 2002

VA.R. Doc. No. R02-316; Filed July 30, 2002, 12:22 p.m.

Title of Regulation: 12 VAC 30-141. Family Access to Medical Insurance Security Plan (adding 12 VAC 30-141-10 through 12 VAC 30-141-650).

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 324F of Chapter 899 of the 2002 Acts of Assembly.

Effective Dates: August 1, 2002, through July 31, 2003.

Preamble:

Section 2.2-4011 of the Code of Virginia provides for regulations that an agency finds are necessitated by an emergency situation. In August of 2001, the Director of the Department of Medical Assistance Services (DMAS), in lieu of the Board of Medical Assistance and pursuant to then § 9-6.14.4:1(C)(5) of the Code of Virginia, issued emergency regulations to comply with the 2000 Acts of Assembly, Chapters 824 and 848.

The 2000 Acts of Assembly, Chapters 824 and 848 cl. 5 provided "that a seamless transition between the Children's Medical Security Insurance Plan and the implementation of the Family Access to Medical Insurance Security Plan shall

be deemed to be a public emergency situation pursuant to § 9-6.14:4.1; therefore, to meet this emergency situation, the Board shall promulgate emergency regulations to implement this act." Therefore, an emergency regulation was necessary in accordance with § 32.1-351 of the Code of Virginia.

Item 324F of the 2002 Virginia Acts of Assembly (Chapter 899) enables the Director of the DMAS to issue emergency regulations for the Family Access to Medical Insurance Security Plan (FAMIS) through July 31, 2003.

These emergency regulations do not differ substantively from the agency's existing FAMIS regulations. The agency is essentially readopting the existing FAMIS regulations, and using these regulations as a temporary bridge until revised regulations are developed to address certain anticipated programmatic changes.

Agency Contact: Cynthia B. Jones, Deputy Director, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-4626, FAX (804) 786-1680 or e-mail cjbones@dmas.state.va.us.

CHAPTER 141. FAMILY ACCESS TO MEDICAL INSURANCE SECURITY PLAN.

PART I. GENERAL PROVISIONS.

12 VAC 30-141-10. Definitions.

"Abuse by providers" means practices which are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to the Virginia FAMIS Program or in reimbursement for a level of utilization or pattern of services that is not medically necessary.

"Abuse by enrollees" means practices by an enrollee or enrollees, which are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia FAMIS Program.

"Adverse action" means the denial of eligibility; failure to make a timely determination of eligibility; suspension or termination of enrollment; or delay, denial, reduction, suspension, or termination of health services, in whole or in part.

"Agency" means a local department of social services, the Central Processing Unit, or other entity designated by DMAS to make eligibility determinations for FAMIS.

"Agency error" means cases in which a person(s) received benefits to which they were not entitled as a result of an error on the part of someone at the Central Processing Unit.

"Agent" means an individual designated in writing to act on behalf of a FAMIS Plan applicant or enrollee during the administrative review process.

"Act" means the Social Security Act.

"Applicant" means a child who has filed an application (or who has an application filed on his behalf) for health coverage through FAMIS. A child is an applicant until the child's eligibility has been determined for FAMIS.

"Authorized representative" means a person who is authorized to conduct the personal or financial affairs for an individual who is 18 years of age or older.

"Central Processing Unit" means the entity that will determine eligibility for and administer part of the Family Access to Medical Insurance Security Plan or FAMIS.

"Child" means an individual under the age of 19 years.

"Competent individual" means a person who has not been judged by a court to be legally incapacitated.

"Comprehensive health insurance coverage" means health benefits coverage, which includes the following categories of services at a minimum: inpatient and outpatient hospital services, physician's surgical and medical services, and laboratory and radiological services.

"Conservator" means a person appointed by the Court who is responsible for managing the estate and financial affairs of an incapacitated person as defined in § 37.1-134.6 of the Code of Virginia.

"Continuation of enrollment" means ensuring an enrollee's benefits are continued until completion of the review process, with the condition that should the enrollee not prevail in the review process, the enrollee shall be liable for the repayment of all benefits received during the review process.

"COV" means Code of Virginia.

"Creditable health coverage" means that health coverage as defined in 42 USC 1397jj(c)(2).

"Director" means the individual, or his designee, specified in § 32.1-324 of the Code of Virginia with all of the attendant duties and responsibilities to administer the State Plan for Medical Assistance and the State Plan for FAMIS.

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

"Employer-sponsored health insurance coverage or ESHI" means comprehensive health insurance coverage offered by the employer when the employer contributes at least fifty percent towards the cost of dependent or family coverage, or as otherwise approved by the Centers for Medicare and Medicaid Services (CMS) in the U.S. Department of Health and Human Services. For purposes of ESHI, CMS has approved a 40 percent employer contribution.

"Enrollee" means a child who has been determined eligible to participate in FAMIS and is enrolled in the FAMIS program.

"ESHI or ESHI component" means employer-sponsored health insurance and this component of FAMIS refers to the ability of DMAS to provide coverage to FAMIS children by providing premium assistance to families who enroll the FAMIS children in their employer's health plan.

"External Quality Review Organization" means the independent contractor assigned by DMAS to conduct final review of MCE determinations for FAMIS.

"Family" (when determining financial eligibility) means parents, including adoptive and step-parents and their children who are living in the same household. Family shall not mean

grandparents or legal guardians. A child who is temporarily living outside the home while attending an educational or training program shall be considered to be living in the same household with his parents.

"Family" (when used in the context of the ESHI component) means a unit or group that has access to an employer's group health plan. Thus, it includes the employee and any dependents who can be covered under the employer's plan.

"FAMIS" means Family Access to Medical Insurance Security Plan.

"FAMIS premium" means the monthly premium which families having incomes exceeding 150% of FPL pay to have their children enrolled in the FAMIS program. Families having incomes exceeding 150% of the Federal Poverty Level are also required to pay this premium if they are enrolled in the ESHI component.

"Federal poverty level" or "FPL" means that income standard as published annually by the U.S. Department of Health and Human Services in the Federal Register.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Gross family income" means the total income of all family members in a household. Income includes, but is not necessarily limited to, before tax earnings from a job, including cash, wages, salary, commissions and tips, self-employment net profits, Social Security, Retirement Survivor Disability Insurance (RSDI), veterans benefits, Railroad Retirement, disability workers' compensation, unemployment benefits, child support, alimony, spousal support, pensions and retirement benefits, settlement benefits, rental income, and lottery/bingo winnings. Income excludes public assistance program benefits such as SSI and TANF payments, foster care payments, general relief, loans, grants, or scholarships for educational expenses or earned income of a child who is a full-time student.

"Group health plan" or "health insurance coverage" means that health care coverage as defined in 42 U.S.C. § 1397jj(c)(3).

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person as defined in § 37.1-134.6 of the Code of Virginia.

"Incapacitated individual" means person who has been judged by a court to be incapacitated and for whom a guardian or conservator has been appointed as defined in § 37.1-134.6 of the Code of Virginia.

"Legal emancipation" means that the parents and child have gone through the court and a judge has declared that the parents have surrendered the right to care, custody, and earnings of the child and have renounced parental duties. A married minor is not emancipated unless a court has declared the married minor emancipated from his parents.

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"MCE" means an entity that enters into a contract to provide services in a managed care delivery system, including but not limited to managed care organizations, prepaid health plans, and primary care case managers.

"Member of a family," for purposes of determining whether the child is eligible for coverage under a state employee health insurance plan means (i) parent or parents, including absent parents, or (ii) stepparent or stepparents with whom the child is living if the stepparent claims the child as a dependent on the employee's federal tax return.

"Premium assistance" means the portion of the family's cost of participating in the employer's plan that DMAS will pay to the family to cover the FAMIS children under the employer plan if DMAS determines it is cost-effective to do so.

"Provider" means the individual, facility or other entity registered, licensed, or certified, as appropriate, and enrolled by an MCE to render services to FAMIS enrollees eligible for services.

"Supplemental coverage" means additional coverage provided to FAMIS children covered under the ESHI component so that they can receive all of the FAMIS benefits and they are not required to pay any more cost sharing than they would have under FAMIS.

"Title XXI" means the Federal State Children's Health Insurance Program as established by Subtitle J of the Balanced Budget Act of 1997.

"Virginia State Employee Health Insurance Plan" means a health insurance plan offered by the Commonwealth of Virginia to its employees and includes the Local Choice Program whereby local governmental entities elect to provide local employees' enrollment in the State Employee Health Insurance Plan.

12 VAC 30-141-20. Administration and general background.

A. The state shall use funds provided under Title XXI for obtaining coverage that meets the requirements for a State Child Health Insurance Plan (also known as Title XXI).

B. The DMAS Director will have the authority to contract with entities for the purpose of establishing a centralized processing site, determining eligibility, enrolling eligible children into health plans, collecting premiums, performing outreach, data collection, reporting, and other services necessary for the administration of the Family Access to Medical Insurance Security Plan and for employing state staff to perform Medicaid eligibility determinations on children referred by FAMIS staff.

C. Health care services under FAMIS shall be provided through the delivery systems established under Virginia Code § 32.1-351(F). These delivery systems may consist of prepaid health plans that manage and deliver health care for enrollees for a monthly capitated amount and through the Primary Care Case Management Program (PCCM) that may be reimbursed on a fee-for-service basis. Services may be offered through preferred provider organizations or other providers not currently under contract with DMAS.

12 VAC 30-141-30. Outreach and public participation.

DMAS will work cooperatively with other state agencies and contractors to ensure that federal law and any applicable federal regulations are met.

PART II. REVIEW OF ADVERSE ACTIONS.

12 VAC 30-141-40. Review of adverse actions.

A. Upon written request, all FAMIS Plan applicants and enrollees shall have the right to a review of an adverse action made by the MCE, CPU or DMAS.

B. During review of a suspension or termination of enrollment the enrollee shall have a right to continuation of enrollment, if the enrollee requests review prior to the effective date of the suspension or termination of enrollment.

C. Review of an adverse action made by the CPU or DMAS shall be heard and decided by an agent of DMAS who has not been directly involved in the adverse action under review.

D. Review of an adverse action made by the MCE must be conducted by a person or agent of the MCE who has not been directly involved in the adverse action under review. After final review by the MCE, there shall also be opportunity for final independent external review by the External Quality Review Organization.

E. There will be no opportunity for review of an adverse action to the extent that such adverse action is based on a determination by the Director that funding for FAMIS has been terminated or exhausted.

F. The burden of proof shall be upon the applicant or enrollee to show that an adverse action is incorrect.

G. At no time shall the MCE's, the CPU's, or DMAS' failure to meet the time frames set in this chapter or set in the MCE's or DMAS' written review procedures constitute a basis for granting the applicant or enrollee the relief sought.

H. Adverse actions related to health benefits covered under an employer sponsored health insurance (ESHI) plan shall be resolved between the employer's plan and the ESHI enrollee, and are not subject to further review by DMAS or its contractors. Adverse actions made by an MCE, the CPU, or DMAS shall be subject to the review process set forth in this part of the regulations.

12 VAC 30-141-50. Notice of adverse action.

The MCE shall send written notification to enrollees of an adverse action within 10 calendar days. The CPU or DMAS shall send written notification to applicants of an adverse action within 10 calendar days of an adverse action. The CPU or DMAS shall send written notification to enrollees 10 days prior to suspension or termination of enrollment. Notice shall include the reasons for determination, an explanation of applicable rights to review of that determination, the standard and expedited time frames for review, the manner in which a review can be requested, and the circumstances under which enrollment may continue pending review.

12 VAC 30-141-60. Request for review.

A. Requests for review of adverse actions made by the MCE shall be submitted in writing to the MCE, and requests for review of adverse actions made by the CPU or DMAS shall be submitted in writing to DMAS.

B. Any written communication clearly expressing a desire to have an adverse action reviewed shall be treated as a request for review.

C. To be timely, requests for review of a MCE determination shall be received by the MCE no later than 30 calendar days from the date of the MCE's notice of adverse action. Requests for review of a DMAS or CPU determination shall be received by DMAS no later than 30 calendar days from the date of the CPU's or DMAS' notice of adverse action. Requests for review of a DMAS or CPU determination shall be considered received by DMAS when the request is date stamped by the DMAS Appeals Division in Richmond, Virginia.

12 VAC 30-141-70. Review procedures.

A. MCE review shall be conducted pursuant to written procedures developed by the MCE, and DMAS review shall be conducted pursuant to written procedures developed by DMAS.

B. The MCE's written procedures and any modifications thereto shall be reviewed and approved in writing by DMAS.

C. The procedures in effect on the date a particular request for review is received by the MCE or DMAS shall apply throughout the review.

D. Copies of the procedures shall be promptly mailed by the MCE or DMAS to applicants and enrollees upon receipt of timely requests for review.

E. The written procedures shall include but not be limited to the following:

1. The right to representation by an attorney or other agent of the applicant's or enrollee's choice, but at no time shall the MCE, the CPU, or DMAS be required to obtain or compensate attorneys or other agents acting on behalf of applicants or enrollees;
2. The right to have personal and medical information and records maintained as confidential; and
3. The right to a written final decision within 90 calendar days of receipt of the request for review.
4. If the enrollee's physician or health plan determines that the 90-day timeframe could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to expedited review. Under these conditions, review by the MCE and review by the External Quality Review Organization may each take no longer than 72 hours from the time an enrollee requests expedited review. Expedited review may be extended up to 14 calendar days, if the enrollee requests an extension.

12 VAC 30-141-71 through 12 VAC 30-141-99. Reserved.

PART III. ELIGIBILITY DETERMINATION AND APPLICATION REQUIREMENTS.

12 VAC 30-141-100. Eligibility requirements.

A. This section shall be used to determine eligibility of children for FAMIS.

B. FAMIS shall be in effect statewide.

C. Eligible children must be under 19 years of age, be residents of the Commonwealth, and be either U.S. citizens, U.S. nationals OR qualified non-citizens.

D. Income.

1. Screening. All FAMIS applications must be screened to identify applicants who are potentially eligible for Medicaid. Children found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid based on a full review of a Medicaid application. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined.

2. Standards. Income standards for FAMIS are based on a comparison of gross family income to 200% of the Federal Poverty Level for the family size. Children who have gross family income at or below 200% of the Federal Poverty Level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.

3. Children enrolled in the Children's Medical Security Insurance Plan will be automatically enrolled in FAMIS at the time of conversion from CMSIP to FAMIS. To protect those currently enrolled children whose eligibility determination was based on the requirements of CMSIP and whose gross family income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12 VAC 30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.

4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.

E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS.

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F. *Qualified non-citizen.* The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for non-citizens set out in subsections 3b and c of 12 VAC 30-40-10 will be used when determining whether a child is a qualified non-citizen for purposes of FAMIS eligibility.

G. *Coverage under other health plans.*

1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

2. No substitution for private insurance.

a. Only uninsured children shall be eligible for FAMIS. Each application for FAMIS shall include a declaratory statement that the child for whom the application is being filed is not covered under any group health plan. Each application and re-determination of eligibility shall document inquiry about health insurance within the past six months. If the child has been covered under a health insurance plan other than through the ESHI component of FAMIS within six months of application for or receipt of FAMIS services, the child will be ineligible, unless the parent, guardian, or legal custodian demonstrates good cause for discontinuing the coverage.

b. Health insurance does not include Medicaid nor insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program.

c. Good cause. A child shall not be ineligible for FAMIS if health insurance was discontinued for good cause within the six-month period prior to the month of application. The Director shall make a determination of good cause based upon DMAS written policy.

3. Health Insurance Premium Payment (HIPP) Program does not apply to FAMIS. DMAS shall not enroll children who are in FAMIS in the HIPP Program.

12 VAC 30-141-110. Duration of eligibility.

A. The effective date of FAMIS eligibility shall be the first day of the month in which a signed application was received by the FAMIS central processing unit if the applicant met all eligibility in that month. In no case shall a child's eligibility be effective earlier than the date of the child's birth and no earlier than August 1, 2001.

B. Eligibility for FAMIS will continue for 12-months so long as the child meets all eligibility requirements. The parent, legal guardian, or authorized representative of the child must report all changes affecting eligibility when such changes occur. A change in eligibility will be effective the first of the month following expiration of a ten-day advance notice. Eligibility will be re-determined no less often than annually.

C. Exception. If the child becomes an inpatient in an institution for mental disease or an inmate of a public institution, ineligibility will be effective the date that the child is admitted to the institution.

12 VAC 30-141-120. Children ineligible for FAMIS.

A. If a child is:

1. Eligible for Medicaid, or would be eligible if he applied for Medicaid, he shall be ineligible for coverage under FAMIS. A child found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS.

2. A member of a family eligible for coverage under any Virginia State Employee Health Insurance Plan, including members of any family eligible for coverage under the Virginia State Employee Health Insurance Plan through the Local Choice Program where the employer contributes towards the cost of dependent coverage, shall be ineligible for FAMIS. Children of an absent parent shall be ineligible for FAMIS if the absent parent is eligible for coverage under the State Employee Health Insurance Plan or through the Local Choice Program where the employer contributes towards the cost of dependent coverage;

3. An inmate of a public institution as defined in 42 CFR 435.1009 shall be ineligible for FAMIS; or

4. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR 435.1009 shall be ineligible for FAMIS.

B. If a parent, guardian, or legal custodian obtained benefits for a child or children who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the child or children for whom the application is made shall be ineligible for FAMIS. An administrative hearing shall be held to present the facts and, upon a finding of intentional misrepresentation, the child or children shall be excluded from participation for 12 months from the date of the finding. The parent, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

12 VAC 30-141-130. Nondiscriminatory provisions.

FAMIS shall be conducted in compliance with all civil rights requirements. FAMIS shall not:

A. Discriminate during the eligibility determination process on the basis of diagnosis;

B. Cover children of higher income without first covering children with a lower family income within a defined group of covered targeted low-income children; and

C. Deny eligibility based on a child having a preexisting medical condition.

12 VAC 30-141-140. No entitlement.

In accordance with § 2102(b)(4) of the Social Security Act and § 32.1-353 of the COV, FAMIS shall not create any individual entitlement for, right to, or interest in payment of medical services on the part of any medically indigent child or any right or entitlement to participation.

12 VAC 30-141-150. Application requirements.

A. Availability of program information. DMAS or its designee shall furnish the following information in written form and orally as appropriate to all applicants and to other individuals who request it:

1. The eligibility requirements;
2. Summary of covered benefits;
3. Premium and co-payment amounts required; and
4. The rights and responsibilities of applicants and enrollees.

B. Opportunity to apply. DMAS or its designee must afford an individual wishing to do so the opportunity to apply for FAMIS. FAMIS applications will be accepted at a central site designated by DMAS. Applicants may apply for the FAMIS program by mail, by phone, by fax, or by Internet. Face-to-face interviews for the program will not be conducted at the central site. Local departments of social services may provide applications and assist families in completing FAMIS applications; however, eligibility determinations for FAMIS shall occur at the DMAS designated central site.

C. Right to apply. An individual who is 18 years of age shall not be refused the right to complete a Family Access to Medical Insurance Security application for himself and shall not be discouraged from asking for assistance for himself under any circumstances.

D. Applicant's signature. The applicant must sign a state-approved official application form, even if another person fills out the form, unless the application is filed and signed by the applicant's parent, legal guardian or conservator, attorney-in-fact or authorized representative.

E. Authorized representative for individuals 18 years of age or older.

1. The authorized representative of an incapacitated individual shall be the individual's legally appointed conservator or guardian.
2. A competent individual may sign an application on his own behalf where appropriate, or he may designate anyone to be his authorized representative to file a Family Access to Medical Insurance Security application on his behalf. If a competent individual wants another person to file a Family Access to Medical Insurance Security application for him, he must designate the authorized representative in a written statement that is signed by the individual applicant. The authorized representative statement is valid for the life of the Family Access to Medical Insurance Security application or until the applicant changes his authorized representative. If the application is approved, the authorized representative statement is valid for any subsequent review and re-determination until the applicant's Family Access to Medical Insurance Security eligibility is cancelled. If the applicant reapplies for the Family Access to Medical Insurance Security, he must sign the application or a new authorized representative statement.
3. When an individual has given power-of-attorney to another person that includes the power to conduct the

applicant's business affairs, the attorney-in-fact is considered the applicant's authorized representative.

4. For an individual who has not been determined by a court to be legally incapacitated, but who is reported to be mentally unable to sign his name or to make a mark, an application may be signed under the following circumstances. When it is reported that an individual cannot sign the application and the individual does not have an attorney-in-fact, or authorized representative, the individual's inability to sign the application must be verified by a written statement from the individual's doctor that the individual is mentally unable to sign and file a Family Access to Medical Insurance Security application because of the individual's diagnosis or condition.

F. Authorized representative for children under 18 years of age.

1. A minor child under 18 years of age who is a parent may apply for the Family Access to Medical Insurance Security for his or her own child.
2. An authorized employee of the public or private child placing agency that has custody of the child must sign the Family Access to Medical Insurance Security application for a child under 18 years of age that is in foster care.
3. A child applicant who is under 18 years of age is not legally able to sign a Family Access to Medical Insurance Security application for himself unless he is legally emancipated from his parents. If the child applicant is not legally emancipated, his parents shall sign the application on the child applicant's behalf. If the child applicant is married and the child applicant's spouse is 18 years of age or older, the spouse may sign the application on the child applicant's behalf. If the child applicant does not live with a parent or spouse who is 18 years of age or older, the adult who has legal custody or who is the legal guardian of the child applicant must sign the application. A child applicant's parent, guardian or legal custodian may designate an authorized representative to complete a Family Access to Medical Insurance Security application on behalf of the child applicant. The authorization must be in writing in accordance with this section.

G. If no adult is the child applicant's guardian or no adult has legal custody of the child applicant, whoever is caring for the child applicant shall be responsible for seeking custody or guardianship of the child applicant:

1. If a motion has been filed in court to appoint a guardian or seek legal custody of the child, the Family Access to Medical Insurance Security application shall be held in a pending status. If verification is received within 10 working days that court action has been initiated, the application will be continued until the guardian is appointed or custody is awarded. When the guardian has been appointed or custody awarded, the eligibility worker must provide the Family Access to Medical Insurance Security application to the guardian or custodian. The guardian or custodian must return the signed application and documentation of his appointment within 10 working days. If the application or documentation is not returned by either 10-day deadline,

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the Family Access to Medical Insurance Security eligibility shall be denied.

2. If guardianship or custody procedures have not been filed with the court, the eligibility worker must refer the child to the appropriate child welfare service worker. The application for the Family Access to Medical Insurance Security shall be held in a pending status until the service investigation is completed and any court proceedings are completed. If the court emancipated the child, the child must sign the application and return it to the eligibility worker within 10 working days. If a guardian has been appointed or custody awarded, the eligibility worker must provide the Family Access to Medical Insurance Security application to the guardian or custodian. The guardian or custodian must return the signed application and documentation of his appointment within 10 working days. If the application or documentation is not returned by the deadline, the Family Access to Medical Insurance Security eligibility shall be denied.

H. Persons prohibited from signing an application. An employee of, or an entity hired by, a medical service provider who stands to obtain Family Access to Medical Insurance Security payments shall not sign a Family Access to Medical Insurance Security application on behalf of an individual who cannot designate an authorized representative.

I. Written application. DMAS or its designee shall require a written application for the FAMIS program from the applicant if at least 18 years of age or older, or from a parent, guardian, legal custodian, or authorized representative if the applicant is less than 18 years of age or the applicant is incapacitated. The application must be on a separate form prescribed by DMAS, one not used to determine eligibility under Title XIX (Medicaid), and must be signed under a penalty of perjury. The application form shall contain information sufficient to screen applicants for Medicaid eligibility, but shall not serve as a Medicaid application.

J. Assistance with application. DMAS or its designee shall allow an individual or individuals of the applicant's choice to assist and represent the applicant in the application process, or a re-determination process for eligibility.

K. Timely determination of eligibility. Except for cases of unusual circumstances as described below, DMAS or its designee shall determine eligibility and inform the applicant of a decision within 10 business days from the date of receiving an application that contains all information and verifications necessary to determine eligibility.

1. Unusual circumstances include: administrative or other emergency beyond the agency's control. In such case, DMAS or its designee must document, in the applicant's case record, the reasons for delay. DMAS or its designee must not use the time standards as a waiting period before determining eligibility or as a reason for denying eligibility because it has not determined eligibility within the time standards.

2. Incomplete applications shall be held open for a period of 30 calendar days to enable applicants to provide outstanding information needed for an eligibility determination. Any applicant who fails to provide, within 30

calendar days of the receipt of the initial application, information or verifications necessary to determine eligibility, shall have his application for FAMIS eligibility denied.

L. Notice of DMAS' or its designee's decision concerning eligibility. DMAS or its designee must send each applicant a written notice of the agency's/designee's decision on his application, and, if approved, his obligations under the program. If eligibility for FAMIS is denied, notice must be given concerning the reasons for the action and an explanation of the applicant's right to request a review of adverse case actions.

M. Case documentation. DMAS or its designee must include in each applicant's record all necessary facts to support the decision on his application, and must dispose of each application by a finding of eligibility or ineligibility, unless (i) there is an entry in the case record that the applicant voluntarily withdrew the application and that the agency or its designee sent a notice confirming his decision; (ii) there is a supporting entry in the case record that the applicant has died; or (iii) there is a supporting entry in the case record that the applicant cannot be located.

N. Re-determination of eligibility. DMAS or its designee must re-determine the eligibility of enrollees with respect to circumstances that may change at least every 12 months. Enrollees must make timely and accurate reports of all changes in circumstances that may affect their eligibility. DMAS or its designee must promptly re-determine eligibility when it receives information about changes in a enrollee's circumstances that may affect eligibility. If the agency has information about anticipated changes in a enrollee's circumstances, it must re-determine eligibility at the appropriate time based on those changes.

O. Notice of decision concerning eligibility. DMAS or its designee must give enrollees timely notice of proposed action to terminate their eligibility under FAMIS. The notice must meet the requirements of 42 CFR 457.1180.

12 VAC 30-141-151 through 12 VAC 30-141-158. Reserved.

PART IV. COST SHARING.

12 VAC 30-141-160. Co-payments and premiums for families not participating in employer sponsored health insurance (ESHI).

A. Premiums. FAMIS-eligible children, in families with incomes above 150 percent of the Federal Poverty Level (FPL) Income Guidelines (as published annually by the U.S. Department of Health and Human Services in the Federal Register), shall be required to contribute to the cost of health care coverage by paying premium payments. Income levels are provided as a percentage of FPL based on gross income.

B. Co-payments. Co-payments shall apply to all enrollees (above and below 150 percent of the FPL).

C. These cost-sharing provisions shall be implemented with the following restrictions:

1. Total cost sharing shall be limited to two and one-half percent of a family's income for the year (or 12-month eligibility period) for income equal to or under 150 percent of FPL, and five percent for family incomes above 150 percent of FPL.

2. The state shall ensure that the annual aggregate cost sharing for all FAMIS enrollees in a family does not exceed the aforementioned five percent cap as required by § 2103(e)(3)(b) of Title XXI.

3. Families will be required to submit documentation to DMAS or its designee, showing that their maximum co-payment amounts are met for the year.

4. Cost sharing will be monitored to ensure that maximum allowable cost sharing per family is not exceeded. Once the cap is met, DMAS or its designee will issue a new eligibility card excluding such families from paying additional co-pays.

D. Exceptions to the above cost-sharing provisions:

1. Co-payments shall not be required for well-child, other preventive services, and families participating in ESHI. This shall include:

a. All healthy newborn inpatient physician visits, including routine screening (inpatient or outpatient);

b. Routine physical examinations, laboratory tests, immunizations, and related office visits; and,

c. Routine preventive and diagnostic dental services (i.e., oral examinations, prophylaxis and topical fluoride applications, sealants, and x-rays).

2. Enrollees are not held liable for any additional costs, beyond the standard co-payment amount, for emergency services furnished outside of the individual's managed care network. Only one co-payment charge will be imposed for a single office visit.

3. No cost sharing will be charged to American Indians and Alaska Natives.

E. Dis-enrollment for nonpayment of premium. FAMIS will dis-enroll families who fail to make their family contribution. DMAS or its designee shall provide a 30-day prior notice to the family in writing that premium payment has not been received. The child will be dis-enrolled 60 days after the period covered by the last payment. During the dis-enrollment process the enrollee will have the opportunity to show that the enrollee's income has declined prior to dis-enrollment for non-payment of cost sharing charges. Children dis-enrolled pursuant to this section will be eligible for re-enrollment after six months and payment of the premiums in arrears. FAMIS may waive the six-month re-enrollment exclusion period if it finds that a family had "good cause for nonpayment." The Director shall make a determination of good cause based on DMAS written policy.

12 VAC 30-141-161 through 12 VAC 30-141-169. Reserved.

12VAC 30-141-170. Employer sponsored health insurance (ESHI).

Enrollees in FAMIS who have access to employer sponsored health insurance coverage may, but shall not be required to, enroll in an employer's health plan if DMAS or its designee

determines that such enrollment is cost-effective, as defined below. DMAS reserves the right to implement in phases the ESHI component for children enrolled in CMSIP. The method and the timing for phasing in the ESHI component will be determined by DMAS after it has assessed the potential volume of CMSIP enrollees with access to an employer plan and interest in the ESHI component.

A. Eligibility determination. FAMIS children who have access to health insurance coverage under an employer-sponsored plan may elect to receive coverage under the employer plan and DMAS may elect to provide coverage by paying a portion of the premium if the following conditions are met:

1. The children are enrolled in FAMIS.

2. The employer's plan provides comprehensive health insurance coverage.

3. The employer contributes at least forty percent of the cost of family or dependent coverage.

4. The cost of coverage for the child or children under ESHI is equal to or less than the Commonwealth's cost of obtaining coverage under FAMIS only for the eligible targeted low-income children involved. The cost-effectiveness determination methodology is described below.

5. The family receives the full premium contribution from the employer.

6. The applicant agrees to assign rights to benefits under the employer's plan to DMAS to assist the Commonwealth in pursuing these third party payments. (When a child is provided coverage under an employer's plan, that plan becomes the primary payer for the services covered under that plan.)

B. When more than one employer plan is available to the family, the family shall enroll in the plan that DMAS has determined to be the most cost-effective for the state.

C. DMAS will continually verify the child's or children's coverage under the employer's plan and will re-determine the eligibility of the child or children for the ESHI component when it receives information concerning an applicant's or enrollee's circumstances that may affect eligibility.

D. Application requirements.

1. DMAS shall furnish the following information in written form and orally as appropriate to the families of FAMIS children who have access to employer sponsored health insurance:

a. The eligibility requirements;

b. Summary of covered benefits and supplementation of employer benefits;

c. Cost sharing requirements; AND

d. The rights and responsibilities of applicants and enrollees.

2. Opportunity to apply. DMAS may elect to provide health insurance coverage to FAMIS children by having FAMIS

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children and their families enroll in ESHI. Families with access to employer coverage for family members will be identified through the FAMIS application. DMAS will provide these families with applications for ESHI.

3. *Written application.* A written application for the ESHI component shall be required from interested families.

4. *Timely determination of eligibility.* DMAS shall determine eligibility for the ESHI component promptly not to exceed 45 calendar days from the date of receiving an application which contains all information and verifications necessary to determine eligibility except in unusual circumstances beyond the agency's control. Actual enrollment into the ESHI component may not occur for extended periods of time depending on the ability of the family to enroll in the employer's plan.

5. *Incomplete ESHI applications shall be held for a period of 30 calendar days to enable applicants to provide outstanding information needed for an ESHI eligibility determination.* Any applicant who, within 30 calendar days of the receipt of the initial application, fails to provide information or verifications necessary to determine ESHI eligibility shall have his application denied.

6. *DMAS must send each applicant a written notice of the agency's decision on his application, and, if approved, his obligations under the program. If eligibility is denied, notice will be given concerning the reasons for the action.*

E. Cost-effectiveness. DMAS may elect to provide coverage to FAMIS children by paying a portion of the family's employer-sponsored health insurance premium if the cost of family coverage under ESHI is equal to or less than the Commonwealth's cost of obtaining coverage under FAMIS only for the eligible targeted low-income child or children involved. The cost-effectiveness determination will be conducted for individual families on a case-by-case basis. DMAS must determine that the premium subsidy plus the cost of the supplemental coverage, plus the administrative cost for a family enrolled in the ESHI component, is equal to or less than the amount the Commonwealth would have paid to cover the eligible targeted low-income child or children in that family under FAMIS. The cost-effectiveness determination is a three-step process:

1. *The cost of covering only the FAMIS child or children under the employer plan must be isolated as much as possible from the cost of covering the adults.*

2. *The premium subsidy DMAS would pay is obtained by taking the cost of covering the children obtained in step "1" above, and subtracting any FAMIS premium the family is responsible for paying.*

3. *To determine whether it is cost-effective to cover the family, DMAS will compare the following two amounts:*

(a) *The sum of the premium assistance amount from step "2" plus the cost of supplemental coverage, plus the administrative cost; and*

(b) *The cost of covering the FAMIS child or children under FAMIS. The cost will be determined by using the*

capitated payment rate paid to managed care entities, or an average cost amount developed by DMAS.

4. *If (a) is less than (b), covering the child or children under the ESHI component is cost-effective.*

F. Enrollment and Disenrollment.

1. *FAMIS children with access to employer-sponsored health insurance will be enrolled in a FAMIS MCE until their eligibility for coverage under the ESHI component is established and until they are able to enroll in the employer sponsored health plan.*

2. *The timing and procedures employed to transfer FAMIS children to the ESHI component will be coordinated between DMAS and the Central Processing Unit to ensure continuation of health plan coverage.*

3. *Participation by families in the ESHI component shall be voluntary. Families may disenroll their child or children from the ESHI component and enroll them in a FAMIS MCE as long as the proper timing and procedures established by DMAS are followed to ensure continuation of health plan coverage.*

4. *If a child becomes ineligible to participate in the ESHI component, but is still eligible for FAMIS, DMAS will transfer this child back to a FAMIS MCE. DMAS will coordinate with the Central Processing Unit to ensure continuous health plan coverage.*

G. Premium assistance. When a child is determined eligible for coverage under the ESHI component, premium assistance payments shall become effective the month in which the FAMIS child or children are enrolled in the employer's plan. Payment of premium assistance shall end:

1. *On the last day of the month in which FAMIS eligibility ends;*

2. *The last day of the month in which the child or children lose eligibility for coverage under the employer's plan;*

3. *The last day of the month in which the family notifies DMAS that they wish to disenroll their child or children from the ESHI component and enroll them in a FAMIS MCE, or*

4. *The last day of the month in which adequate notice period expires (consistent with federal requirements) given by DMAS whereby DMAS has determined that the employer's plan is no longer cost-effective.*

H. Supplemental health benefits coverage will be provided to ensure that FAMIS children enrolled in the ESHI component receive all of the FAMIS benefits. FAMIS children can obtain these supplemental benefits through DMAS providers.

I. Cost Sharing. ESHI families will not be responsible for co-payments for FAMIS Title XXI benefits. DMAS will instruct providers to submit billings to DMAS or its designee for payment of applicable co-payments. In situations where the provider refuses to bill DMAS for the co-payment amount, DMAS will reimburse the enrollee directly.

1. *FAMIS children will have to pay co-pays for any services covered under the employer's plan that are not FAMIS benefits and for benefits provided beyond the FAMIS Title*

XXI benefits. The cost sharing paid by families for these benefits do not count towards the cost-sharing cap.

2. Families with incomes equal to or less than 150 percent of FPL will not pay premiums. All families above 150 percent FPL shall be required to contribute to the cost of health care coverage by means of monthly premium payments.

3. ESHI families will pay deductibles, coinsurance, and enrollment fee amounts under their employers' plans up to the cost sharing limits allowed for non-ESHI FAMIS families (\$180 annually for those equal to or less than 150 percent FPL and \$350 annually for those over 150 percent FPL). After the family has reached its cost-sharing cap, DMAS will reimburse the family for any additional deductibles or coinsurance they incur for the FAMIS-enrolled children in the family for FAMIS Title XXI benefits received. Families will need to track their deductibles and coinsurance. Once the cap is reached for a family, that family will submit Explanation of Benefits forms or other forms approved by DMAS for reimbursement each time the family incurs a deductible or coinsurance amount for a FAMIS child for a FAMIS Title XXI benefit. DMAS will reimburse the families.

12 VAC 30-141-180. Third party liability for excess benefits; liability for excess benefits or payments obtained without intent; recovery of FAMIS payments.

A. Any person who, without intent to violate this section obtains benefits or payments under FAMIS to which he is not entitled shall be liable for any excess benefits or payments received. If the enrollee knew or reasonably should have known that he was not entitled to the excess benefits, he may also be liable for interest on the amount of the excess benefits or payments at the judgment rate as defined in § 6.1-330.49 of the COV from the date upon which excess benefits or payments to the date on which repayment is made to the Commonwealth. No person shall be liable for payment of interest, however, when excess benefits or payments were obtained as a result of errors made solely by the DMAS.

B. Any payment erroneously made on behalf of a FAMIS enrollee or former enrollee may be recovered by DMAS from the enrollee or the enrollee's income, assets, or estate unless state or federal law or regulation otherwise exempts such property.

12 VAC 30-141-181 through 12 VAC 30-141-199. Reserved.

PART V.
BENEFITS AND REIMBURSEMENT.

12 VAC 30-141-200. The following benefits with some limits shall be covered for FAMIS enrollees consistent with the XXI State Plan as set out, and amended, in the member handbook.

These benefits will be used for FAMIS and the employer sponsored health insurance component (ESHI) of FAMIS. The covered services shall be: inpatient hospital, outpatient, physician, surgical, clinic, prescription drugs, laboratory and radiological, prenatal care and prepregnancy family services and supplies, inpatient mental health, outpatient mental health, durable medical equipment and other medically-related or remedial devices, disposable medical supplies, home and

community-based health care services, nursing care, abortion if necessary to save the life of the mother, dental services, inpatient substance abuse treatment services and residential substance abuse treatment, outpatient substance abuse treatment, hospice services, physical/occupational/speech-hearing-language therapies, chiropractic services, premiums for private health care insurance coverage, ambulance services under certain conditions as defined in the Virginia Title XXI State Plan.

12 VAC 30-141-230. Enhanced services in excess of the Title XXI State Plan benchmark package.

A. Well-child care from ages 6 through 18 years of age including visits, laboratory services, and any immunizations recommended by the Advisory Committee on Immunization Practice (ACIP).

B. Physical therapy, occupational therapy, speech language pathology, and skilled nursing services for special education students.

12 VAC 30-141-240. Services covered in excess of the Title XXI State Plan benchmark package covered with all state funds.

These specified services shall not be subject to the limits on cost sharing applicable to other covered services and cost sharing for these services shall not be credited towards the cumulative cap.

A. Complex restorative dental services: inlays, onlays, crowns, dentures, bridges, relining dentures for a better fit, and implants, covered at 50 percent of the approved charge.

B. Orthodontic services for specified conditions are covered up to a maximum of \$1,200 per lifetime per enrolled member.

C. Lead testing.

D. Vision Services.

E. Hearing Aids.

12 VAC 30-141-241 through 12 VAC 30-141-449. Reserved.

12 VAC 30-141-500. Benefits reimbursement.

Reimbursement for the services covered under FAMIS shall be as specified below.

A. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, ambulance services under certain conditions as defined in the Virginia Title XXI State Plan, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical therapy/occupational therapy/speech-language therapy services, hospice services, vision services shall be based on the Title XIX rates in effect as of July 1 of each year for the subsequent state fiscal year.

B. Exceptions.

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1. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital as of July 1 each year for the subsequent state fiscal year. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

2. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital as of July 1 each year for the subsequent state fiscal year. Payments made will be final and there will be no retrospective cost settlements.

3. Reimbursement for inpatient mental health services will be based on the Title XIX rates in effect for each hospital as of July 1 each year for the subsequent state fiscal year. Reimbursement will not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency as of July 1 each year for the subsequent state fiscal year. Payments made will be final and there will be no retrospective cost settlements.

5. Reimbursement for inpatient and outpatient substance abuse treatment services will be based on rates determined for children ages 6-18. Payments made will be final and there will be no retrospective cost settlements.

12 VAC 30-141-501 through 12 VAC 30-141-559. Reserved.

PART VI.

QUALITY ASSURANCE AND UTILIZATION CONTROL.

12 VAC 30-141-560. Quality assurance.

A. Each provider entity shall meet requirements determined by contract with DMAS for the following: access to well-baby, well-child, and well-adolescent care, immunizations; referral systems, prior authorization requirements, clinical practice guidelines, provider network adequacy, a system to provide enrollees urgent care and emergency services, implementation of systems for complaints, grievances and reviews, implementation of a data management system to meet data collection requirements of quality assurance projects, a quality improvement program and annual quality improvement plan, and annual performance measures.

B. Each provider entity shall meet requirements determined by contract for the monitoring and reporting of access to services, timeliness of services, appropriateness of services, and prior authorization decisions for all enrollees, including those with complex or serious medical conditions. Requirements may include the calculation and reporting of performance measures and the implementation of performance improvement projects, as determined by DMAS.

12 VAC 30-141-570. Utilization control.

A. Each provider entity shall implement a utilization review system as determined by contract with DMAS.

B. DMAS may collect and review comprehensive encounter and fee-for-service claims data to monitor utilization after receipt of services.

12 VAC 30-141-571 through 12 VAV 30-141-599. Reserved.

12 VAC 30-141-600. Enrollee audit unit.

A. Pursuant to § 32.1-310 et seq. of the COV, the enrollee audit unit shall investigate allegations of acts of fraud or abuse, committed by persons enrolled in the FAMIS program or the parent, guardian, or legal custodian on behalf of a person or persons enrolled in the FAMIS program, which result in misspent funds.

B. Any FAMIS enrollee, parent, guardian, or legal custodian of a FAMIS enrollee who, on the behalf of others, attempts to obtain benefits to which the enrollee is not entitled by means of a willful false statement or by willful misrepresentation, or by willful concealment of any material facts, shall be liable for repayment of any excess benefits received and the appropriate interest charges.

C. Upon the determination that the enrollee has committed fraud or abuse, criminal or civil action may be initiated.

D. When determining the amount of misspent funds to be recovered, capitation fees shall be included for FAMIS enrollees who are in managed care.

E. Access to FAMIS enrollees' eligibility records by authorized DMAS representatives will be permitted upon request.

12 VAC 30-141-601 through 12 VAC 30-141-649. Reserved.

12 VAC 30-141-650. Provider review.

A. Provider review unit shall be responsible for reviewing enrolled FAMIS providers to identify potential inappropriate utilization of services and potential billing errors.

B. Providers agree to keep such records as DMAS determines necessary. The providers will furnish DMAS upon request information regarding payments claimed for providing services under the State Plan for Title XXI.

C. Access to records and facilities by authorized DMAS representatives will be permitted upon reasonable request.

D. Providers will be required to refund payments made by DMAS if they are found to have billed DMAS contrary to policy, failed to maintain any record or adequate documentation to support their claims, or billed for medically unnecessary services.

E. A review of adverse actions concerning provider reimbursement shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia.

F. Managed Care providers will be reviewed by the managed care unit of DMAS.

/s/ Mark R. Warner

Governor

Date: July 26, 2002

VA.R. Doc. No. R02-315; Filed July 30, 2002; 12:28 p.m.

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

Title of Regulation: 12 VAC 35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services (amending 12 VAC 35-105-20, 12 VAC 35-105-30, 12 VAC 35-105-280, 12 VAC 35-105-590, 12 VAC 35-105-660, and 12 VAC 35-105-800).

Statutory Authority: §§ 37.1-10, 37.1-179 et seq. and 51.5-14.1 of the Code of Virginia.

Effective Dates: September 19, 2002, through September 18, 2003.

Preamble:

The proposed emergency regulations are required by amendments to § 51.5-14.1 of the Code of Virginia, Cooperation of Department with other state departments, and Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, which requires promulgation of regulations to license day support, crisis stabilization, and in-home services funded through the Individual and Family Developmental Disabilities Support (IFDDS) Waiver. Chapter 56 of the 2002 Acts of Assembly requires the State Board of Mental Health, Mental Retardation and Substance Abuse Services (board) to promulgate regulations within 280 days of July 1, 2002.

The proposed emergency regulations amend this chapter by incorporating provisions for licensing IFDDS funded services. Funds allocated for IFDDS services have not been fully accessed in the past because there was no state agency designated to license these services.

The emergency regulation:

- 1. Modify several definitions in 12 VAC 35-105-20 to reflect the services provided under the IFDDS waiver and add definitions of terms relevant to the services.*
- 2. Incorporate reference to the IFDDS services in 12 VAC 35-105-30.*
- 3. Require supervision be provided by a qualified developmental disabilities professional (QDDP) in 12 VAC 35-105-590 C 2 and that assessment and individual service plans (ISPs) be approved by a QDDP.*
- 4. Require services be accessible to individuals with physical and sensory disabilities in 12 VAC 35-105-280 A.*
- 5. Require the ISP to be consistent with the Consumer Service Plan, 12 VAC 35-105-660 I.*

These changes to the board's licensing regulations were developed in consultation with an advisory group of providers of IFDDS services, advocates, and affected state agencies.

The regulations assure adequate staffing requirements, physical environment requirements, financial support for services, treatment provision, and human rights compliance,

all of which protect the health, safety, and welfare of individuals receiving services from licensed providers.

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066.

12 VAC 35-105-20. Definitions.

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

"Abuse" (§ 37.1-1 of the Code of Virginia) means any act or failure to act, by an employee or other person responsible for the care of an individual receiving services that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving services. Examples of abuse include, but are not limited to, the following:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice or the person's individual service plan;
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individual service plan.

"Admission" means the process of acceptance into a service that includes orientation to service goals, rules and requirements, and assignment to appropriate employees.

"Behavior management" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security.

"Behavioral or positive behavior support treatment program" means any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following: (i) improved behavioral functioning and effectiveness; (ii) alleviation of the symptoms of psychopathology; or (iii) reduction of serious behaviors. A behavioral treatment

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program can also be referred to as a behavioral treatment plan or behavioral support plan.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help an individual obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, *cognitive*, or social functioning.

"Case management service" means assisting individuals and their families to access services and supports that are essential to meeting their basic needs identified in their individualized service plan, which include not only accessing needed mental health, mental retardation and substance abuse services, but also any medical, nutritional, social, educational, vocational and employment, housing, economic assistance, transportation, leisure and recreational, legal, and advocacy services and supports that the individual needs to function in a community setting. Maintaining waiting lists for services, case management tracking and periodically contacting individuals for the purpose of determining the potential need for services shall be considered screening and referral and not admission into licensed case management.

"Clubhouse service" means the provision of recovery-oriented psychosocial rehabilitation services in a nonresidential setting on a regular basis not less than two hours per day, five days per week, in which clubhouse members and employees work together in the development and implementation of structured activities involved in the day-to-day operation of the clubhouse facilities and in other social and employment opportunities through skills training, peer support, vocational rehabilitation, and community resource development. *Clubhouse services provided under the Individual and Family Developmental Disabilities Support (IFDDS) Waiver are provided not less than three days per week.*

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Community gero-psychiatric residential services" means 24-hour nonacute care in conjunction with treatment in a setting that provides less intensive services than a hospital, but more intensive mental health services than a nursing home or group home. Individuals with mental illness, behavioral problems, and concomitant health problems (usually age 65 and older), appropriately treated in a geriatric setting, are provided intense supervision, psychiatric care, behavioral treatment planning, nursing, and other health related services. An Interdisciplinary Services Team assesses the individual and develops the services plan.

"Community intermediate care facility/mental retardation (ICF/MR)" means a service licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services in which care is provided to individuals who have mental retardation who are not in need of nursing care, but who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities must comply with Title XIX of the Social Security Act standards, provide health or rehabilitative services, and provide active treatment to individuals receiving services

toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation brought to the attention of the department that a licensed provider violated these regulations.

"Consumer service plan (CSP)" means a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual with a developmental disability or other related conditions. *This plan is developed by the support coordinator for an individual served through the IFDDS Waiver.*

"Corrective action plan" means the provider's pledged corrective action in response to noncompliances documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body (i) through actions such as, but not limited to, striking or hitting with any part of the body or with an implement; (ii) through pinching, pulling or shaking; or (iii) through any similar action that normally inflicts pain or discomfort.

"Crisis" means a situation in which an individual presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration.

"Crisis stabilization" means *direct, intensive intervention to individuals who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service shall include temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that individuals can be maintained in the community during and beyond the crisis period.*

"Day support service" means the provision of individualized planned activities, supports, training, supervision, and transportation to individuals with mental retardation or developmental disabilities or related conditions to improve functioning or maintain an optimal level of functioning. Services may enhance the following skills: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, *social skills*, medication management, and transportation. *Services provide opportunities for peer interaction and community integration.* Services may be provided in a facility (center based) or provided out in the community (noncenter based). Services are provided for two or more consecutive hours per day. The term "day support service" does not include services in which the primary function is to provide extended sheltered or competitive employment, supported or transitional employment services, general education services, general recreational services, or outpatient services licensed pursuant to this chapter.

"Day treatment services" means the provision of coordinated, intensive, comprehensive, and multidisciplinary treatment to individuals through a combination of diagnostic, medical, psychiatric, case management, psychosocial rehabilitation, prevocational and educational services. Services are provided for two or more consecutive hours per day.

"Department" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Developmental disabilities and related conditions" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. It is attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation, and requires treatment or services similar to those required for these persons.
2. It is manifested before the person reaches age 22.
3. It is likely to continue indefinitely.
4. It results in substantial functional limitations in three or more of the following areas of major life activity:
 - a. Self-care;
 - b. Understanding and use of language;
 - c. Learning;
 - d. Mobility;
 - e. Self-direction; or
 - f. Capacity for independent living.

"Discharge" means the process by which the individual's active involvement with a provider is terminated by the provider.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and coordinates planning for aftercare services.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means mental health, mental retardation or substance abuse services available 24 hours a day and seven days per week that provide crisis intervention, stabilization, and referral assistance over the telephone or face-to-face for individuals seeking services for themselves or others. Emergency services may include walk-ins, home visits, jail interventions, pre-admission screenings, and other activities designed to stabilize an individual within the setting most appropriate to the individual's current condition.

"Group home residential service" means a congregate residential service providing 24-hour supervision in a community-based, home-like dwelling. These services are provided for individuals needing assistance, counseling, and

training in activities of daily living or whose service plan identifies the need for the specific type of supervision or counseling available in this setting.

"Home and noncenter based" means that a service is provided in the home or other noncenter-based setting. This includes but is not limited to noncenter-based day support, supportive in-home, and intensive in-home services.

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

"Individual" or "individual receiving services" means a person receiving care or treatment or other services from a provider licensed under this chapter whether that person is referred to as a patient, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving services of the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual.

"Inpatient psychiatric service" means a 24-hour intensive medical, nursing care and treatment provided for individuals with mental illness or problems with substance abuse in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

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

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by ICT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including such individuals who also have a diagnosis of mental retardation. Services are usually time limited provided typically in the residence of an individual who is at risk of being moved to out-

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of-home placement or who is being transitioned back home from an out-of-home placement. These services include crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and emergency response.

"Intensive outpatient service" means treatment provided in a concentrated manner (involving multiple outpatient visits per week) over a period of time for individuals requiring stabilization. These services usually include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding a violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report or other information that comes to the attention of the department.

"Legally authorized representative" means a person permitted by law to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, or certification as a psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility, under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication error" means that an error has been made in administering a medication to an individual when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the proper method is not used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented psychosocial rehabilitation services to individuals with long-term, severe psychiatric disabilities including skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in their individualized service plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS Services are provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, 1994, that affects the well-being or behavior of an individual.

"Neglect" means the failure by an individual or provider responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse (§ 37.1-1 of the Code of Virginia). *This definition of neglect also applies to individuals receiving in-home support, crisis stabilization, and day support under the IFDDS Waiver.*

"Opioid treatment service" means an intervention strategy that combines treatment with the administering or dispensing of opioid agonist treatment medication. An individual-specific, physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment.

"Outpatient service" means a variety of treatment interventions generally provided to individuals, groups or families on an hourly schedule in a clinic or similar facility or in another location. Outpatient services include, but are not limited to, emergency services, crisis intervention services, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services. *"Outpatient service"* specifically includes:

1. Services operated by a community services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;
2. Services funded wholly or in part, directly or indirectly, by a community services board established pursuant to

Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means the provision within a medically supervised setting of day treatment services that are time-limited active treatment interventions, more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;
2. Minimally refers individuals to outside service providers;
3. Provides services on a long-term care basis with continuity of caregivers over time;
4. Delivers 75% or more of the services outside program offices; and
5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by PACT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that provides services to individuals with mental illness, mental retardation or substance addiction or abuse including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone or other opioid replacements or provides in-home support, crisis stabilization, or day support under the IFDDS Waiver. Such person, entity or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board as defined in § 37.1-194.1 of the Code of Virginia, behavioral health authority as defined in § 37.1-243 of the Code of Virginia, private provider, and any other similar or related person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia. It does not include any person providing uncompensated services to a family member.

"Psychosocial rehabilitation service" means care or treatment for individuals with long-term, severe psychiatric disabilities, which is designed to improve their quality of life by assisting them to assume responsibility over their lives and to function

as actively and independently in society as possible, through the strengthening of individual skills and the development of environmental supports necessary to sustain community living. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified Developmental Disabilities Professional (QDDP)" means an individual possessing at least one year of documented experience working directly with individuals who have developmental disabilities or related conditions and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified Mental Health Professional (QMHP)" means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis; including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: an individual with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (vi) registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience; or (vii) any other licensed mental health professional.

"Qualified Mental Retardation Professional (QMRP)" means an individual possessing at least one year of documented experience working directly with individuals who have mental retardation or other developmental disabilities and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or holds at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology.

"Qualified Paraprofessional in Mental Health (QPPMH)" means an individual who must, at a minimum, meet one of the following criteria: (i) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) an Associate's Degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to persons with a diagnosis of mental illness; or (iii) a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP providing

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services to persons with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means providing short-term, intensive treatment to individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit.

"Residential service" means a category of service providing 24-hour care in conjunction with care and treatment or a training program in a setting other than a hospital. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include, but are not limited to: residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health or substance abuse treatment service in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Individuals providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or in a sponsored residential home.

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent an individual receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance in which there is an imminent risk of an individual harming himself or others, including staff; when nonphysical interventions are not viable; and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes and the related post-procedure care processes, when the use of such a device is not a standard practice for the individual's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit, when the individual does not have the option to remove the device. The device may limit an individual's movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the individual's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes: (i) to intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands-on approach or (ii) to quickly de-escalate a dangerous situation that could cause harm to the individual or others.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the preliminary assessment of an individual's appropriateness for admission or readmission to a service.

"Seclusion" means the involuntary placement of an individual receiving services alone, in a locked room or secured area from which he is physically prevented from leaving.

"Serious injury" means any injury resulting in bodily hurt, damage, harm or loss that requires medical attention by a licensed physician.

"Service" or *"services"* means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance addiction or abuse. *Service also means in-home support, day support, and crisis stabilization services provided to individuals under the IFDD Waiver.*

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex

objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"*Social detoxification service*" means providing nonmedical supervised care for the natural process of withdrawal from excessive use of alcohol or other drugs.

"*Sponsored residential home*" means a service where providers arrange for, supervise and provide programmatic, financial, and service support to families or individuals (sponsors) providing care or treatment in their own homes.

"*State authority*" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. This is the agency designated by the Governor to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"*Substance abuse*" means the use, without compelling medical reason, of alcohol and other drugs which results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"*Substance abuse residential treatment for women with children service*" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"*Supervised living residential service*" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, and budgeting.

"*Supportive in-home service*" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals. Services strengthen individual skills and provide environmental supports necessary to attain and sustain independent community residential living. They include, but are not limited to, drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"*Time out*" means assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

"*Volunteer*" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12 VAC 35-105-30. Licenses.

A. Licenses are issued to providers who offer services to one or a combination of the ~~three~~ *four* disability groups: persons with mental illness, persons with mental retardation, and persons with substance addiction or abuse problems *or persons with developmental disabilities or related conditions served under the IFDDS Waiver.*

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;
2. Clubhouse;
3. Community gero-psychiatric residential;
4. Community intermediate care facility-MR;
5. Day support;
6. Day treatment;
7. Group home residential;
8. Inpatient psychiatric;
9. Intensive Community Treatment (ICT);
10. Intensive in-home;
11. Intensive outpatient;
12. Medical detoxification;
13. Mental health community support;
14. Opioid treatment;
15. Outpatient;
16. Partial hospitalization;
17. Program of assertive community treatment (PACT);
18. Psychosocial rehabilitation;
19. Residential crisis stabilization;
20. Residential treatment;
21. Respite;
22. Social detoxification;
23. Sponsored residential home;
24. Substance abuse residential treatment for women with children;
25. Supervised living; and
26. Supportive in-home.

C. A license addendum describes the services licensed, the population served, specific locations where services are provided or organized and the terms, and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of beds each location may serve.

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12 VAC 35-105-280. Physical environment.

A. The physical environment shall be appropriate to the population served and the services provided *and be accessible to individuals with physical and sensory disabilities.*

B. The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.

C. The physical environment, design, structure, furnishing, and lighting shall be appropriate to the population served and the services provided.

D. Floor surfaces and floor covering shall promote mobility in areas used by individuals and shall promote maintenance of sanitary conditions.

E. The physical environment shall be well ventilated. Temperatures shall be maintained between 65°F and 80°F.

F. Adequate hot and cold running water of a safe and appropriate temperature shall be available. Hot water accessible to individuals being served shall be maintained within a range of 100-120°F. If temperatures cannot be maintained within the specified range, the provider shall make provisions for protecting individuals from injury due to scalding.

G. Lighting shall be sufficient for the activities being performed and all areas within buildings and outside entrances and parking areas shall be lighted for safety.

H. Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.

I. If smoking is permitted, the provider shall make provisions for alternate smoking areas separate from the service environment. This regulation does not apply to home-based services.

J. For all program areas added after September 19, 2002, minimum room height shall be 7-1/2 feet.

K. This section does not apply to home and noncenter-based services. Sponsored residential services shall certify compliance of sponsored residential homes with this regulation.

12 VAC 35-105-590. Provider staffing plan.

A. The provider shall design and implement a staffing plan including the type and role of employees and contractors that reflects the:

1. Needs of the population served;
2. Types of services offered;
3. The service description; and
4. The number of people served.

B. The provider shall develop a transition staffing plan for new services, added locations, and changes in capacity.

C. The following staffing requirements relate to supervision.

1. The provider shall describe how employees, volunteers, contractors and student interns are to be supervised in the staffing plan.

2. Supervision of employees, volunteers, contractors and student interns shall be provided by persons who have experience in working with the population served and in providing the services outlined in the service description. In addition, supervision of mental health services shall be performed by a QMHP and supervision of mental retardation services shall be performed by a QMRP or an employee or contractor with experience equivalent to the educational requirement. *Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or contractor with experience equivalent to the educational requirement.*

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans. This responsibility may be delegated to an employee or contractor who is a QMHP or , QMRP, or QDDP, or who has equivalent experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs, speech, language or hearing problems or other needs where specialized training is necessary.

12 VAC 35-105-660. Individualized services plan (ISP).

A. The provider shall develop a preliminary individualized services plan for the first 30 days. The preliminary individualized services plan shall be developed and implemented within 24 hours of admission and shall continue in effect until the individualized services plan is developed or the individual is discharged, whichever comes first.

B. The provider shall develop an individualized services plan for each individual as soon as possible after admission but no later than 30 days after admission. Providers of short-term services must develop and implement a policy to develop individualized services plans within a time frame consistent with the expected length of stay of individuals. Services requiring longer term assessments may include the completion of those as part of the individualized services plan as long as all appropriate services are incorporated into the individualized services plan based on the assessment completed within 30 days of admission and the individualized services plan is updated upon the completion of assessment.

C. The individualized services plan shall address:

1. The individual's needs and preferences.
2. Relevant psychological, behavioral, medical, rehabilitation and nursing needs as indicated by the assessment;
3. Individualized strategies, including the intensity of services needed;

4. A communication plan for individuals with communication barriers, including language barriers; and

5. The behavior treatment plan, if applicable.

D. The provider shall comply with the human rights regulations in regard to participation in decision-making by the individual or legally authorized representative in developing or revising the individualized services plan.

E. The provider shall involve family members, guardian, or others, if appropriate, in developing, reviewing, or revising, at least annually, the individualized service plans consistent with laws protecting confidentiality, privacy, the human rights of individuals receiving services (see 12 VAC 35-115-60) and the rights of minors.

F. Employees or contractors responsible for implementation of an individualized services plan shall demonstrate a working knowledge of the plan's goals, objectives and strategies.

G. The provider shall designate a person who will develop and implement individualized service plans.

H. The provider shall implement the individualized services plan and review it at least every three months or whenever there is a revised assessment. These reviews shall evaluate the individual's progress toward meeting the plan's objectives. The goals, objectives and strategies of the individualized services plan shall be updated, if indicated.

I. The individualized service plan shall be consistent with the CSP for individuals served by the IFDDS Waiver.

12 VAC 35-105-800. Policies and procedures on behavior management techniques.

A. The provider shall develop and implement written policies and procedures that describe the use of behavior management techniques, including, *but not limited to*, seclusion, restraint, and time out. The policies and procedures shall:

1. Be consistent with applicable federal and state laws and regulations;
2. Emphasize positive approaches to behavior management;
3. List and define behavior management techniques in the order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used in each service for each individual;
4. Protect the safety and well-being of the individual at all times, including during fire and other emergencies;
5. Specify the mechanism for monitoring the use of behavior management techniques; and
6. Specify the methods for documenting the use of behavior management techniques.

B. The behavior management policies and procedures shall be developed, implemented, and monitored by employees or contractors trained in behavior management programming.

C. Policies and procedures related to behavior management shall be available to individuals, their families, guardians and

advocates except that it does not apply to services provided in correctional facilities.

D. Individuals receiving services shall not discipline, restrain, seclude or implement behavior management techniques on other individuals receiving services.

E. Injuries resulting from or occurring during the implementation of behavior management techniques shall be recorded in the clinical record and reported to the employee or contractor responsible for the overall coordination of services.

/s/ Mark R. Warner
Governor
Date: July 26, 2002

VA.R. Doc. No. R02-321; Filed August 2, 2002, 9:58 a.m.



GOVERNOR

EXECUTIVE ORDER NUMBER 30 (2002)

ESTABLISHING THE GOVERNOR'S ARMENIAN ADVISORY COMMISSION

By virtue of the authority vested in me by Section 2.2-134 of the Code of Virginia, I hereby establish the Governor's Armenian Advisory Commission (hereinafter referred to as "the Commission").

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.2-134, 2.2-135, and 2.2-2100 of the Code of Virginia. The purpose of this Commission shall be to:

1. Advise the Governor regarding the development of economic, professional, cultural, educational, and governmental links between the Commonwealth of Virginia, the Virginia Armenian Community and the Republic of Armenia.
2. Undertake studies, symposiums, research and factual reports in order to gather information to formulate and present recommendations to the Governor relative to the Commonwealth's relationship with the Republic of Armenia and shall advise the Governor regarding any and all cultural, educational and historical studies it pursues about the Armenian Nation and its Virginia-Armenian Community in order to educate the people of the Commonwealth of Virginia.
3. Advise the Governor regarding mutual exchange of cultural and historical information between the citizens of the Commonwealth and citizens of the Republic of Armenia.

The Commission shall have 25 members, appointed by the Governor and serving at his pleasure. Mr. Bedros C. Bandazian shall serve as Chairman. The Governor may appoint additional members to the Commission at his discretion.

Members of the Commission shall serve without compensation. They may receive reimbursement for expenses incurred in the discharge of their official duties upon approval by the Governor's Chief of Staff or his designee.

Such staff support as is necessary for the conduct of the Commission's work during the term of its existence shall be furnished by the Office of the Governor and such other executive agencies as the Governor may designate. An estimated 500 hours of staff time will be required to support the commission. An estimated \$10,000 is required to support the work of the Commission. Such funding as is necessary for the term of the Commission's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the Commission, as authorized by Section 2.2-135(B) of the Code of Virginia. The Commission shall be able to apply for, accept, and expend gifts, grants, or donations from public, quasi-public or private sources to enable it to better carry out its purposes for the Commonwealth of Virginia and its community.

This Executive Order shall be effective July 18, 2002 and shall remain in full force and effect until July 18, 2003, unless

amended or rescinded by further executive order. Given under my hand and under the Seal of the Commonwealth of Virginia, this 18th day of July 2002.

/s/ Mark R. Warner
Governor

VA.R. Doc. No. R02-320; Filed July 26, 2002, 3:57 p.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Guidance Document Issuance

The Department of Environmental Quality has issued: GUIDANCE MEMORANDUM 02 – 2016 - Issuance of Virginia Water Protection Permits for Surface Water Impacts in the Potomac River.

The purpose of this guidance is to provide a framework for Virginia Water Protection permit requirements applicable to the Potomac River and to guide applicants and the Department of Environmental Quality in issuing VWP Permits for surface water impacts to the Potomac River. These impacts include regulated activities affecting wetlands and streams and water withdrawals. This guidance document shall take effect when the Attorney General certifies to the Department of Environmental Quality that the current litigation *Virginia v. Maryland*, No. 129, Orig., pending in the United States Supreme Court, has been concluded or resolved in a manner not inconsistent with the exercise of authority described in this guidance.

Please contact Ellen Gilinsky, Virginia Water Protection Permit Program Manager, at 804-698-4375 or egilinsky@deq.state.va.us if you have any questions about this guidance.

This document provides procedural guidance to the permit staff. This document is guidance only. It does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the State Water Control Law and the implementation regulations on the basis of the site specific facts when permits are issued.

Full text of the guidance document follows:

Issuance of Virginia Water Protection Permits for Surface Water Impacts in the Potomac River

BACKGROUND

The legal authority for issuance of Virginia Water Protection Permits is contained in § 62.1-44.5 of The Code of Virginia, "Prohibition of waste discharges or other quality alterations of state waters except as authorized by permit", as follows:

"A. Except in compliance with a certificate issued by the [State Water Control] Board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical or biological properties of 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;
4. On and after October 1, 2001, conduct the following activities in a wetland:

- a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
- b. Filling or dumping;
- c. Permanent flooding or impounding; or
- d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

Further, § 62.1-44.15:5 of the Code of Virginia, Virginia Water Protection Permit, states that:

"A. Issuance of a Virginia Water Protection Permit shall constitute the certification required under § 401 of the Clean Water Act.

B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses.

C. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia's waters. Conditions contained in a Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses.

The regulations promulgated by the State Water Control Board pursuant to the above sections of the Code of Virginia provide as follows with respect to the issuance of a Virginia Water Protection ("VWP") Permit, in 9 VAC 25-210-50, "Prohibitions and requirements for VWP permits":

A. Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
2. Filling or dumping;
3. Permanent flooding or impounding; or
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

DEFINITIONS

The following pertinent definitions are taken from the Virginia Water Protection Permit Regulation (9 VAC 25-210-10):

"*Adjacent*" means bordering, contiguous or neighboring; wetlands separated from other surface waters by man-made dikes or barriers, natural river berms, sand dunes and the like are adjacent wetlands.

"*Beneficial use*" means both instream and offstream uses. Instream beneficial uses include, but are not limited to: the

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protection of fish and wildlife habitat; maintenance of waste assimilation; recreation; navigation; and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to: domestic (including public water supply); agricultural; electric power generation; and commercial and industrial uses.

"Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of any pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

"Draining" means human-induced activities such as ditching, excavation, installation of tile drains, hydrologic modification by surface water runoff diversion, pumping water from wells, or similar activities such that the activities have the effect of artificially dewatering the wetland or altering its hydroperiod.

"Dredged material" means material that is excavated or dredged from surface waters.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Excavate" or *"excavation"* means ditching, dredging, or mechanized removal of earth, soil or rock.

"Fill" means replacing portions of surface water with upland, or changing the bottom elevation of a surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris.

"Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose.

"Permanent flooding or impounding" means an increase in the duration or depth of standing water on a land surface, other than that resulting from extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with Virginia Department of Conservation and Recreation (DCR) standards for such facilities (Virginia Stormwater Management Handbook, First Edition, 1999, Volume 1, Chapter 3) or local standards that, at a minimum, meet the DCR standards.

"Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with

such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands

"Surface water" means all state waters that are not ground water as defined in § 62.1-255 of the Code of Virginia.

"VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

In addition, the following definitions are applicable to this guidance:

"Originating in Virginia" means regulated impacts from projects that are connected to or begin on Virginia's land or shoreline; such impacts include water withdrawals from facilities located in Virginia, pipelines emanating from Virginia facilities, excavation or other bottomland disturbances related to the construction or expansion of facilities with Virginia addresses.

COVERAGE

The definition of "state waters" includes waters "partially within" or "bordering the Commonwealth". Accordingly, activities originating in Virginia that impact the Potomac River and that are covered by VWPP program (see 9 VAC 25-210-50) require a VWP permit. Therefore, Virginia users who seek to withdraw water from the Potomac River or who seek to construct an improvement appurtenant to the Virginia shoreline will be required to obtain a VWP permit.

VWP Permits will be processed according to the VWP regulation and the procedures outlined in the VWP Permit Manual (Guidance Memorandum 02-2005, May 1, 2002).

For water withdrawal permits, the statutory considerations applicable to the issuance of a VWP Permit include protecting "instream beneficial uses." [§ 62.1-44.15:5(B) of the Code of Virginia]. Those beneficial uses are flexibly described as follows:

C. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural, and aesthetic values is a beneficial use of Virginia's waters. Conditions contained in a Virginia Water Protection Permit may include, but are not limited to, the volume of water which may be withdrawn as a part of the permitted activity. Domestic and other existing beneficial uses shall be considered the highest priority uses.

The statute also calls for consultation with other agencies prior to issuance of a VWP permit, in § 62.1-44.15:5 F of the Code of Virginia:

"F. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with, and give full consideration to the written recommendations of, the following agencies: the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services and any other interested and affected agencies. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within forty-five days after notification by the Board. The Board shall assume that if written comments are not submitted by an agency within this time period, the agency has no comments on the proposed permit." (Emphasis added).

For VWP Permits sought by Virginia users of the Potomac River, the Maryland Department of Environment shall be furnished copies of the applications and as an "interested and affected agency" shall be consulted in the same manner as are Virginia agencies under subsection (F) above.

For users seeking to withdraw water through a pipe or intake extending from the Virginia side of the Potomac River, any approved VWP permit shall include such provisions as are necessary to comply with, and to effect the purposes of, the Potomac River Low Flow Allocation Agreement, dated January 11, 1978, by and among the United States of America, the State of Maryland, the Commonwealth of Virginia, the District of Columbia, the Washington Suburban Sanitary Commission and the Fairfax County Water Authority.

Please contact Ellen Gilinsky, Virginia Water Protection Permit Program Manager, at 804-698-4375 with any questions about the application of this guidance.

DEPARTMENT OF HEALTH

Notice of Intent to Set Forth Guidelines and Procedures for Informal Fact-Finding Conferences (IFFCs) in Certificate of Public Need (COPN) Cases Through a Guidance Document

Following public comment, the Virginia Department of Health (VDH) intends to implement the guidance document set out below. This document will provide a procedural framework for conducting informal fact-finding conferences (IFFCs) on applications for certificates of public need (COPNs), issued by the State Health Commissioner to authorize the development

of certain medical care improvements, or "projects" as defined in § 32.1-102.1 of the Code of Virginia. This document does not purport to define procedure for any IFFC conducted by the department in programmatic areas that do not involve applications for COPNs.

In developing this guidance document, which effectively replaces VDH Guidance Document ADJ-002, revised February 15, 2001, the department has sought to supplement the Administrative Process Act, Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Code of Virginia, by defining a procedural framework that allows for the predictable, fair and orderly administration of the program by which applications for COPNs are considered.

The department believes the interests of due process and administrative efficiency will be not only served but enhanced by allowing interested and affected citizens an opportunity to comment on the guidance document.

Comments will be welcomed through September 30, 2002. Interested and affected persons should address comments to: Douglas R. Harris, Adjudication Officer, Virginia Department of Health, 1500 East Main Street, Suite 227, Richmond, VA 23219, e-mail dharris@vdh.state.va.us or FAX (804) 786-6776.

Guidelines and Policies for Informal Fact-Finding Conferences (IFFCs) to Consider Applications for Certificates of Public Need (COPNs) Submitted to the Virginia Department of Health (VDH)

Part I. General.

§ 1. Introduction. Article 1.1 of Chapter 4 of Title 32.1 (Section 32.1-102.1 *et seq.*) of the Code of Virginia contains law requiring the issuance of a certificate of public need (COPN) by the State Health Commissioner authorizing the development and implementation of certain medical care facilities and services, listed therein. The Administrative Process Act, § 2.2-4000 *et seq.*, and § 32.1-102.6 of the Code of Virginia set forth administrative procedures binding the review of such applications. Additionally, the State Board of Health has adopted regulations, including those contained in Part V of 12 VAC 5-220 (§§ 170 through 310), to clarify and establish additional provisions for the appropriate review of applications.

§ 2. Need for Guidelines and Policies. A. Due to the complex nature of the issue of public need, the often voluminous administrative record developed in relation to applications for COPNs, and the requirement that the commissioner's determination regarding applications for a COPN be issued within statutory time frames created to ensure prompt dispositions, the Department of Health proposes the present document to assist applicants, their counsel and agency staff, and to serve as an effective normative device that should impart predictability to the administrative process involving COPNs and enhance fairness and efficiency.

B. The present document contains guidelines and policies intended to create an effective framework for an orderly and fair administrative process insofar as that process involves, from time to time, the convening of an informal fact-finding

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conference (IFFC) to consider an application for a COPN, or two or more competing applications, conducted by an adjudication officer employed by the department. The department intends these guidelines and policies to promote a review process that will elicit operative facts and salient considerations helpful in gauging the core issue whether public need for a proposed project exists, while remaining wholly consistent with and supplemental to applicable law and regulation. The department will make the present document available pursuant to § 2.2-4008 of the Code of Virginia and Executive Order 21 (2002), and will distribute it, and any revision to it, in a manner reasonably designed to inform affected and interested persons.

§ 3. Need for an IFFC. An applicant whose proposal:

- (i) Has been recommended for denial by the department's Division of Certificate of Public Need (DCOPN);
- (ii) Has been recommended for denial by one or more regional health planning agencies (HPAs) having jurisdiction over the application;
- (iii) Has been recommended for denial by any combination of these agencies; or
- (iv) Is being challenged by a party seeking to demonstrate "good cause" as defined in subsection G of § 32.1-102.6 of the Code of Virginia;

and all competing applicants in a batch review cycle to which a proposal specified in items (i) through (iv) above will be provided an opportunity to be heard at an IFFC conducted by an adjudication officer. See subsection D of § 32.1-102.6 of the Code of Virginia.

§ 4. Scheduling of an IFFC.

A. Section 32.1-102.6 of the Code of Virginia provides that IFFCs must be held between the eightieth and ninetieth days of the applicable review cycle. The date on which an IFFC is prospectively scheduled (regardless of whether such an IFFC is eventually held or not) will be determined after an application is accepted as complete by DCOPN and will be set forth in the notice of acceptance of the application into an appropriate batch for review.

B. All applicants and their counsel are advised to take careful notice of the scheduled IFFC date, time and place inasmuch as existing law limits considerably the department's discretion in rescheduling an IFFC.

C. Subsection I of § 32.1-102.6 of the Code of Virginia, however, grants applicants the authority to extend any of the time periods prescribed in the law for reviewing COPN applications. In the event that the consideration of a particular application, or a batch of competing applications, would be facilitated by rescheduling an IFFC, an adjudication officer may request that an applicant, or applicants in a batch, authorize the rescheduling of an IFFC to a date outside the period between the eightieth and ninetieth days. Such a rescheduling would necessitate the establishment of a new schedule for subsequent time periods. All applicants in a competing batch must agree to such rescheduling and establishment of a schedule for subsequent time periods.

§ 5. Participants at an IFFC. Participants at an IFFC shall typically be limited to (i) the applicant or competing applicants, who may choose to be represented by legal counsel, (ii) a representative of an HPA having jurisdiction over the application (if the HPA's recommendation was to deny the application; see subsection D of § 32.1-102.6 of the Code of Virginia), (iii), any third-party payor providing health care insurance or prepaid coverage to five percent or more of the patients in the applicant's or applicants' service area, (iv) any person showing "good cause" (as defined in subsection G of § 32.1-102.6 of the Code of Virginia) to be a participant at an IFFC, and (v) a representative of DCOPN.

Part II. Filing Documents.

§ 6. Submission and Distribution of Filings.

A. All documents submitted by an applicant to the adjudication officer in connection with an IFFC for inclusion in the record and for consideration during the decision-making process, whether submitted before, during or after an IFFC, must be distributed to all parties presumed to be participants at an IFFC (if filed before an IFFC) and to all parties who participated at the IFFC (if filed after an IFFC). Submission and delivery by facsimile transmission, in addition to other established or reasonable means of ensuring prompt receipt, to all such parties is strongly encouraged in order to ensure timely distribution and fair notification.

B. Documents prepared by an applicant or its counsel, by an HPA or by DCOPN to summarize facts, marshal evidence and present argument should be submitted to the adjudication officer on paper and in electronic form. Brevity should be a primary consideration when drafting and submitting such documents. Such documents include discussions involving the twenty statutory considerations defining public need, discussed below in § 9.

C. When submitting documents in electronic form, parties should prepare them as files saved in Microsoft Word, with 12-point Times New Roman font, and preferably with left-justified margins and few atypical formatting and stylistic features, although tables that succinctly relate comparative facts and key data are encouraged.

§ 7. Pre-IFFC Filings.

A. An applicant, or its counsel, may choose to file documents for the purpose of facilitating a presentation at an IFFC. When an applicant chooses to do so, it should submit the documents to the adjudication officer and distribute them to all parties presumed to be participants at an IFFC, as discussed in § 6, above.

B. In the event that an applicant wishes to file documents for the purpose of facilitating a presentation at an IFFC and such documents relate complex facts or data to be discussed at the IFFC, the applicant should file these documents by submitting them to the adjudication officer and distributing them to all parties presumed to be participants at the IFFC so as to be received at least four days before the scheduled date of the IFFC (if such date falls on a Monday) and at least three days before the date of the IFFC (if such date falls on any other business day). The purpose of this provision is to afford the adjudication officer and participants adequate time before the

IFFC to review documents that relate complex facts and data, as distinguished from documents that contain argument and general evidence and analysis, so that the IFFC may be optimally effective.

C. The adjudication officer, on his own or on a participant's motion, may limit a participant's or witness' discussion at an IFFC of complex facts and data if:

(i) Such facts and data were not fairly and clearly explained in a document submitted and distributed before the IFFC and in accordance with § 6 and this section, and

(ii) As determined in the discretion of the adjudication officer, discussion of the complex facts and data would work an injustice, or cause unnecessary confusion or the undue surprise of a participant.

D. Documents that do not relate complex facts or data but are nonetheless intended to facilitate a presentation at an IFFC, such as summaries of witnesses' credentials, generally-available articles, letters from non-participants conveying support for a project, maps, and paper versions of documents created in Microsoft PowerPoint, may be filed at the beginning, during or after an IFFC.

§ 8. Post-IFFC Filings.

A. In the interest of coordinating a fair, orderly, timely and economical conclusion of the application review process, the adjudication officer conducting an IFFC will determine and announce at the close of an IFFC the date upon which the record in the matter will close, and, with the agreement of the participating parties, may determine and announce any interim dates upon which post-IFFC filings shall be submitted to him and distributed to participants at the IFFC, in accordance with § 6 above. Such additional filings normally consist of, in the order in which their respective due dates are set:

- (i) Additional written information;
- (ii) Proposed findings of fact and conclusions of law; and
- (iii) Any rebuttal deemed necessary by a participant.

B. The date for closing the record must be no later than 30 calendar days following the IFFC, in accordance with subdivision E 4 of § 32.1-102.3 of the Code of Virginia. All submittals delivered before the close of the record shall become part of the record in the matter and, if delivered and distributed without undue surprise on any participant, shall be duly considered by the adjudication officer in formulating his recommendation to the commissioner.

§ 9. Twenty Statutory Considerations.

A. Each applicant should prepare a succinct written discussion of its proposed project in direct relation to the twenty considerations defining public need, set forth in subsection B of § 32.1-102.3 of the Code of Virginia. Other participants at an IFFC, including an HPA with jurisdiction and a representative of DCOPN, should prepare such a written document so as to discuss all applications under review at an IFFC, individually and comparatively as appropriate.

B. Discussions relating a project, or projects, to the statutory considerations may be submitted as part of any other

submittal filed and distributed by a participant, should be titled so as to aid their clear identification, should be filed no later than the deadline for filing proposed findings of fact and conclusions of law, and, in any event, must be filed before the record closes.

C. Discussions relating a proposed project, or projects, to the statutory considerations should be submitted to the adjudication officer in electronic form, as discussed in § 6 above.

§ 10. Petitions Seeking to Show Good Cause.

A. In accordance with subdivision E 3 of § 32.1-102.6 of the Code of Virginia and subsection A of 12 VAC 5-220-230, any person seeking to show good cause and thereby be made a participant at an IFFC may petition for such standing by delivering to the commissioner and to the adjudication officer a written filing disclosing such person's intention no later than the eightieth calendar day of the batch review cycle in which the application involved was reviewed and no more than 10 days after DCOPN has transmitted its recommendation to the applicant involved and to persons who have requested a copy of the DCOPN recommendation.

B. Such a petition should be distributed to the applicant and to all parties presumed to be participants at an IFFC (and an HPA if it recommended approval of the proposed project involved) in such a manner as is likely to cause prompt notice of its existence and in accordance with applicable provisions of § 6 of this document above.

C. Such a petition must state the purported grounds and factual basis for finding good cause and should be submitted to the adjudication officer in electronic form, in accordance with § 6 of this document above.

D. A person seeking to show good cause who has participated in a good-cause-IFFC, as discussed in § 12 below, may submit and distribute post-IFFC filings, as discussed in § 8 above, and according to any schedule agreed upon at the close of an IFFC-in-chief, as if that person had shown good cause. Such filings will be taken under advisement until such time as a determination that good cause exists may be reached.

Part III. Conduct of IFFCs.

§ 11. Oral Presentations in General.

A. An applicant, with or without counsel at its election, may present any factual and analytical evidence and argument that is material and relevant to a subject application and to the fundamental set of issues involved in determining whether its proposed project is likely to meet a public need. An HPA having jurisdiction and a representative of DCOPN may present factual and analytical evidence, argument and summary. The effectiveness of such a presentation may be enhanced to the degree it bears a direct relation to the twenty considerations defining public need, set forth in subsection B of § 32.1-102.3 of the Code of Virginia.

B. Cumulative or redundant evidence, perhaps presented through the similar testimony of several witnesses, may dilute the impact of important considerations. Brevity should be a

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primary consideration when preparing and delivering a presentation.

C. An applicant's agreement to any condition on the issuance of a prospective COPN, proposed or discussed during the review process, including a condition authorized by subsection F of § 32.1-102.5 of the Code of Virginia, should be confirmed or otherwise clearly stated by the applicant or its counsel at an IFFC.

D. As discussed in § 7 above, the adjudication officer, on his own or on a participant's motion, may limit a participant's discussion of complex facts or data if such facts or data have not been fairly and clearly explained in a document submitted and distributed before the IFFC and in accordance with that section.

§ 12. Oral Presentations at a Good-Cause IFFC.

A. In the event that a party has duly and timely submitted and distributed a petition seeking to show good cause, as discussed in § 10 above, and the petition, on its face, indicates a likelihood that good cause will be shown, a brief IFFC to allow that person to present the grounds and basis for a finding of good cause (referred to for present purposes as a good-cause IFFC), will be held on the day of and immediately before an IFFC scheduled to discuss a proposed project (referred to for present purposes as an IFFC-in-chief).

B. The party seeking to show good cause may, by motion, be allowed to discuss briefly the application involved, as if the party had successfully demonstrated good cause. If the party seeking to show good cause discusses the application, the participant seeking approval of the application involved may briefly respond to, or rebut, this discussion. Such a discussion of the application by the person seeking to show good cause will be taken under advisement until such time as a determination that good cause exists may be reached.

§ 13. Transcript of an IFFC. A transcript of an IFFC will be made for the purposes of aiding a possible appeal to a court of competent jurisdiction, and for reference by the parties in preparing post-IFFC filings, assuming the ability of the court reporter tasked with preparing the transcript to distribute it promptly. In the event that an IFFC-in-chief follows a good-cause-IFFC, the transcript will include the testimony elicited and argument made at both proceedings.

Part IV. Post-IFFC Discussions.

§ 14. Teleconference to Clarify Facts or Consider Conditions.

A. In the event that an adjudication officer's review of the closed record on an application or a batch of applications reveals the need for clarification of salient facts or suggests an opportunity for improving the likelihood of approval through the devising of one or more particular conditions, including those authorized by subsection F of § 32.1-102.5 of the Code of Virginia, to be attached to the issuance of a COPN sought by an applicant, the adjudication officer may request that the IFFC participants (and an HPA in the event that it did not participate at the IFFC) take part in a brief teleconference or other meeting, and conduct such a teleconference or meeting for the purpose of clarifying facts or devising particular conditions.

B. Such a post-IFFC discussion may involve consideration of the closed record, shall be affirmatively conscribed so as not to reopen the record or to violate the prohibition on ex parte communications contained in subsection C of § 32.1-102.6 of the Code of Virginia, and shall be concluded at a point and in a manner in the discretion of the adjudication officer.

Part V. Decisions.

§ 15. Good Cause Determinations.

A. If an IFFC-in-chief on a particular application is not already scheduled or pending when a petition seeking to establish good cause in relation to that application is received by the commissioner, a determination whether good cause exists will be made within five days of a good-cause-IFFC.

B. If an IFFC-in-chief on an application is already scheduled or pending when such a petition is received, a determination whether good cause exists may be made at any time up to the time that a determination whether public need for the project proposed in the subject application is reached. In such a case, if the commissioner finds that good cause exists, the content of any submissions duly and timely filed, and oral presentation made at a good-cause-IFFC by the party seeking to show good cause, may be relied upon by the adjudication officer in formulating a recommendation and by the commissioner in reaching a determination whether public need for the proposed project under consideration exists. In such a case, a finding whether good cause exists may be issued at the same time that a determination regarding whether a proposed project meets a public need is issued.

§ 16. Issuance of Decisions on Applications. After receiving an adjudication officer's recommendation, the commissioner will reach a determination whether public need for a proposed project exists and issue a decision on an attendant application within 45 days of the close of the record unless:

(i) In the commissioner's discretion and upon written notification to the participants pursuant to subdivision E 6 of § 32.1-102.6 of the Code of Virginia, he extends the time for review of the application for an additional 25 days beyond expiration of the 45-day period;

(ii) In the commissioner's discretion and by operation of subdivision E 7 of § 32.1-102.6 of the Code of Virginia, he allows 70 days following close of the record in the matter to elapse, thereby allowing an application for a proposed project under consideration to be deemed approved; or

(iii) As authorized by subsection I of § 32.1-102.6 of the Code of Virginia, the applicant, or applicants in a competing batch together, elect to extend the 70-day time period prescribed by law and discussed in this section.

**MODEL PROCEDURES FOR THE IMPLEMENTATION
OF THE PUBLIC-PRIVATE EDUCATION FACILITIES
AND INFRASTRUCTURE ACT**

Notice of Comment Period

The work group developing model procedures for the implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (the PPEA) invites the public to comment on the draft procedures that have been developed.

The PPEA grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine that there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The legislation establishing the PPEA provides for the chairs of the General Laws Committees of the Senate and the House of Delegates and the Governor to facilitate the development of model procedures for implementation of the PPEA.

The public is invited to submit written comment on the draft procedures. A copy of the draft model procedures may be obtained by contacting Amigo Wade or Rhonda Dyer, Division of Legislative Services, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 371-0169, or e-mail rdyer@leg.state.va.us or awade@leg.state.va.us. Written comments may be submitted to the attention of Amigo Wade or Rhonda Dyer and must be received by 4:30 p.m. on September 12, 2002.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in the Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://legis.state.va.us/codecomm/register/regindex.htm>

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
- PETITION FOR RULEMAKING - RR13

ERRATA

STATE BOARD OF CORRECTIONS

Title of Regulation: **6 VAC 15-40. Minimum Standards for Jails and Lockups.**

Publication: 18:20 VA.R. 2583-2585 June 17, 2002.

Correction to Final Regulation:

In 6 VAC 15-40-970, strike "specify" in first sentence.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **9 VAC 20-60. Virginia Hazardous Waste Management Regulations.**

Publication: 18:21 VA.R. 2837-2839 July 1, 2002.

Correction to Emergency Regulation:

Page 2837, 9 VAC 20-60-1285 A, change the fee for "Transporters with terminals or other facilities within the Commonwealth" from "\$80 420" to "\$80 240"

STATE WATER CONTROL BOARD

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

Publication: 18:24 VA.R. 3289-3295 August 12, 2002.

Correction to Final Regulation:



Insert the following Registrar's Notice following the Agency Contact on page 3289:

<p>REGISTRAR'S NOTICE: The proposed action regarding 9 VAC 25-260-140 was adopted as published in 18:4 VA.R. 495-518 November 5, 2001; therefore pursuant to § 2.2-4031 A of the Code of Virginia, the identical text of the final regulation is not set out at length. Changes to 9 VAC 25-260-155 are shown below.</p>

<p>See 18:20 VA.R. 2657-2661 June 17, 2002, regarding adoption of the other sections that were proposed in 18:4.</p>
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CALENDAR OF EVENTS

Symbol Key

-  Location accessible to persons with disabilities
 Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY , or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."


VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

NOTE: CHANGE IN MEETING TIME

August 28, 2002 - 10 a.m. -- Open Meeting


Virginia Board of Accountancy, 3600 West Broad Street, Suite 696, Richmond Virginia.  (Interpreter for the deaf provided upon request)

The Enforcement Committee will review pending complaints, discuss mediation and volunteer networking. Public comment will not be received.


Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY , e-mail boa@boa.state.va.us.

† September 24, 2002 - 11 a.m. -- Open Meeting

† September 25, 2002 - 9 a.m. -- Open Meeting


Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A two-day general business meeting to discuss matters requiring board action including regulatory review. A public comment period will be held at the beginning of the meeting. All meetings are subject to change and cancellation. Persons desiring to attend the meeting and requiring special accommodations or interpretative services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY , e-mail boa@boa.state.va.us.

COMMONWEALTH COUNCIL ON AGING


† September 12, 2002 - 9 a.m. -- Open Meeting

Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the Public Relations Committee. Public comments welcome.

Contact: Robin Brannon, Communications Director, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9323.

† September 12, 2002 - 10 a.m. -- Open Meeting

Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular business meeting. Public comments welcome.

Contact: Marsha Mucha, Virginia Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Cattle Industry Board

† September 4, 2002 - 9:30 a.m. -- Open Meeting

Four Points Hotel by Sheraton, 900 Prices Fork Road, Blacksburg, Virginia. 

During the regular business meeting, the board will approve minutes from the August 2002, meeting in addition to reviewing the financial statement for the period October 1, 2001 through September 1, 2002. Staff will give program updates for the state and national level. The board will review all projects submitted for fiscal year October 1, 2002, to September 30, 2003. A proposed budget will be developed for the upcoming fiscal 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 accommodation in order to participate at the

meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

Contact: Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.


Virginia Charity Food Assistance Advisory Board

August 29, 2002 - 10:30 a.m. -- Open Meeting
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia. 

A routine meeting to discuss issues related to hunger, malnutrition, and food insecurity in the Commonwealth, and potential opportunities to alleviate the problem. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Steven W. Thomas at least five days before the meeting date so that suitable arrangements can be made.

Contact: Steven W. Thomas, Executive Secretary, Department of Agriculture and Consumer Services, 1100 Bank St., Room 809, Richmond, VA 23219, telephone (804) 786-3936, FAX (804) 371-7788.


Virginia Horse Industry Board

August 29, 2002 - 9:30 a.m. -- Open Meeting
Virginia Department of Forestry, 900 Natural Resources Drive,
Second Floor, Charlottesville, Virginia. 

A meeting to review the minutes of the last meeting, the board's current financial status, and ongoing projects. The board will also discuss new projects for the 2002-2003 fiscal 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 accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Suite 1004, Richmond, VA, telephone (804) 786-5842, FAX (804) 371-7786.

Virginia Sweet Potato Board

† **September 5, 2002 - 6 p.m.** -- Open Meeting
Little Italy Restaurant, 10227 Rogers Drive, Nassawadox,
Virginia. 

The board will hear and approve minutes of the last meeting and the presentation of the board's financial statement. The board will discuss and consider programs (promotion, research, and education), the annual budget, and other business that may be presented. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs

any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.


Contact: Butch Nottingham, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973.

STATE AIR POLLUTION CONTROL BOARD

August 26, 2002 - 7 p.m. -- Public Hearing
Circuit Courtroom, Russell County Courthouse, 121 East Main
Street, Lebanon, Virginia. 


A public hearing to receive comments on a draft federal operating permit pursuant to the regulations of the State Air Pollution Control Board for Appalachian Power Company to operate an electric power generating facility and associated coal and ash processing and handling equipment in Carbo, Virginia.

Contact: Tom Derting, State Air Pollution Control Board, 355 Deadmore St., Abingdon, VA 24210, telephone (276) 676-4831, e-mail tmderting@deq.state.va.us.

September 11, 2002 - 9 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia. 


A public hearing to receive comments on the notice of intended regulatory action to adopt a regulation establishing testing and certification procedures for manufacturers of on-road heavy-duty diesel engines sold in Virginia.

Contact: Kathleen R. Sands, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, e-mail krsands@deq.state.va.us.

September 11, 2002 - 9 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia. 

A public hearing to receive comments on proposed amendments to the Control and Abatement of Air Pollution Regulations concerning municipal solid waste landfills (Rev B02).

Contact: Karen G. Sabasteanski, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, e-mail kgsabastea@deq.state.va.us.

September 11, 2002 - 9 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia. 

A public hearing to receive comments on the notice of intended regulatory action to amend the Regulations for the Control and Abatement of Air Pollution concerning VOC emission standards (Rev. C02).

Contact: Kathleen R. Sands, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, e-mail krsands@deq.state.va.us.

Calendar of Events

† **October 10, 2002 - 9 a.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia.

A public hearing to receive comments on proposed amendments to the Air Regulations (Rev. K00).

Contact: Karen G. Sabasteanski, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, e-mail kgsabastea@deq.state.va.us.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 26, 2002 - 9 a.m. -- Open Meeting
September 9, 2002 - 9 a.m. -- Open Meeting
September 23, 2002 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.

An executive staff meeting to receive and discuss reports and activities. Other matters are not yet determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4442.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

September 6, 2002 - 10 a.m. -- Open Meeting
Department for the Aging, 1600 Forest Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Alzheimer's Disease and Related Disorders Commission, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail jlhoneycutt@vdh.state.va.us.

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

September 10, 2002 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the board 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

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September 10, 2002 - 9 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to amend regulations entitled: **18 VAC 10-10. Public Participation Guidelines.** The purpose of the proposed action is to allow the board to accept requests to be placed on a notification list, and to notify PPG list members, via electronic means and to make necessary grammatical changes and update references to recodified provisions of the APA

Statutory Authority: §§ 2.2-4007 and 54.1-404 of the Code of Virginia.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apelsla@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

September 6, 2002 - 10 a.m. -- Open Meeting
October 4, 2002 - 10 a.m. -- Open Meeting
November 1, 2002 - 10 a.m. -- Open Meeting
Virginia War Memorial, 601 South Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. AARB submittal forms and submittal instructions can be downloaded by visiting the DGS forms center at www.dgs.state.va.us. Request submittal form DGS-30-905 or submittal instructions form DGS-30-906.

Contact: Richard L. Ford, AIA, Chairman, Art and Architectural Review Board, 1011 E. Main St., Room 221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

October 8, 2002 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to adopt regulations entitled: **18 VAC 15-40. Virginia Certified Home Inspectors Regulations.** The purpose of the proposed regulation is to establish entry, renewal, and reinstatement requirements for certification by the board for a voluntary certification program for home inspectors established by House Bill 2174 of the 2001 Session of the General Assembly. The proposed regulations also establish minimum standards for conducting certified home inspections as well as standards for conduct and practice.

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128 or (804) 367-9753/TTY ☎

October 8, 2002 - 2 p.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia.

October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to adopt regulations entitled: **18 VAC 15-30. Virginia Lead-Based Paint Activities Regulations.** The purpose of the proposed amendments is to deregulate lead-based paint activities in public building, commercial buildings, and superstructures, and begin regulating these activities in child-occupied facilities. The deregulation is a direct result of the EPA not finalizing certain portions of its proposed regulations, and Virginia's statutory mandate to be no more stringent than the federal regulations. Extensions of interim licenses have been eliminated. The Supervisor and Project Designer training courses have been redefined as two separate and distinct courses. Individuals applying for a second interim license will be required to retake the initial training instead of an eight-hour refresher. Licensure through "grandfathering" has been eliminated. The Inspector Technician discipline has been replaced with Lead Inspector, and the Inspector/Risk Assessor discipline has been replaced with Lead Risk Assessor. Specific degree fields have been added to the option for Risk Assessors to substitute one year of experience with a bachelor's degree. Interim approval will no longer be granted to lead training courses. An on-site audit must be conducted prior to approval.

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

Contact: Tom Perry, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128 or (804) 367-9753/TTY ☎

October 29, 2002 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5 West,
Richmond, Virginia.

A meeting to conduct routine business and review and respond to comments received on the proposed regulations for certified home inspectors during the 60-day public comment period and public hearing, and adopt final regulations. A public comment period will be held at the beginning of the meeting.

Contact: David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.state.va.us.

AUCTIONEERS BOARD

October 17, 2002 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, 5th Floor, Richmond, Virginia.

October 18, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Auctioneers Board intends to amend regulations entitled: **18 VAC 25-10. Public Participation Guidelines.** The purpose of the proposed action is to allow the board to accept requests to be placed on a notification list, and to notify PPG list members, via electronic means and to update references to recodified provisions of the Administrative Process Act.

Statutory Authority: §§ 2.2-4007 and 54.1-602 of the Code of Virginia.

Contact: Marian H. Brooks, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail Auctioneers@dpor.state.va.us.

BOARD FOR BARBERS AND COSMETOLOGY

September 9, 2002 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A regular board meeting that will include working on proposed wax technician regulations.

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

September 10, 2002 - 9:30 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.

Calendar of Events

September 27, 2002 - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to adopt regulations entitled: **18 VAC 41-10. Public Participation Guidelines.** The purpose of the proposed action is to promulgate guidelines governing public participation.

Statutory Authority: §§ 2.2-4007 and 54.1-201 of the Code of Virginia.

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

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September 10, 2002 - 9:30 a.m. -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia.


September 27, 2002 - Public comments may be submitted through this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to adopt regulations entitled: **18 VAC 41-20. Barbering and Cosmetology Regulations.** The proposed regulatory changes will promulgate regulations for the newly combined Board for Barbers and Cosmetology as directed by Acts of Assembly 2000, c. 726, cl.3.; clarify and standardize requirements for licensure; provide for and ensure that health, sanitation standards, and safety are adequate in facilities where barbering and cosmetology are practiced; extend the temporary work permit from 30 to 45 days to allow sufficient time for posting examination scores and avoid interruption of employment, and adjust licensing fees for regulants of the Board for Barbers and Cosmetology.

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


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

BOARD FOR THE BLIND AND VISION IMPAIRED


October 15, 2002 - 1 p.m. -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review information regarding activities and operations, review expenditures from board endowment fund, and discuss other issues raised for the board members.


Contact: Katherine C. Proffitt, Administrative Staff Assistant, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3145, FAX

(804) 371-3157, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail proffikc@dbvi.state.va.us.


Statewide Rehabilitation Council for the Blind

† **September 14, 2002 - 10 a.m.** -- Open Meeting
Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Blind and Vision Impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the commonwealth.

Contact: James G. Taylor, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail taylorjg@dbvi.state.va.us.


STATE CHILD FATALITY REVIEW TEAM

September 13, 2002 - 10 a.m. -- Open Meeting
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. 

The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m., is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

Contact: Virginia Powell, Coordinator, State Child Fatality Review Team, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708.

COMPENSATION BOARD


August 27, 2002 - 11 a.m. -- Open Meeting
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy P. Waddell, Administrative Staff Assistant, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

BOARD OF CONSERVATION AND RECREATION

NOTE: CHANGE IN MEETING TIME AND LOCATION


September 6, 2002 - 10 a.m. -- Open Meeting
State Capitol, House Room 1, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

DEPARTMENT OF CONSERVATION AND RECREATION

August 29, 2002 - 1 p.m. -- Open Meeting


Smith Mountain Lake State Park Visitor Center, 1235 State Park Road, Huddleston, Virginia.  (Interpreter for the deaf provided upon request)

The final committee meeting to complete the master plan process for Smith Mountain Lake State Park. Requests for interpreter for the deaf should be filed two weeks prior to the meeting.

Contact: Robert Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 886-6140, FAX (804) 371-7899, e-mail rsmunson@dcr.state.va.us.

Virginia Cave Board

† **September 14, 2002 - 11:30 a.m.** -- Open Meeting


Department of Conservation and Recreation, Staunton Soil and Water Office, Staunton, Virginia.  (Interpreter for the deaf provided upon request)

Committees will meet at 11:30 a.m. A regular board meeting will be held at 1 p.m. Request for interpreter for the deaf should be filed two weeks prior to the meeting.


Contact: Larry Smith, Protection Manager, Department of Conservation and Recreation, 217 Governor St., Richmond, VA 23219, telephone (804) 371-6205, FAX (804) 371-2674, e-mail lsmith@dcr.state.va.us.

BOARD FOR CONTRACTORS

August 28, 2002 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to conduct board business.


Contact: Eric L. Olson, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.state.va.us.

August 30, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Contractors is amending regulations entitled: **18 VAC 50-22. Board for Contractors Regulations;** and **18 VAC 50-30. Tradesman Rules and Regulations.** The purpose of the proposed action is to increase the licensing fees for contractors and tradesmen.


Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Contact: Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St.,

Richmond, VA 23230-4917, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail contractors@dpor.state.va.us.

BOARD OF CORRECTIONS


September 17, 2002 - 10 a.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss correctional services and policy/regulation matters that may be presented to the full board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.


September 18, 2002 - 8:30 a.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, Room 3065, Richmond, Virginia. 

A meeting to discuss administrative matters that may be presented to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.

September 18, 2002 - 10 a.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss correctional services and policy/regulation matters that may be brought before the full board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr. Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3605, e-mail woodhousebl@vadoc.state.va.us.

CRIMINAL JUSTICE SERVICES BOARD

September 12, 2002 - 10 a.m. -- Open Meeting

Virginia State Police Training Academy, 7700 Midlothian Turnpike, Room 335, Richmond, Virginia.

A meeting of the Harold L. McCann Memorial Award Committee to conduct general business. For VSP Academy information, please call 804-674-2248.

Contact: Judith Kirkendall, Reg. Coordinator, Department of Criminal Justice Services, Eighth St. Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410, e-mail jkirkendall@dcjs.state.va.us.

Calendar of Events

BOARD OF DENTISTRY


September 13, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to increase certain fees charged to applicants and licensed dentists and dental hygienists.


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


Public comments may be submitted until September 13, 2002, to Sandra K. Reen, Executive Director, Board of Dentistry, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

† **September 19, 2002 - 9 a.m.** -- Public Hearing
Norfolk Waterside Marriott, 235 East Main Street, Norfolk, Virginia. 

The board will receive public comments on proposed regulations for the registration of oral and maxillofacial surgeons and certification to perform certain cosmetic procedures.


Contact: Sandra Reen, Executive Director, Board of Dentistry, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail sandra_reen@dhp.state.va.us.

† **September 19, 2002 - 1 p.m.** -- Open Meeting
Norfolk Waterside Marriott, 235 East Main Street, Norfolk, Virginia. 

A panel of the board will convene a formal hearing to inquire into allegations that a certain practitioner may have violated laws governing the practice of dentistry. The panel will meet in open and closed sessions pursuant to the Code of Virginia. Public comments will not be received.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY , e-mail denbd@dhp.state.va.us.


DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

September 19, 2002 - 11 a.m. -- Open Meeting
October 17, 2002 - 11 a.m. -- Open Meeting
† **November 21, 2002 - 11 a.m.** -- Open Meeting
Virginia War Memorial, 601 South Belvidere Street, Auditorium, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities to use design-build or construction management-type contracts. Contact the Division of Engineering and Buildings to confirm the meeting. Board rules and regulations can be obtained online at www.dgs.state.va.us under the DGS Forms, Form DGS-30-904.

Contact: Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY , e-mail fadcock@dgs.state.va.us.

BOARD OF EDUCATION

August 28, 2002 - 9 a.m. -- Open Meeting
September 11, 2002 - 9 a.m. -- Open Meeting
Hilton Garden Hotel at Innsbrook, 4050 Cox Road, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)

A work session of the Committee to Enhance the K-12 Teaching Professions; public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.


Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

September 2, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education is amending regulations entitled: **8 VAC 20-440. Regulations Governing the Employment of Professional Personnel.** The purpose of the proposed action is to amend and clarify the "breach of contract" provision in the regulation.

Statutory Authority: §§ 22.1-16 and 22.1-302 of the Code of Virginia.

Contact: Dr. Thomas Elliott, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2924, FAX (804) 225-2524 or e-mail telliott@mail.vak.12ed.edu.


September 26, 2002 - 9 a.m. -- Open Meeting
October 16, 2002 - 9 a.m. -- Open Meeting
† **November 20, 2002 - 9 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency in advance. Public comment will be received.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James

Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

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September 26, 2002 - 1 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. 

October 2, 2002 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to adopt regulations entitled: **8 VAC 20-650. Regulations Governing the Determination of Critical Teacher Shortage Areas for Awarding the Virginia Teaching Scholarship Loan Program.** The purpose of the proposed action is to collect the supply and demand information from school divisions and provide a reasonable and scientific procedure to identify critical teacher shortage areas in Virginia.

Statutory Authority: § 22.1-290.01 of the Code of Virginia.

Contact: Dr. Thomas Elliott, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2924, FAX (804) 225-2524 or e-mail telliott@mail.vak.12ed.edu.

October 17, 2002 - 8:30 a.m. -- Open Meeting

October 18, 2002 - 8:30 a.m. -- Open Meeting


Radisson Hotel Historic Richmond, 301 West Franklin Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A working session of the State Special Education Advisory Committee. Public comment will not be received. Persons requesting the services of an interpreter for the deaf should do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

DEPARTMENT OF ENVIRONMENTAL QUALITY


August 27, 2002 - 7 p.m. -- Public Hearing

Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the permit amendment to incorporate a groundwater monitoring plan and a variance for the use of alternate concentration limits.

Contact: Rosemarie Ballance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4223, e-mail rballance@deq.state.va.us.


September 4, 2002 - 7 p.m. -- Public Hearing

New River Valley Competitiveness Center, 6580 Valley Center Drive, Conference Room, Radford, Virginia. 

A public hearing to receive comments on revocation of the existing RCRA post-closure care permits for units 5 and 7 and issuance of a new RCRA post-closure care permit for units 5, 7, 10 and 16 for the Radford Army Ammunition Plant located in Radford, Virginia.

Contact: Fuxing Zhou, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4126, e-mail fzhou@deq.state.va.us.


September 4, 2002 - 7 p.m. -- Public Hearing

New River Valley Competitiveness Center, 6580 Valley Center Drive, Conference Room, Radford, Virginia. 

A public hearing to receive comments on issuance of a new RCRA permit treatment and storage of hazardous waste in tanks and hazardous waste treatment by incineration at the Radford Army Ammunition Plant located in Radford, Virginia.

Contact: Garwin W. Eng, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4131, e-mail gweng@deq.state.va.us.


† **September 5, 2002 - 7 p.m.** -- Public Hearing

Culpeper County Library, 271 Southgate Shopping Center, Route 29 S (Madison Road), Culpeper, Virginia. 

A public hearing to receive comments on the draft post-closure permit for hazardous waste for Continental Teves, Inc. in Culpeper.

Contact: Allen Brockman, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4468, e-mail arbrockman@deq.state.va.us.


September 9, 2002 - 9 a.m. -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the Ground Water Protection Steering Committee, an interagency advisory committee formed to stimulate, strengthen and coordinate groundwater protection activities in the Commonwealth.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.state.va.us.


September 9, 2002 - 10 a.m. -- Open Meeting

October 9, 2002 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the air impact study group.

Contact: James E. Sydnor, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4424, e-mail jesydnor@deq.state.va.us.


† **September 10, 2002 - 7 p.m.** -- Public Hearing

Lorton Community Library, 9529 Richmond Highway, Meeting Room, Lorton, Virginia. 

A public hearing to receive comments on the draft permit amendment to incorporate a groundwater monitoring plan into the permit for the Rainwater Debris Landfill located in Fairfax County approximately one mile south of Lorton.


Calendar of Events

Contact: James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4222, e-mail jfbernard@deq.state.va.us.

† **September 11, 2002 - 7 p.m.** -- Public Hearing
Cape Charles Town Hall Building, 2 Plum Street, Cape Charles, Virginia. 

A public hearing to receive comments on a draft permit amendment to incorporate a groundwater monitoring plan to the permit. The comment period on the draft permit amendment closes on September 26, 2002.

Contact: James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4222, e-mail jfbernard@deq.state.va.us.

September 12, 2002 - 10 a.m. -- Open Meeting
October 10, 2002 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 


A meeting of the water impact study group.

Contact: Allan Brockenbrough, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4147, e-mail abrockenb@deq.state.va.us.

† **September 12, 2002 - 7 p.m.** -- Public Hearing
Accomack County Administration Building, 23296 Courthouse Avenue, Accomack, Virginia. 


A public hearing to receive comments on the tentative draft permit amendment to incorporate the groundwater monitoring plan into the permit. The comment period on the tentative draft permit amendment closes on September 27, 2002.

Contact: James Bernard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4222, e-mail jfbernard@deq.state.va.us.

† **September 12, 2002 - 7 p.m.** -- Public Hearing
King George High School, Dahlgren Road, Auditorium, King George, Virginia. 

A public hearing to receive comments on a draft permit amendment for an experimental program for operating a bioreactor landfill under a Project XL agreement. The comment period on the draft permit amendment closes on September 27, 2002.


Contact: Paul Farrell, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4214, e-mail epfarrell@deq.state.va.us.

† **September 12, 2002 - 7 p.m.** -- Public Hearing
Workforce Development Center, 100 North College Drive, Room 204, Franklin, Virginia. 

A public hearing to receive comments on the draft post-closure permit for hazardous waste for International Paper located in Franklin, Virginia. The comment period on the draft permit closes on September 27, 2002.

Contact: Richard Doucette, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4337, e-mail rcdoucette@deq.state.va.us.


BOARD OF FORESTRY

† **September 16, 2002 - 7 p.m.** -- Public Hearing
† **September 17, 2002 - 7 p.m.** -- Public Hearing
† **September 23, 2002 - 1 p.m.** -- Public Hearing
Department of Forestry, 210 Riverland Drive, Salem, Virginia.  (Interpreter for the deaf provided upon request)


The department will receive comments on its draft Forest Land Enhancement, State Priority Plan. Please see Department of Forestry website for draft of the plan (www.dof.state.va.us).

Contact: James Starr, Forest Management, Board of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 296-2369, e-mail starrj@dof.state.va.us.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

September 10, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

A general business meeting including consideration of legislative, regulatory and disciplinary matters as may be on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

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September 10, 2002 - 9 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to amend regulations entitled: **18 VAC 65-30. Regulations for Preneed Funeral Planning**. The purpose of the proposed action is to clarify and eliminate an unnecessary requirement for a contract number.

Statutory Authority: §§ 54.1-2400 and 54.1-2480 of the Code of Virginia.

Public comments may be submitted until October 11, 2002, to Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

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September 10, 2002 - 9 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia.

October 11, 2002 - Public comments may be submitted until
this date.



Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the Board of Funeral Directors and
Embalmers intends to amend regulations entitled: **18 VAC
65-40. Regulations for the Resident Trainee Program in
Funeral Service.** The purpose of the proposed action is to
ensure that the trainee receives training in preneed funeral
arrangements.


Statutory Authority: Chapter 38 of the Code of Virginia.



Public comments may be submitted until October 11, 2002, to
Elizabeth Young, Executive Director, Board of Funeral
Directors and Embalmers, 6606 West Broad Street,
Richmond, VA 23230.



Contact: Elaine J. Yeatts, Regulatory Coordinator,
Department of Health Professions, 6606 W. Broad St.,
Richmond, VA 23230, telephone (804) 662-9918, FAX (804)
662-9114 or e-mail elaine.yeatts@dhp.state.va.us.



BOARD OF GAME AND INLAND FISHERIES

September 4, 2002 - 7 p.m. -- Open Meeting
Deep Creek Middle School, 1955 Deal Avenue, Auditorium,
Chesapeake, Virginia.  (Interpreter for the deaf provided
upon request)
Prince Edward County Agriculture and Natural Resources
Building, 100 Dominion Drive, Conference Room, Farmville,
Virginia.  (Interpreter for the deaf provided upon request)

September 5, 2002 - 7 p.m. -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad
Street, Board Room, Richmond, Virginia. 


September 9, 2002 - 7 p.m. -- Open Meeting
Mountain Empire Community College, Highway 23 South,
Dalton Cantrell Auditorium, Big Stone Gap, Virginia. 
(Interpreter for the deaf provided upon request)
Department of Game and Inland Fisheries, 4725 Lee
Highway, Verona, Virginia.  (Interpreter for the deaf provided
upon request)


September 10, 2002 - 7 p.m. -- Open Meeting
Wytheville Community College, 1000 East Main Street,
Grayson Hall, The Commons, Wytheville, Virginia. 
(Interpreter for the deaf provided upon request)
Northern Virginia Regional Park Authority, 5400 Ox Road,
Fairfax Station, Virginia.  (Interpreter for the deaf provided
upon request)


September 12, 2002 - 7 p.m. -- Open Meeting
Forest Public Library, 15583 Forest Road, Forest, Virginia. 
(Interpreter for the deaf provided upon request)
Toano Middle School, 7817 Richmond Road, Toano (James
City County), Virginia.  (Interpreter for the deaf provided
upon request)


The department is holding a series of 10 open meetings for
the purpose of receiving public comments regarding
proposed changes to regulations governing fishing, wildlife
diversity (i.e., wildlife other than in the context of hunting,
trapping, or fishing), and boating. The proposals addressed
at the meeting series will be those regulations or regulation
amendments that the board proposes at its August 22,
2002, meeting. A public comment period opened on the
regulation amendments the board proposes will open
August 22 and will close October 24, 2002. The proposals
will be available on the department's web site,
www.dgif.state.va.us, at the department's central and
regional offices, published in the Virginia Register of
Regulations, and will be available at the public meetings.
The public input meeting series is being held prior to the
board meeting of October 24, 2002, at which the board
intends to adopt final regulations or regulation amendments.
The 10 public input meetings are supplemental public
hearings to the two hearings that will occur at the August 22
and October 24 board meetings. Comments received on the
proposals at the public input meetings will be summarized
and reported to the board for their consideration at the
October 24, 2002, meeting prior to adopting final
regulations. The Department of Game and Inland Fisheries
is exempt from the Administrative Process Act in
promulgating regulations regarding the management of
wildlife, pursuant to subdivision A 3 of § 2.2-4002 of the
Code of Virginia. The department publishes all proposed
and final wildlife management regulations as required under
§ 2.2-4031 of the Code of Virginia.


Contact: Phil Smith, Policy Analyst, Department of Game
and Inland Fisheries, 4010 W. Broad St., Richmond VA
23230, telephone (804) 367-1000, FAX (804) 367-0488, e-
mail regcomments@dgif.state.va.us.


† **September 23, 2002 - 7 p.m.** -- Open Meeting
Department of Game and Inland Fisheries, Verona (Staunton)
Regional Office, 127 Lee Highway, Verona, Virginia 
(Interpreter for the deaf provided upon request)

† **September 24, 2002 - 7 p.m.** -- Open Meeting
Bedford Public Library, Forest Branch, 15583 Forest Road
(Route 221), Forest, Virginia.  (Interpreter for the deaf
provided upon request)

† **September 24, 2002 - 7 p.m.** -- Open Meeting
Orange High School, 201 Selma Road, Orange, Virginia. 
(Interpreter for the deaf provided upon request)

† **September 25, 2002 - 7 p.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad
Street, Richmond, Virginia.  (Interpreter for the deaf provided
upon request)

† **September 25, 2002 - 7 p.m.** -- Open Meeting
James City County Government Complex, 101-C Mounts Bay
Road, Building C, Williamsburg, Virginia.  (Interpreter for the
deaf provided upon request)

† **September 25, 2002 - 7 p.m.** -- Open Meeting
Smyth-Bland Regional Library, 118 South Sheffey Street,
Copenhaver Meeting Room, Marion, Virginia.  (Interpreter for
the deaf provided upon request)

Calendar of Events

Public input meetings on hunting and trapping programs and regulations. The Virginia Department of Game and Inland Fisheries is hosting open meetings to receive comments from the public on agency programs, regulations, and management of Virginia's game species, hunting and trapping. All interested citizens are invited to attend. The comments and suggestions received will be considered by staff as they refine current programs and develop staff recommendations for amendments to regulations. Agency staff will present such recommendations to the Virginia Board of Game and Inland Fisheries at its March 2003 meeting as part of the regular biennial review of applicable Virginia Administrative Code regulations.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, e-mail RegComments@dgif.state.va.us.

STATE BOARD OF HEALTH


October 1, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health intends to amend regulations entitled: **12 VAC 5-610. Sewage Handling and Disposal Regulations.** The purpose of the proposed action is to regulate mass sewage disposal systems (systems larger than 1,200 gallons per day per acre) that have a greater potential for failure than domestic and small commercial onsite systems. These large systems also pose a higher risk of ground water contamination than smaller systems. The amendments include standards for proper siting, design, construction, operation, and monitoring of mass sewage disposal systems. A second amendment is to regulate the amount of rock fragments surrounding a subsurface soil absorption system.

Statutory Authority: §§ 32.1-12 and 32.1-164 of the Code of Virginia.


Contact: Donald J. Alexander, Director, Division of Onsite Sewage and Water Services, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 225-4030, FAX (804) 225-4003 or e-mail dalexander@vdh.state.va.us.


DEPARTMENT OF HEALTH


August 29, 2002 - 10 a.m. -- Open Meeting
Natural Resources Building, 900 Natural Resource Drive, Fontaine Research Park, Charlottesville, Virginia. 


A meeting of the Biosolids Use Regulation Advisory Committee to discuss possible language revisions to the Biosolids Use Regulations (12 VAC 5-585). The revisions now being considered include (i) land application fees, (ii) local government monitoring reimbursement, (iii) land application operation, and (iv) nutrient management restrictions and nutrient management practices requirements.


Contact: Cal Sawyer, Director, Division of Wastewater Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567 or e-mail csawyer@vdh.state.va.us.

† **September 4, 2002 - 7 p.m.** -- Public Hearing
Ferlazzo Building, 15941 Donald Curtis Drive, Leesylvania Room, Woodbridge, Virginia. 

† **September 10, 2002 - 3 p.m.** -- Public Hearing
Roanoke Higher Education Center, 108 North Jefferson Street, Roanoke, Virginia. 

† **September 16, 2002 - 7 p.m.** -- Public Hearing
Disability Resource Center, 409 Progress Street, Fredericksburg, Virginia. 

† **September 17, 2002 - Noon** -- Public Hearing
Cape Charles Sustainable Technology Park, 301 Patrick Henry Avenue, Cape Charles, Virginia. 

† **September 18, 2002 - 1 p.m.** -- Public Hearing
Fan Free Clinic, 1010 North Thompson Street, Richmond, Virginia. 

A public hearing to solicit public comment on the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act and its implementation in Virginia.

Contact: Michelle Baker, Public Health Nurse Senior, Department of Health, P.O. Box 2448, Room 112, Richmond, VA 23218, telephone (804) 371-2492, FAX (804) 786-3223, e-mail mbaker@vdh.state.va.us.

BOARD FOR HEARING AID SPECIALISTS

† **October 25, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Hearing Aid Specialists intends to amend regulations entitled: **18 VAC 80-20. Board for Hearing Aid Specialists Regulations.** The purpose of the proposed action is to clarify entry requirements for licensure, modify the procedures and provisions regarding renewal and reinstatement, and ensure that the standards of practice and conduct meet statutory requirements.

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

Contact: William H. Ferguson, II, Assistant Director, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8575, FAX (804) 367-2474, or e-mail hearingaidspec@dpor.state.va.us.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

August 29, 2002 - 9 a.m. -- Open Meeting
State Council of Higher Education for Virginia, James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia.

A work session. No final council actions will be taken at this meeting.


Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA, telephone (804) 225-2602, FAX (804) 371-7911, e-mail lrung@schev.edu.

† **September 18, 2002 - 11 a.m.** -- Open Meeting
UVA's College at Wise, Chapel of all Faiths, Wise, Virginia.


Agenda materials will be available on the website approximately one week prior to the meeting at www.schev.edu. A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

Contact: Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA, telephone (804) 225-2637, FAX (804) 371-7911, e-mail lrung@schev.edu.


DEPARTMENT OF HISTORIC RESOURCES

† **October 1, 2002 - 6 p.m.** -- Public Hearing
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. 


A public hearing for proposed stage of the regulations implementing the Virginia Rehabilitation Tax Credit program pursuant to § 58.1-339.2 of the Code of Virginia.

Contact: Virginia E. McConnell, Manager, Office of Preservation Incentives, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY , e-mail gmccconnell@dhr.state.va.us.


State Review Board and Historic Resources Board

September 11, 2002 - 9 a.m. -- Open Meeting
U. S. Naval Weapons Station, Building 1959, Yorktown, Virginia.  (Interpreter for the deaf provided upon request)

Both boards will consider and recommend register nominations to be placed on the Virginia Landmarks Register and the National Register of Historic Places. The Historic Resources Board will approve highway marker texts and easements. In the afternoon session of the State Review Board, the board will consider and recommend the submitted Preliminary Information Applications.

Contact: Marc Wagner, Manager, National Register Section, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY , e-mail mwagner@dhr.state.va.us.


HOPEWELL INDUSTRIAL SAFETY COUNCIL

September 3, 2002 - 9 a.m. -- Open Meeting
Hopewell Community Center, 100 West City Point Road, Hopewell, Virginia.  (Interpreter for the deaf provided upon request)

The Local Emergency Preparedness Committee will meet as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, Hopewell Industrial Safety Council, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.


BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† **September 11, 2002 - 1 p.m.** -- Open Meeting
Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia  (Interpreter for the deaf provided upon request)

A regular business meeting. This meeting will be held at the site of the 2002 Virginia Housing Conference. A board luncheon will be provided at 12:30 p.m. The full board meeting will begin at 1 p.m. No committee meetings are scheduled.

Contact: Steve Calhoun, Senior Policy Analyst, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, e-mail scalhoun@dhcd.state.va.us.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **September 11, 2002 - 9 a.m.** -- Open Meeting
Hotel Roanoke, 110 Shenandoah Avenue, Roanoke, Virginia. 

A regular meeting of the Board of Commissioners to review and, if appropriate, approve the minutes from the prior monthly meeting; consider for approval and ratification mortgage loan commitments under its various programs; consider for approval amendments to the Authority's Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income, Rules and Regulations for Multi-Family Housing Developments, and Rules and Regulations for Home Rehabilitation Loans; review the authority's operations for the prior month; and consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet during the day preceding the regular meeting and before and after the regular meeting and may consider matters within their purview.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St. Richmond, VA 23220, telephone (804) 782-1986, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY , e-mail judson.mckellar@vhda.com.

Calendar of Events

VIRGINIA ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

October 21, 2002 - 1:30 p.m. -- Open Meeting
Waterside Convention Center, Norfolk, Virginia. ♿

Agenda will be provided after the August 20 meeting.

Contact: Alda Wilkinson, Secretary, Virginia Advisory Commission on Intergovernmental Relations, 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (804) 828-1120/TTY ☎, e-mail awilkinson@clg.state.va.us

November 11, 2002 - 3:30 p.m. -- Open Meeting
The Homestead, Hot Springs (Bath County), Virginia. ♿

An agenda will be provided after the October 21 meeting.

Contact: Alda Wilkinson, Secretary, Virginia Advisory Commission on Intergovernmental Relations, 900 E. Main St., Suite 103, Richmond, VA 23219-3513, telephone (804) 786-6508, FAX (804) 371-7999, (804) 828-1120/TTY ☎, e-mail awilkinson@clg.state.va.us.

JAMESTOWN-YORKTOWN FOUNDATION

† **November 18, 2002 - Noon** -- Open Meeting

† **November 19, 2002 - 8 a.m.** -- Open Meeting
Radisson Fort Magruder Inn, 6945 Pocahontas Trail, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

Semiannual board meeting. Agenda to be determined. No public comment will be heard.

Contact: Laura W. Bailey, Executive Assistant to the Board, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (804) 253-4840, FAX (804) 253-5299, (804) 253-7236/TTY ☎, e-mail lwbailey@jyf.state.va.us.

STATE BOARD OF JUVENILE JUSTICE

† **September 11, 2002 - 10 a.m.** -- Open Meeting
Culpeper Juvenile Correctional Center, 12240 Coffeewood Drive, Mitchells, Virginia. ♿

Committees of the board will meet at 9 a.m. to receive certification audit reports. The full board convenes at 10 a.m. to take certification actions based on the audit reports and to receive comments from the public concerning the board's proposed regulations governing the certification process.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.

DEPARTMENT OF LABOR AND INDUSTRY

October 25, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Labor and Industry intends to amend regulations entitled: **16 VAC 15-10. Public Participation Guidelines.** The purpose of the proposed action is to conform the regulation language to current Administrative Process Act requirements; include references to agency website and Virginia Regulatory Town Hall; and remove redundant language.

Statutory Authority: §§ 2.2-4007 and 40.1-6(3) of the Code of Virginia

Contact: Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

Apprenticeship Council

† **September 5, 2002 - 9:30 a.m.** -- Open Meeting
Department of Labor and Industry, Mezzanine, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general meeting of the Apprenticeship Council subcommittee.

Contact: Beverley Donati, Assistant Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY ☎, e-mail bgd@doli.state.va.us.

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October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Labor and Industry intends to amend regulations entitled: **16 VAC 20-10. Public Participation Guidelines.** The purpose of the proposed action is to conform the regulation language to current Administrative Process Act requirements, include references to agency website and Virginia Regulatory Town Hall, and remove redundant language.

Statutory Authority: §§ 2.2-4007 and 40.1-117 of the Code of Virginia.

Contact: Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

Safety and Health Codes Board

October 25, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Safety and Health Codes Board intends to amend regulations entitled: **16 VAC 25-10. Public Participation Guidelines**. The purpose of the proposed action is to conform the regulation language to current Administrative Process Act requirements; include references to agency website and Virginia Regulatory Town Hall; and remove redundant language.

Statutory Authority: §§ 2.2-4007 and 40.1-22(5) of the Code of Virginia

Contact: Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

STATE LAND EVALUATION ADVISORY COUNCIL

September 5, 2002 - 10 a.m. -- Open Meeting
Department of Taxation, Richmond District Office, 1708 Commonwealth Avenue, Richmond, Virginia. ☎

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open space land use and the use-value assessment program.

Contact: Keith Mawyer, Property Tax Manager, Virginia Department of Taxation, 2220 W. Broad St., Richmond, VA 23220, telephone (804) 367-8020.

STATE LIBRARY BOARD

September 23, 2002 - 8:15 a.m. -- Open Meeting
† November 18, 2002 - 8:15 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ☎

Meetings of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room;
Publications and Educational Services Committee, Conference Room B;
Records Management Committee, Conference Room C.

9:30 a.m. - Archival and Information Services Committee, Orientation Room;
Collection Management Services Committee, Conference Room B;
Legislative and Finance Committee, Conference Room C.

10:30 a.m. - Library Board, Conference Room 2M.

Contact: Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@lva.lib.va.us.

LONGWOOD UNIVERSITY

† September 6, 2002 - 9 a.m. -- Open Meeting
Longwood University, Lancaster 215, 201 High Street, Stallard Board Room, Farmville, Virginia. ☎

Committees will meet at follows:

9 a.m. - Administration, Finance and Facilities Committee
11:30 a.m. - Audit Committee
1:30 p.m. - Academic and Student Affairs Committee
3:45 p.m. - University Advancement Committee

Contact: Jeanne Hayden, Office of the President, Longwood University, 201 High St., Farmville, VA 23909, telephone (804) 395-2004.

† September 7, 2002 - 9 a.m. -- Open Meeting
Longwood University, Lancaster 215, 201 High Street, Stallard Board Room, Farmville, Virginia. ☎

A meeting to conduct routine business of the Board of Visitors.

Contact: Jeanne Hayden, Office of the President, Longwood University, 201 High St., Farmville, VA 23909, telephone (804) 395-2004.

VIRGINIA MANUFACTURED HOUSING BOARD

† September 19, 2002 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, 1st Floor Board Room, Richmond, Virginia. ☎

A regular business meeting.

Contact: Curtis L. McIver, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY ☎, e-mail cmciver@dhcd.state.va.us.

MARINE RESOURCES COMMISSION

August 27, 2002 - 9:30 a.m. -- Open Meeting
September 24, 2002 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. ☎

A monthly commission meeting.

Contact: Stephanie Montgomery, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., Suite 107, Newport News, VA 23607, telephone (757) 247-8088, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY ☎, e-mail smont@mrc.state.va.us.

BOARD OF MEDICAL ASSISTANCE SERVICES

NOTE: CHANGE IN MEETING DATE

† October 1, 2002 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A routine business meeting. An agenda will be posted closer to the meeting date.

Calendar of Events

Contact: Nancy Malczewski, Communications Office, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-4626, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail nmalczewski@dmas.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† **October 25, 2002** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-120. Waivered Services.** The current regulations for the Elderly and Disabled Waiver program describe the criteria that must be met in order for providers to be reimbursed for the services rendered. The current services offered in this waiver include personal emergency response systems (PERS) to the waiver. The changes to the regulation include the following: (i) the addition of PERS as a permanent covered service; (ii) the addition of language regarding waiver desk reviews, which the Centers for Medicare and Medicaid Services require DMAS to perform; (iii) the addition of language referencing the Code of Virginia regarding criminal records checks for all compensated employees of personal care, respite care and adult day health care agencies; (iv) the addition of language that states that personal care recipients may continue to work and attend post-secondary school while receiving services under this waiver; (v) a change in the requirement of supervisory visits from every 30 days in general to every 30 days for recipients with a cognitive impairment, and up to every 90 days for recipients who do not have a cognitive impairment; (vi) the addition of "some family members" to the definition of who is qualified to perform personal care services; (vii) the addition of the required qualifications for LPNs for respite care; and (viii) clarifications and corrections to the existing language.

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

Contact: Vivian Horn, Policy Analyst, Division of LTC, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527 or vhorn@dmas.state.va.us.

November 7, 2002 - 2 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Board Room, Richmond, Virginia. ♿

A meeting to conduct routine business of the Drug Utilization Review Board.

Contact: Marianne Rollings, Pharmacist, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268, FAX (804) 786-1680, (800) 343-0634/TTY ☎, e-mail mrollings@dmas.state.va.us.

BOARD OF MEDICINE

September 11, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Committee on Acupuncture to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

September 11, 2002 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Radiologic Technology to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

September 12, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Occupational Therapy to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

September 12, 2002 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Respiratory Care to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

September 13, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Athletic Training to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

September 13, 2002 - 1 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Advisory Board on Physicians Assistants to consider regulatory issues as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

September 27, 2002 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

The Legislative Committee will receive reports from the advisory boards and consider regulatory and legislative items as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

October 2, 2002 - 8:45 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿

A panel of the board will convene a formal hearing to inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The panel will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler/Renee Dixon, Staff, Board of Medicine, 6606 W. Broad St., Richmond, VA, 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.state.va.us.

October 10, 2002 - 8 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting including the adoption of amendments to regulations and other items as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Southern States Bldg., 6606 W. Broad St., 4th

Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

Informal Conference Committee

September 4, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

September 17, 2002 - 9 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia. ♿

September 18, 2002 - 8:45 a.m. -- Open Meeting
Williamsburg Marriott Hotel, 50 Kingsmill Road, Williamsburg, Virginia.

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Peggy Sadler or Renee Dixon, Staff, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail Peggy.Sadler@dhp.state.va.us.

STATE MILK COMMISSION

August 28, 2002 - 10:30 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 2063, Charlottesville, Virginia. ♿

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 9th St. Office Bldg., 202 N. Ninth St., Room 915, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail ewilson@smc.state.va.us.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† August 29, 2002 - 7 p.m. -- Public Hearing
General District Courtroom, 109 North Madison Road, Orange, Virginia. ♿ (Interpreter for the deaf provided upon request)

An informal public hearing to receive comments regarding a proposed mining operation in Orange County. Persons attending the hearing may present written or oral statements, photographs, or other evidence to the hearing officer. The hearing will be recorded. The permit applicant, General Shale Products LLC, has submitted a complete application package, which is available for review in the DMME office located at 900 Natural Resources Drive,

Calendar of Events

Charlottesville, Virginia. Special accommodations for the disabled will be made available at the hearing on request. Anyone needing special accommodations for the hearing should contact the Department of Mines, Minerals, and Energy at (434) 951-6311 or the Virginia Relay Center TTY at 1-800-828-1120 or 1140 by August 21, 2002.

Contact: William L. Lassetter, Environmental Engineer Consultant, Department of Mines, Minerals and Energy, 900 Natural Resources Dr., Charlottesville, VA 22903, telephone (434) 951-6322, FAX (434) 951-6325, (800) 828-1120/TTY ☎, e-mail wll@mme.state.va.us.

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† **September 26, 2002 - 9 a.m.** -- Public Hearing
Department of Mines, Minerals and Energy, 900 Natural Resources Drive, Training Room 1224, Charlottesville, Virginia.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Mines, Minerals and Energy intends to repeal regulations entitled: **4 VAC 25-30. Minerals Other than Coal Surface Mining Regulations**, and adopt regulations entitled: **4 VAC 25-31. Reclamation Regulations for Mineral Mining**. The purpose of the proposed regulation is to provide for the beneficial development of mineral resources and to minimize the effects of mining on the environment. The regulation will replace the present reclamation regulations, 4 VAC 25-30, Minerals Other Than Coal Surface Mining Regulations.

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on October 26, 2002.

Contact: William Lassetter, Environmental Engineer Consultant, Department of Mines, Minerals and Energy, Fontaine Research Park, 900 Natural Resources Dr., P.O. Box 3727, Charlottesville, VA 22903, telephone (804) 951-6310, FAX (804) 951-6325, or e-mail cts@mme.state.va.us.

DEPARTMENT OF MOTOR VEHICLES

† **September 9, 2002 - 8:30 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committees will meet as follows:

Dealer Practices Committee - 8:30 a.m.
Franchise Law Committee - Five minutes after Dealer Practices Committee
Licensing Committee - 9:30 a.m. or five minutes after Franchise Law
Advertising Committee - 10 a.m. or five minutes after Licensing Committee
Finance Committee - 10:30 a.m. or five to 45 minutes after Personnel Committee
Personnel Committee - Five minutes after Advertising Committee

Transaction Recovery Fund Committee - 11 a.m. or five to 45 minutes after Finance

The full board will meet at 1 p.m. Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Alice R. Weedon, Administrative Assistant, Department of Motor Vehicles, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, e-mail dboard@mvb.state.va.us.

† **October 10, 2002 - 9 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿

A meeting of the Digital Signature Implementation Workgroup. Meetings will be held on the second Thursday of every other month from 9 a.m. until noon at the location noted above unless otherwise noted. The room will be open for coffee and pre-session business at 8:30 a.m.; the business session will begin at 9 a.m.

Contact: Vivian Cheatham, Executive Staff Assistant, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-6870, FAX (804) 367-6631 or e-mail dmvrc@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

† **September 5, 2002 - 8 a.m.** -- Open Meeting
† **October 1, 2002 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, Main Lobby Conference Room, 2800 Grove Avenue, Richmond, Virginia. ♿

A monthly meeting for staff to update the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

† **September 18, 2002 - 9 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ♿

Committees will meet as follows:

9 a.m. - Program Review Committee (Main Lobby Conference Room)
10 a.m. - Expansion Committee (CEO Building, 2nd Floor Conference Room)
12:30 p.m. - Exhibitions Committee (Auditorium)
2 p.m. - Education and Programs Committee (CEO Building, 2nd Floor Conference Room)
3:15 p.m. - Communications and Marketing Committee (CEO Building, 2nd Floor Conference Room)

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond,

VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

† **September 19, 2002 - 8:30 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia. ♿

Committees will meet as follows:

8:30 a.m. - Buildings and Grounds Committee (CEO Building, 2nd Floor Conference Room)
9:30 a.m. - Collections Committee (Auditorium)
11 a.m. - Finance and Legislative Committee (CEO Building, 2nd Floor Conference Room)

The full board will meet at 12:30 p.m.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

August 31, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-50. Regulations Governing the Certification of Massage Therapists.** The purpose of the proposed action is to address concerns about competency of certificate holders by requiring recertification by the National Certification Board for Therapeutic Massage and Bodywork (MCBTMB) or obtaining at least 25 hours of continuing education in the biennium before renewal. The board will also amend regulations to further specify the requirements for licensure by endorsement, to delete outdated "grandfathering" provisions and unnecessary rules for provisional certification, and to incorporate by reference the code of ethics and standards of practice of the NCBTMB.

Statutory Authority: Chapter 30 of Title 54.1 of the Code of Virginia.

Public comments may be submitted until August 30, 2002, to Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

September 23, 2002 - 9 a.m. -- Open Meeting
September 25, 2002 - 9 a.m. -- Open Meeting
September 26, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees or certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

† **September 24, 2002 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting including regulatory and disciplinary actions as may be presented on the agenda. Public comment will be received at 11 a.m.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail ndurrett@dhp.state.va.us.

September 24, 2002 - 1:30 p.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing intends to amend regulations entitled: **18 VAC 90-20. Regulations Governing the Practice of Nursing.** The purpose of the proposed action is to establish qualifications and renewal requirements for advanced certification for certified nurse aides and the criteria for an approved education and training program.

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

Public comments may be submitted until October 11, 2002, to Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Southern States Bldg., 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.


† **November 18, 2002 - 9 a.m.** -- Open Meeting
† **November 21, 2002 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees and certificate holders. Public comment will not be received.


Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.state.va.us.

Calendar of Events


Special Conference Committee

August 29, 2002 - 9 a.m. -- Open Meeting
October 8, 2002 - 9 a.m. -- Open Meeting
October 10, 2002 - 9 a.m. -- Open Meeting
October 21, 2002 - 9 a.m. -- Open Meeting
October 22, 2002 - 9 a.m. -- Open Meeting
October 29, 2002 - 9 a.m. -- Open Meeting
October 30, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. 

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees or certificate holders. 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, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.state.va.us.

BOARD OF NURSING HOME ADMINISTRATORS

October 9, 2002 - 10 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 2, Richmond, Virginia. 

October 11, 2002 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled: **18 VAC 95-20. Regulations Governing the Practice of Nursing Home Administrators.** The purpose of the proposed action is to increase certain fees charged to nursing home administrators.

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

Public comments may be submitted until October 11, 2002, to Sandra Reen, Executive Director, Board of Nursing Home Administrators, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.


OLD DOMINION UNIVERSITY

September 13, 2002 - 1:15 p.m. -- Open Meeting
Webb University Center, Old Dominion University, Norfolk, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting of the governing board to discuss business of the board and the institution as determined by the rector and the president.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA


23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

October 21, 2002 - 3 p.m. -- Open Meeting
† November 18, 2002 - 3 p.m. -- Open Meeting
Webb University Center, Old Dominion University, Norfolk, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5678, e-mail dmeeks@odu.edu.

BOARD OF PHARMACY

September 12, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 3, Richmond, Virginia. 

A meeting of the Special Conference Committee to discuss disciplinary matters.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmbd@dhp.state.va.us.

September 13, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy.** The purpose of the proposed action is to increase certain fees charged to applicants and licensed pharmacists, permitted pharmacies and other entities.

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

Public comments may be submitted until September 13, 2002, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.

September 13, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **18 VAC 110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled**

Substances. The purpose of the proposed action is to increase certain fees charged to applicants and regulated physicians licensed to sell controlled substances.

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

Public comments may be submitted until September 13, 2002, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9914 or e-mail elaine.yeatts@dhp.state.va.us.

† **September 30, 2002 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

The board will receive public comment on proposed regulations governing criteria for the registration of pharmacy technicians.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ♿, e-mail erussell@dhp.state.va.us.

November 4, 2002 - 2 p.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A meeting of the Informal Conference Committee to discuss disciplinary matters.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313, e-mail pharmbd@dhp.state.va.us.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 18, 2002 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct board business. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ♿, e-mail polygraph@dpor.state.va.us.

September 18, 2002 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Polygraph Examiners Board intends to amend regulations entitled: **18 VAC 120-30. Regulations Governing Polygraph Examiners.** The purpose of the proposed action is to clarify current policy in several areas, make grammatical improvements, and expand requirements regarding polygraphy schools and the procedures for renewing or withdrawing department approval.

Statutory Authority: §§ 54.1-201 and 54.1-1802 of the Code of Virginia.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail APELSLA@dpor.state.va.us.

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

September 20, 2002 - 10 a.m. -- Public Hearing
Newport News City Council Chamber, City Hall Building, 2400 Washington Avenue, Newport News, Virginia.

September 23, 2002 - 11 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

October 4, 2002 - 1:30 p.m. -- Public Hearing
Roanoke City Council Chamber, Noel C. Taylor Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

A public hearing to examine the feasibility and appropriateness of regulating roller skating rinks in Virginia. The public hearing is being held pursuant to Senate Bill 436 of the 2002 General Assembly Session.

Contact: Karen O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, e-mail BPOR@dpor.state.va.us.

September 20, 2002 - 1:30 p.m. -- Public Hearing
Newport News City Council Chamber, City Hall Building, 2400 Washington Avenue, Newport News, Virginia.

September 23, 2002 - 1:30 p.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

September 23, 2002 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Calendar of Events

A general board meeting.

Contact: Karen O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, e-mail BPOR@dpor.state.va.us.

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September 26, 2002 - 9 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

October 12, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Professional and Occupational Regulations intends to amend regulations entitled: **18 VAC 120-40. Virginia Professional Boxing and Wrestling Events Regulations.** The purpose of the proposed action is to achieve consistency with the federal Muhammad Ali Boxing Reform Act, to ensure consistency with state law and to amend the wrestling event license fee.

Statutory Authority: § 54.1-831 of the Code of Virginia and 15 USC 6301 et seq.

Contact: Karen W. O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail oneal@dpor.state.va.us.

NOTE: CHANGE IN MEETING TIME

September 23, 2002 - 1:30 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

October 4, 2002 - 10 a.m. -- Public Hearing
Roanoke City Council Chamber, Noel C. Taylor Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

A public hearing to examine the feasibility and appropriateness of regulating estheticians and electrologists in Virginia.

Contact: Karen O'Neal, Deputy Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, e-mail BPOR@dpor.state.va.us.

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

† **September 5, 2002 - 9 a.m.** -- Open Meeting
† **September 6, 2002 - 9 a.m.** -- Open Meeting
Holiday Inn Richmond, 6531 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting. Public comment is welcome and will be received at 9 a.m. on Thursday, September 5.

Contact: Claunita Jackson, Administrative Assistant, Virginia Office for Protection and Advocacy, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2042, FAX (804)

225-3221, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail jacksonca@vopa.state.va.us.

BOARD OF PSYCHOLOGY

September 10, 2002 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Regulatory Committee will consider a petition for rulemaking for the issuance of a clinical psychologist license following completion of the doctoral degree, clinical internship and examination. The committee will consider other regulatory issues as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

† **October 8, 2002 - 9:45 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will receive public comment on the proposed amendments to increase certain fees charged to licensees.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, Southern States Bldg., 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail ebrown@dhp.state.va.us.

VIRGINIA PUBLIC GUARDIANSHIP AND CONSERVATOR BOARD

† **September 4, 2002 - 10:30 a.m.** -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled meeting.

Contact: Terry Raney, Public Guardianship Coordinator, Department of the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail traney@vdh.state.va.us.

REAL ESTATE BOARD

September 11, 2002 - 1 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

September 30, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-20. Real Estate Board Rules and Regulations.** The purpose of the

proposed action is to make general clarifying changes; impose less burdensome requirements for reciprocal applicants; clarify language regarding applicants with criminal convictions; revise language regarding the supervision of branch offices to focus on the actual supervision provided rather than the physical location of the office; add clarifying language to the escrow provisions; revise the advertising provisions to incorporate Internet advertising; and combine Parts V and VI, Standards of Practice and Conduct.

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

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, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

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September 11, 2002 - 1 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

September 30, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-40. Real Estate Board Time-Share Regulations.** The purpose of the proposed action is to ensure that the regulations remain consistent with the Time-Share Act and to create a regulatory framework to protect the public when purchasing or utilizing a time-share project.

Statutory Authority: §§ 54.1-2105 and 55-396 of the Code of Virginia.

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, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

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September 11, 2002 - 1 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

September 30, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to amend regulations entitled: **18 VAC 135-50. Real Estate Board Fair Housing Regulations.** The purpose of the proposed action is to amend existing fair housing regulations to reflect changes in the Code of Virginia and federal law.

Statutory Authority: §§ 36-96.20 and 54.1-2105 of the Code of Virginia.

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, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

† **September 13, 2002 - 9 a.m.** -- Open Meeting
September 16, 2002 - 9 a.m. -- Open Meeting
September 17, 2002 - 9 a.m. -- Open Meeting
† **November 13, 2002 - 9 a.m.** -- Open Meeting
† **November 14, 2002 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct informal fact-finding conferences. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Debbie Amaker, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582, FAX (804) 367-0194, (804) 367-9753/TTY ☎, e-mail amaker@dpor.state.va.us.

REAL ESTATE APPRAISER BOARD

September 11, 2002 - 1 p.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

September 30, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Appraiser Board intends to amend regulations entitled: **18 VAC 130-20. Real Estate Board Regulations.** The purpose of the proposed action is to incorporate changes to criteria set forth by the Appraiser Qualifications Board and standards set by the Appraisal Standards Board of the Appraisal Foundation, permit renewal on inactive status, and make clarifying changes.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

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, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

Calendar of Events

DEPARTMENT OF REHABILITATIVE SERVICES

Commonwealth Neurotrauma Initiative Advisory Board

† **September 23, 2002 - 9:30 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly business meeting.

Contact: Sandra Prince, Program Specialist, Brain Injury/Spinal Cord Injury Services, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7021, FAX (804) 662-7122, toll-free (800) 552-5019, (804) 662-9040/TTY, e-mail princesw@drs.state.va.us.

VIRGINIA RESOURCES AUTHORITY

September 10, 2002 - 9 a.m. -- Open Meeting
October 15, 2002 - 9 a.m. -- Open Meeting
Virginia Resources Authority, 707 East Main Street, 2nd Floor Conference Room, Richmond, Virginia.

A regular meeting of the Board of Directors to (i) review and, if appropriate, approve the minutes from the most recent monthly meeting; (ii) review the authority's operations for the prior month; (iii) review applications for loans submitted to the authority for approval; (iv) consider loan commitments for approval and ratification under its various programs; (v) approve the issuance of any bonds; (vi) review the results of any bond sales; and (vii) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Directors may also meet immediately before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting and any committee meetings will be available at the offices of the authority one week prior to the date of the meeting. Any person who needs any accommodation in order to participate in the meeting should contact the authority at least 10 days before the meeting so that suitable arrangements can be made.

Contact: Bonnie R.C. McRae, Executive Assistant, Virginia Resources Authority, 707 E. Main St., Suite 1350, Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrac@vra.state.va.us.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

September 18, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, Virginia.

A meeting to hear appeals of Department of Health denials of septic tank permits.

Contact: Susan C. Sherertz, Business Manager, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219,

telephone (804) 371-4236, FAX (804) 225-4003, e-mail ssherertz@vdh.state.va.us.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

August 27, 2002 - 10 a.m. -- Open Meeting
Department of Business Assistance, 707 East Main Street, 3rd Floor, Richmond, Virginia.

A meeting to review applications for loans submitted to the authority for approval and to conduct general business. Meeting time is subject to change depending upon the agenda of the board.

Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8254, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

STATE BOARD OF SOCIAL SERVICES

September 13, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **22 VAC 40-675. Personnel Policies for Local Departments of Social Services.** The purpose of the proposed action is to provide a uniform set of personnel policies to guide operations in local departments of social services in Virginia. Many of the policies are already in use.

Statutory Authority: §§ 63.1-25 and 63.1-26 of the Code of Virginia.

Contact: Lori A. Kam, Human Resources Manager II, Department of Social Services, Division of Human Resources Management, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1520, FAX (804) 692-1560 or e-mail lak900@dss.state.va.us.

September 20, 2002 - 9 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, 8th Floor, Conference Room, Richmond, Virginia.

A subcommittee of the Family and Children's Trust Fund will meet at 9 a.m. A regular business meeting of the Family and Children's Trust Fund Board of Trustees will begin at 10 a.m.

Contact: Nan McKenney, Executive Director, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1823, FAX (804) 692-1869.

October 11, 2002 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **22 VAC 40-680. Virginia Energy Assistance Program - Low Income**

Home Energy Assistance Program (LIHEAP). The purpose of the proposed action is to provide flexibility to adjust the maximum eligibility income limit in response to federal funding fluctuations, and to assist households with summer energy needs by establishing a cooling assistance component and requiring participation by localities.

Statutory Authority: § 63.1-25 of the Code of Virginia.


Contact: Margaret Friedenbergh, Energy Assistance Program Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1728, FAX (804) 692-1469 or e-mail mjf900@dcse.dss.state.va.us.

COUNCIL ON TECHNOLOGY SERVICES

† **September 9, 2002 - 2 p.m.** -- Open Meeting
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. 


A regular monthly meeting of the Executive Committee. For more information, visit the COTS website at www.cots.state.va.us.

Contact: Jenny Hunter, COTS Executive Director, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

† **September 11, 2002 - 10 a.m.** -- Open Meeting
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. 

A regular bimonthly meeting of the Council on Technology Services Telecommunications Workgroup. Please visit the COTS website at www.cots.state.va.us for more information.

Contact: Leslie Carter, Deputy Director, Department of Information Technology, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-5577, e-mail lcarter@dit.state.va.us.

† **September 12, 2002 - 10 a.m.** -- Open Meeting
Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia. 

A regular monthly meeting of the Council on Technology Services Enterprise Architecture Workgroup. For more information, visit www.cots.state.va.us.

Contact: Paul Lubic, IT Manager, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 371-0004, e-mail plubic@ntp.state.va.us.

† **September 24, 2002 - 12:30 p.m.** -- Open Meeting
Virginia Military Institute, Lexington, Virginia.

A bimonthly meeting in conjunction with the Commonwealth of Virginia Information Technology Symposium (COVITS) 2002. For more information about the conference, visit www.covits.org. For more information about the COTS meeting, visit www.cots.state.va.us.


Contact: Jenny Hunter, COTS Executive Director, Department of Technology Planning, 110 S. 7th St., Suite 135

Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

DEPARTMENT OF TECHNOLOGY PLANNING

Wireless E-911 Services Board

August 28, 2002 - 9 a.m. -- Open Meeting


† **November 13, 2002 - 9 a.m.** -- Open Meeting
Department of Information Technology, 110 South 7th Street, 3rd Floor Conference Room, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

The CMRS subcommittee will meet in closed session at 9 a.m. A regular meeting of the board will begin at 10 a.m.

Contact: Steven Marzolf, Public Safety Communications Coordinator, Department of Technology Planning, 110 S. 7th St., Richmond, VA 23219, telephone (804) 371-0015, e-mail smarzolf@ntp.state.va.us.

VIRGINIA TOBACCO SETTLEMENT FOUNDATION

September 10, 2002 - 1:30 p.m. -- Open Meeting

The Siegel Center, 1200 W. Broad Street, Founder Room, Richmond, Virginia. 

A meeting of the Board of Trustees to discuss the budget.

Contact: Eloise Burke, Administrative Specialist, Virginia Tobacco Settlement Foundation, 701 E. Franklin St., Suite 501, Richmond, VA 23219, telephone (804) 786-2523, FAX (804) 225-2272, e-mail eburke@tsf.state.va.us.

COMMONWEALTH TRANSPORTATION BOARD

September 18, 2002 - 2 p.m. -- Open Meeting

Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Sandra M. Mills, Assistant Legislative Coordinator, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail sandee.mills@VirginiaDOT.org.

September 19, 2002 - 10 a.m. -- Open Meeting

Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 


A monthly meeting of the Commonwealth Transportation 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

Calendar of Events

chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.


Contact: Sandra M. Mills, Assistant Legislative Coordinator, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail sandee.mills@VirginiaDOT.org.

UNIVERSITY OF VIRGINIA

September 17, 2002 - 2 p.m. -- Open Meeting
University of Virginia, The Rotunda, East Oval Room, Charlottesville, Virginia. 

The Buildings and Grounds Committee will meet.


Contact: Penney Catlett, Assistant to the Assistant Vice President for University Relations, University of Virginia, P.O. Box 400229, Charlottesville, VA 22904-4229, telephone (434) 924-7620, FAX (434) 924-0938, e-mail pdc@virginia.edu.

September 19, 2002 - 2 p.m. -- Open Meeting
University of Virginia, The Rotunda, Board Room, Charlottesville, Virginia. 

The Medical Center Operating Board will meet.

Contact: Penney Catlett, Assistant to the Assistant Vice President for University Relations, University of Virginia, P.O. Box 400229, Charlottesville, VA 22904-4229, telephone (434) 924-7620, FAX (434) 924-0938, e-mail pdc@virginia.edu.

GOVERNOR'S ADVISORY COMMISSION FOR VETERANS' AFFAIRS

September 12, 2002 - 10 a.m. -- Public Hearing
Northern Virginia Community College, 8333 Little River Turnpike, Annandale, Virginia.  (Interpreter for the deaf provided upon request)

A public hearing and open meeting.

Contact: Sheryl Bailey, Deputy Secretary of Administration, Office of Governor, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-1201, FAX (804) 371-0038, e-mail sbailey@gov.state.va.us.

BOARD OF VETERINARY MEDICINE

October 11, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to revise requirements in order to update facility requirements and to clarify certain provisions that have been confusing or problematic to licensees, especially related to the appropriate delegation of veterinary tasks to licensed technicians or unlicensed assistants.

Statutory Authority: Chapter 38 (§ 54.1-3800 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until October 11, 2002, to Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

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October 11, 2002 - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine.** The purpose of the proposed action is to increase renewal and other fees charged to applicants and licensees.

Statutory Authority: § 54.1-2400 and Chapter 38 (§ 54.1-3800 et seq.) of Title 54.1 of the Code of Virginia.


Public comments may be submitted until October 11, 2002, to Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.


VIRGINIA WAR MEMORIAL FOUNDATION

† **September 20, 2002 - Noon** -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The annual meeting of Virginia War Memorial Foundation Board of Trustees to elect officers. The meeting is open to the public and public comments will be heard.

Contact: Sandra H. Williams, Associate Director, Virginia War Memorial Foundation, 621 S. Belvidere St., Richmond, VA 23219, telephone (804) 786-2060, FAX (804) 786-6652, (804) 786-6152/TTY , e-mail swilliams@vawarmemorial.org.

VIRGINIA WASTE MANAGEMENT BOARD

† **September 4, 2002 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A meeting of the technical advisory committee assisting in the development of amendments to the Hazardous Waste Management Regulations.

Contact: Robert G. Wickline, Virginia Waste Management Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, e-mail rgwickline@deq.state.va.us.

† **October 24, 2002 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ☎

A public hearing to receive comments on the proposed amendments to the regulations governing the transportation of hazardous materials.

Contact: Melissa Porterfield, Virginia Waste Management Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238, e-mail mporterfi@deq.state.va.us.

VIRGINIA BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

October 3, 2002 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct routine business. A public comment period will be held at the beginning of the meeting.

Contact: David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2648, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail wastemgt@dpor.state.va.us.

STATE WATER CONTROL BOARD

August 30, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-195. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concentrated Aquatic Animal Production Facilities.** The purpose of the proposed action is to reissue the general permit for animal production facilities that establishes limitations and monitoring requirements for point source discharges from fish farms or other aquatic animal production facilities.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Contact: Michael Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

September 26, 2002 - 10 a.m. -- Open Meeting
Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A public meeting to receive comments on the State Water Control Board's notice of intent to consider amending the Aboveground Storage Tank Regulation (9 VAC 25-91) and the Underground Storage Tank Financial and Technical Regulations (9 VAC 25-580 and 9 VAC 25-590).

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.state.va.us.

† **September 27, 2002 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

November 12, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled: **9 VAC 25-70. Regulation No. 5 - Control of Pollution from Boats** and **9 VAC 25-730. Smith Mountain Lake No-Discharge Zone** and adopt regulations entitled: **9 VAC 25-71. Regulations Governing the Discharge of Sewage and Other Wastes from Boats.** The purpose of the proposed action is to repeal 9 VAC 25-70 and 9 VAC 25-730 and concurrently adopt 9 VAC 25-71 in order to provide a state regulation to address discharges of sewage and other wastes (decayed wood, sawdust, oil, etc.) from boats, especially with regard to implementation of no discharge zones.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.33 of the Code of Virginia.

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

† **September 27, 2002 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

October 31, 2002 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-120. General Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites and Hydrostatic Tests.** The purpose of the proposed action is to receive public comment on the draft General VPDES Regulation for Discharges from Petroleum Contaminated Sites and Hydrostatic Tests and the proposed reissuance of the General VPDES Permit (VAG83) to discharge to state waters.

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

Contact: Jon van Soestbergen, P.E., Environmental Manager II, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117, FAX (804) 698-4032 or e-mail jvansoest@deq.state.va.us.

Calendar of Events

† **September 27, 2002 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

October 31, 2002 - Public comments may be submitted until
this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled: **9 VAC 25-196. General
Pollutant Discharge Elimination System (VPDES) Permit
Regulation for Cooling Water Discharges.** The purpose
of the proposed action is to receive public comment on the
draft General VPDES Regulation for Cooling Water
Discharges and the proposed reissuance of the General
VPDES Permit (VAG25) to discharge to state waters.

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

Contact: Jon van Soestbergen, P.E., Environmental Manager
II, Department of Environmental Quality, P.O. Box 10009,
Richmond, VA 23240, telephone (804) 698-4117, FAX (804)
698-4032 or e-mail jvansoest@deq.state.va.us.

† **October 1, 2002 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, West Central Regional
Office, 3019 Peters Creek Road, Roanoke, Virginia.

† **October 2, 2002 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

† **October 3, 2002 - 7 p.m.** -- Public Hearing
Department of Environmental Quality, Tidewater Regional
Office, 5636 Southern Boulevard, Virginia Beach, Virginia.

November 1, 2002 - Public comments may be submitted until
this date.

Notice is hereby given in accordance with § 2.2-4007 of the
Code of Virginia that the State Water Control Board intends
to amend regulations entitled: **9 VAC 25-260. Water
Quality Standards** and adopt regulations entitled: **9 VAC
25-280. Groundwater Quality Standards.** The purpose
of the proposed action is to include updates and revisions to
water quality criteria, use designations, mixing zones and
the antidegradation policy. Substantive changes include the
addition of secondary contact bacteria criteria, the revision
of approximately 30 existing numerical criteria and the
addition of approximately 33 new numerical criteria and the
placement of several waters in the Class VII "swamp
waters" classification along with a new pH criteria for those
streams. The changes are based on EPA requirements and
recommendations, the Department of Environmental Quality
staff requests, and public comments. The amendments also
move the groundwater standards into a separate regulation
(9 VAC 25-280). This regulation contains the existing
groundwater standards, criteria and antidegradation policy
as well as pertinent definitions, general requirements,
requirements for modification, amendment, and cancellation
of standards and designations of authority.

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

Contact: Eleanore Daub, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4111 or e-mail: emdaub@deq.state.va.us.

VIRGINIA BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

September 19, 2002 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5W, Richmond,
Virginia. ☎

A meeting to conduct routine business. A public comment
period will be held at the beginning of the meeting.

Contact: David Dick, Assistant Director, Department of
Professional and Occupational Regulation, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-2648, FAX (804)
367-6128, (804) 367-9753/TTY ☎, e-mail
waterwasteoper@dpor.state.va.us.

INDEPENDENT

STATE LOTTERY BOARD

September 11, 2002 - 9 a.m. -- Open Meeting
Lottery Headquarters, Pocahontas Building, 900 East Main
Street, Richmond, Virginia. ☎

A regular board meeting.

Contact: Barbara L. Robertson, Board, Legislative and
Regulatory Coordinator, State Lottery Board, 900 E. Main St.,
Richmond, VA 23219, telephone (804) 692-7105, FAX (804)
692-7775, e-mail brobertson@valottery.state.va.us.

VIRGINIA RETIREMENT SYSTEM

October 16, 2002 - Noon -- Open Meeting
† **November 19, 2002 - Noon** -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond,
Virginia. ☎

A regular meeting of the Optional Retirement Plan Advisory
Committee.

Contact: Darla K. Glazier, Office Manager, Virginia
Retirement System, 1200 E. Main St., Richmond, VA 23219,
telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888)
827-3847, (804) 344-3190/TTY ☎, e-mail
dglazier@vrs.state.va.us.

October 17, 2002 - 9 a.m. -- Open Meeting
† **November 21, 2002 - 9 a.m.** -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond,
Virginia. ☎

A regular meeting of the Board of Trustees.

Contact: Darla K. Glazier, Office Manager, Virginia
Retirement System, P.O. Box 2500, Richmond, VA 23218,
telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888)

827-3847, (804) 344-3190/TTY ☎, e-mail
dkestner@vrs.state.va.us.

† **November 20, 2002 - Noon** -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond,
Virginia. ♿

Committees will meet as follows:

Noon - Audit and Compliance Committee
1 p.m. - Benefits and Actuarial Committee
2:30 p.m. - Administrative and Personnel Committee
3 p.m. - Investment Advisory Committee

Contact: Darla K. Glazier, Office Manager, Virginia
Retirement System, 1200 E. Main St., Richmond, VA 23219,
telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888)
827-3847, (804) 344-3190/TTY ☎, e-mail
dglazier@vrs.state.va.us.

LEGISLATIVE

JOINT COMMISSION ON ADMINISTRATIVE RULES

September 4, 2002 - 1 p.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room A, Richmond, Virginia.

A general meeting. Individuals requiring interpreter services
or other accommodations should contact Senate Committee
Operations. Inquiries regarding the agenda should be
directed to Jennifer Garey, Division of Legislative Services,
(804) 786-3591.

Contact: Nathan A. Hatfield, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450 or (804) 698-7419/TTY ☎

CONSUMER ADVISORY BOARD OF THE VIRGINIA ELECTRICAL UTILITY RESTRUCTURING ACT

September 11, 2002 - 10 a.m. -- Open Meeting
October 10, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room B, Richmond, Virginia.

A general meeting. Individuals requiring interpreter services
or other accommodations should contact Senate Committee
Operations.

Contact: Thomas C. Gilman, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450 or (804) 698-7419/TTY ☎

JOINT SUBCOMMITTEE STUDYING THE EFFECTIVENESS AND COSTS OF THE GUARDIAN AD LITEM PROGRAM

† **September 25, 2002 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. ♿

A regular meeting. Questions about the agenda should be
addressed to Robie Ingram, Division of Legislative Services,
(804) 786-3591.

Contact: Anne R. Howard, House Committee Operations,
P.O. Box 406, Richmond, VA 23218, telephone (804) 698-
1540 or (804) 786-2369/TTY ☎

JOINT SUBCOMMITTEE STUDYING LEAD POISONING PREVENTION

October 1, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate
Room A, Richmond, Virginia.

A general meeting. Individuals requiring interpreter services
or other accommodations should contact Senate Committee
Operations.

Contact: Thomas C. Gilman, Senate Committee Operations,
P.O. Box 396, Richmond, VA 23218, telephone (804) 698-
7450 or (804) 698-7419/TTY ☎

JOINT SUBCOMMITTEE TO STUDY THE PROTECTION OF INFORMATION CONTAINED IN THE RECORDS, DOCUMENTS AND CASES FILED IN THE COURTS OF THE COMMONWEALTH

† **September 18, 2002 - 2 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room C, Richmond, Virginia. ♿

A regular meeting. Questions about the agenda should be
addressed to Mary Felch, Division of Legislative Services,
(804) 786-3591.

Contact: Anne R. Howard, House Committee Operations,
P.O. Box 406, Richmond, VA 23218, telephone (804) 698-
1540 or (804) 786-2369/TTY ☎

JOINT COMMISSION ON TECHNOLOGY AND SCIENCE

August 29, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia. ♿

The first meeting of the Intellectual Property and
Entrepreneurial Development Advisory Committee.

Contact: Eric Link, Staff Attorney, Joint Commission on
Technology and Science, 910 Capitol St., 2nd Floor,
Richmond, VA 23219, telephone (804) 786-3591, e-mail
ELink@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 26
Alcoholic Beverage Control Board

Calendar of Events

August 27

Compensation Board
Marine Resources Commission
Small Business Financing Authority, Virginia

August 28

Accountancy, Board of
- Enforcement Committee
Contractors, Board for
Education, Board of
- Committee to Enhance the K-12 Teaching Professions
Milk Commission, State
Technology Planning, Department of
- CMRS Subcommittee
- Wireless E-911 Services Board

August 29

Agriculture and Consumer Services, Department of
- Virginia Charity Food Assistance Advisory Board
- Virginia Horse Industry Board
Conservation and Recreation, Department of
- Smith Mountain Lake State Park Master Plan Committee
Health, Department of
Higher Education for Virginia, State Council of
Nursing, Board of
- Special Conference Committee
Technology and Science, Joint Commission on
- Intellectual Property and Entrepreneurial Development
Advisory Committee

September 3

Hopewell Industrial Safety Council

September 4

† Aging, Department of the
Administrative Rules, Joint Commission on
† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
Game and Inland Fisheries, Department of
Medicine, Board of
- Informal Conference Committee
† Public Guardianship and Conservator Board
† Waste Management Board, Virginia
- Technical Advisory Committee

September 5

† Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board
Game and Inland Fisheries, Department of
† Labor and Industry, Department of
- Virginia Apprenticeship Council
Land Evaluation Advisory Council, State
† Museum of Fine Arts, Virginia
- Executive Committee
† Protection and Advocacy, Board for

September 6

Alzheimer's Disease and Related Disorders Commission
Art and Architectural Review Board
Conservation and Recreation, Board of
† Longwood University
- Academic and Student Affairs Committee
- Administration, Finance and Facilities Committee
- Audit Committee
- University Advancement Committee
† Protection and Advocacy, Board for

September 7

† Longwood University

- Board of Visitors

September 9

Alcoholic Beverage Control Board
Barbers and Cosmetology, Board of
Environmental Quality, Department of
- Ground Water Protection Steering Committee
Game and Inland Fisheries, Department of
† Motor Vehicle Dealer Board
- Advertising Committee
- Dealer Practices Committee
- Finance Committee
- Franchise Law Committee
- Licensing Committee
- Personnel Committee
- Transaction Recovery Fund Committee
† Technology Services, Council on
- Executive Committee

September 10

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers, and Landscape Architects,
Board for
Funeral Directors and Embalmers, Board of
Game and Inland Fisheries, Department of
Psychology, Board of
- Regulatory Committee
Resources Authority, Virginia
Tobacco Settlement Foundation, Virginia
- Board of Trustees

September 11

Education, Board of
- Committee to Enhance the K-12 Teaching Professions
Electrical Utility Restructuring Act, Virginia
- Consumer Advisory Board
Historic Resources, Department of
- State Review Board and Historic Resources Board
† Housing and Community Development, Board of
† Housing Development Authority, Virginia
- Board of Commissioners
† Juvenile Justice, State Board of
Lottery Board, State
Medicine, Board of
- Advisory Board on Acupuncture
- Advisory Board on Radiologic Technology
† Technology Services, Council on

September 12

† Aging, Commonwealth Council on
- Public Relations Committee
† Criminal Justice Services Board
- Harold L. McCann Memorial Award Committee
Environmental Quality, Department of
Game and Inland Fisheries, Department of
Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care
Pharmacy, Board of
- Special Conference Committee
† Technology Services, Council on
† Veterans' Affairs, Governor's Advisory Commission for

September 13

Child Fatality Review Team, State
Medicine, Board of
- Advisory Board on Athletic Training

- Advisory Board on Physician Assistants
Old Dominion University

- Board of Visitors
† Real Estate Board

September 14

- † Blind and Vision Impaired, Department for the
- Statewide Rehabilitation Council for the Blind
- † Conservation and Recreation, Department of
- Virginia Cave Board

September 16

- Real Estate Board

September 17

- Corrections, Board of
- Correctional Services/Policy and Regulations Committee
- Medicine, Board of
- Informal Conference Committee
- Real Estate Board
- University of Virginia
- Buildings and Grounds Committee

September 18

- Corrections, Board of
- Administration Committee
- † Higher Education for Virginia, State Council of
- Medicine, Board of
- Informal Conference Committee
- † Museum of Fine Arts, Virginia
- Communications and Marketing Committee
- Education and Programs Committee
- Exhibitions Committee
- Museum Expansion Committee
- Program Review Committee
- Polygraph Examiners Advisory Board
- † Protection of Information Contained in the Records,
Documents and Cases Filed in the Courts of the
Commonwealth, Joint Subcommittee to Study
Sewage Handling and Disposal Appeal Review Board
- Transportation Board, Commonwealth

September 19

- † Dentistry, Board of
- Design-Build/Construction Management Review Board
- † Manufactured Housing Board, Virginia
- † Museum of Fine Arts, Virginia
- Board of Trustees
- Buildings and Grounds Committee
- Collections Committee
- Finance and Legislative Committee
- Transportation Board, Commonwealth
- University of Virginia
- Medical Center Operating Board
- Waterworks and Wastewater Works Operators

September 20

- Social Services, State Board of
- Family and Children's Trust Fund Board of Trustees
- † War Memorial Foundation, Virginia
- Board of Trustees

September 23

- Alcoholic Beverage Control Board
- † Game and Inland Fisheries, Department of
- Library Board, State
- Archival and Information Systems
- Collection Management Services Committee
- Legislative and Finance Committee

- Publications and Educational Services Committee
- Public Library Development Committee
- Records Management Committee

- Nursing, Board of

- Professional and Occupational Regulation, Board for

- † Rehabilitative Services, Department of
- Commonwealth Neurotrauma Initiative Advisory Board

September 24

- † Accountancy, Board of
- † Game and Inland Fisheries, Department of
Marine Resources Commission
- † Nursing, Board of
- † Technology Services, Council on

September 25

- † Accountancy, Board of
- † Game and Inland Fisheries, Department of
- † Guardian Ad Litem Program, Joint Subcommittee to
Study the Effectiveness and Costs of the
Nursing, Board of

September 26

- Education, Board of
- Nursing, Board of
- Water Control Board, State

September 27

- Medicine, Board of
- Legislative Committee

October 1

- Lead Poison Prevention, Joint Subcommittee Studying
- † Medical Assistance, Board of
- † Museum of Fine Arts, Virginia
- Executive Committee

October 2

- Medicine, Board of

October 3

- Waste Management Facility Operators, Virginia Board for

October 4

- Art and Architectural Review Board

October 8

- Nursing, Board of
- Special Conference Committee

October 9

- Environmental Quality, Department of

October 10

- Electrical Utility Restructuring Act, Virginia
- Consumer Advisory Board
- Environmental Quality, Department of
- Medicine, Board of
- Motor Vehicles, Department of
- Digital Signature Implementation Workgroup
- Nursing, Board of
- Special Conference Committee

October 15

- Blind and Vision Impaired, Board for the
Resources Authority, Virginia

October 16

- Education, Board of
- Retirement System, Virginia
- Optional Retirement Plan Advisory Committee

October 17

- Design-Build/Construction Management Review Board
- Education, Board of
- State Special Education Advisory Committee

Calendar of Events

Retirement System, Virginia
- Board of Trustees

October 18
Education, Board of
- State Special Education Advisory Committee

October 21
Intergovernmental Relations, Virginia Advisory Commission
on
Nursing, Board of
- Special Conference Committee
Old Dominion University
- Executive Committee

October 22
Nursing, Board of
- Special Conference Committee

October 29
Asbestos, Lead, and Home Inspectors, Virginia Board for
Nursing, Board of
- Special Conference Committee

October 30
Nursing, Board of
- Special Conference Committee

November 1
Art and Architectural Review Board

November 4
Pharmacy, Board of
- Informal Conference Committee

November 7
Medical Assistance Services, Department of
- Medicaid Drug Utilization Review Board

November 11
Intergovernmental Relations, Virginia Advisory Commission
on

November 13
† Real Estate Board
† Technology Planning, Department of
- CMRS Subcommittee
- Wireless E-911 Services Board

November 14
† Real Estate Board

November 18
† Jamestown-Yorktown Foundation
† Old Dominion University
- Executive Committee
† Library Board, State
- Archival and Information Systems
- Collection Management Services Committee
- Legislative and Finance Committee
- Publications and Educational Services Committee
- Public Library Development Committee
- Records Management Committee
† Nursing, Board of

November 19
† Jamestown-Yorktown Foundation
† Retirement System, Virginia
- Optional Retirement Plan Advisory Committee

November 20
† Education, Board of
† Retirement System, Virginia
- Administration and Personnel Committee
- Audit and Compliance Committee
- Benefits and Actuarial Committee

- Investment Advisory Committee

November 21
† Design-Build/Construction Management Review Board
† Nursing, Board of
† Retirement System, Virginia
- Board of Trustees

PUBLIC HEARINGS

August 26
Air Pollution Control Board, State

August 27
Environmental Quality, Department of

August 29
† Mines, Minerals and Energy, Department of

September 4
Environmental Quality, Department of
† Health, Department of

September 5
† Environmental Quality, Department of

September 10
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers, and Landscape Architects,
Board for
Barbers and Cosmetology, Board for
† Environmental Quality, Department of
Funeral Directors and Embalmers, Board of
† Health, Department of

September 11
Air Pollution Control Board, State
† Environmental Quality, Department of
Real Estate Board
Real Estate Appraiser Board

September 12
† Environmental Quality, Department of

September 16
† Forestry, Board of
† Health, Department of

September 17
† Forestry, Board of
† Health, Department of

September 18
† Health, Department of
Polygraph Examiners Advisory Board

September 19
† Dentistry, Board of

September 20
Professional and Occupational Regulation, Board for

September 23
† Forestry, Board of
Professional and Occupational Regulation, Board for

September 24
Nursing, Board of

September 26
Education, Board of
† Mines, Minerals and Energy, Department of
Professional and Occupational Regulation, Board for

September 27
† Water Control Board, State

September 30
† Pharmacy, Board of

October 1

- † Historic Resources, Department of
- † Water Control Board, State

October 2

- † Water Control Board, State

October 3

- † Water Control Board, State

October 4

- Professional and Occupational Regulation, Board for

October 8

- Asbestos, Lead, and Home Inspectors, Virginia Board for
- † Psychology, Board of

October 9

- Nursing Home Administrators, Board of

October 10

- † Air Pollution Control Board, State

October 17

- Auctioneers Board

October 24

- † Waste Management Board, Virginia