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The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2002 VAC Supplement includes final regulations published through *Virginia Register* Volume 18, Issue 24, dated August 12, 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 4. Conservation and Natural Resources			
4 VAC 15-20-160	Amended	19:1 VA.R. 102	10/23/02
4 VAC 15-30-40	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-320-20	Repealed	19:5 VA.R. 805	1/1/03
4 VAC 15-320-25	Added	19:5 VA.R. 805	1/1/03
4 VAC 15-320-30	Repealed	19:5 VA.R. 805	1/1/03
4 VAC 15-320-40	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-320-50	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-10	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-100	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-120	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-160	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-330-190	Amended	19:5 VA.R. 805	1/1/03
4 VAC 15-340-60	Amended	19:5 VA.R. 806	1/1/03
4 VAC 15-350-30	Amended	19:5 VA.R. 806	1/1/03
4 VAC 15-360-10	Amended	19:5 VA.R. 806	1/1/03
4 VAC 15-370-10	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-370-30	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-370-50	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-370-51	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-370-70	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-370-80	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-380-10	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-380-20	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-380-30	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-40	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-50	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-60	Repealed	19:5 VA.R. 807	1/1/03
4 VAC 15-380-70	Amended	19:5 VA.R. 807	1/1/03
4 VAC 15-380-80 through 4 VAC 15-380-130	Added	19:5 VA.R. 807	1/1/03
4 VAC 15-390-10	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-11	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-390-20	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-30	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-50	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-70	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-90	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-100	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-110	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-130	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-390-140	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-390-150	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-390-160	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-400-20	Amended	19:5 VA.R. 808	1/1/03
4 VAC 15-400-30	Amended	19:5 VA.R. 808	1/1/03

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-400-50	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-420-10 through 4 VAC 15-420-120	Added	19:5 VA.R. 808	1/1/03
4 VAC 15-430-10 through 4 VAC 15-430-220	Added	19:5 VA.R. 809	1/1/03
4 VAC 15-440-10 through 4 VAC 15-440-60	Added	19:5 VA.R. 809	1/1/03
4 VAC 20-430-20	Amended	19:3 VA.R. 432	10/1/02
4 VAC 20-562-10 through 4 VAC 20-562-50 emer	Added	18:25 VA.R. 3570	8/16/02-8/30/02
4 VAC 20-610-60	Amended	18:25 VA.R. 3548	8/1/02
4 VAC 20-670-30	Amended	18:25 VA.R. 3550	8/1/02
4 VAC 20-720-20	Amended	19:3 VA.R. 432	10/1/02
4 VAC 20-720-40	Amended	19:3 VA.R. 433	10/1/02
4 VAC 20-720-50 through 4 VAC 20-720-80	Amended	19:3 VA.R. 434-436	10/1/02
4 VAC 20-720-80	Amended	19:5 VA.R. 809	11/1/02
4 VAC 20-752-20	Amended	19:1 VA.R. 102	9/1/02
4 VAC 20-754-10 emer	Amended	19:5 VA.R. 811	10/27/02-11/25/02
4 VAC 20-754-20 emer	Amended	19:5 VA.R. 811	10/27/02-11/25/02
4 VAC 20-754-30 emer	Amended	19:1 VA.R. 137	8/28/02-9/27/02
4 VAC 20-754-30 emer	Amended	19:5 VA.R. 811	10/27/02-11/25/02
4 VAC 20-754-30	Amended	19:3 VA.R. 440	9/26/02
Title 6. Criminal Justice and Corrections			
6 VAC 35-60-10	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-20	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-30	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-40	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-170	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-215	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-225	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-236	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-237	Added	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-280	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-290	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-320	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-330	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-390	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-400	Repealed	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-410	Amended	18:25 VA.R. 3551	11/1/02
6 VAC 35-60-415	Added	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-440	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-450	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-460	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-480	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-490	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-495	Repealed	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-500	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-575	Added	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-580	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-600	Amended	18:25 VA.R. 3552	11/1/02
6 VAC 35-60-605	Repealed	18:25 VA.R. 3552	11/1/02
Title 9. Environment			
9 VAC 5-60-120 through 9 VAC 5-60-180	Amended	19:3 VA.R. 441-454	12/1/02
9 VAC 5-91-380	Amended	19:3 VA.R. 455	12/1/02
9 VAC 5-220-10 through 9 VAC 5-220-60	Added	19:3 VA.R. 456	12/1/02
9 VAC 5-221-10 through 9 VAC 5-221-60	Added	19:3 VA.R. 456	12/1/02
9 VAC 5-510-10 through 9 VAC 5-510-250	Added	19:3 VA.R. 457-466	12/1/02
9 VAC 20-60-1285	Erratum	18:25 VA.R. 3607	--
9 VAC 25-31-50	Amended	18:25 VA.R. 3552	9/25/02
9 VAC 25-31-100	Amended	18:25 VA.R. 3553	9/25/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-180-10	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-20	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-40	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-50	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-55	Added	19:4 VA.R. 629	12/4/02
9 VAC 25-180-60	Amended	19:4 VA.R. 629	12/4/02
9 VAC 25-180-70	Amended	19:4 VA.R. 630	12/4/02
9 VAC 25-260-5	Amended	18:20 VA.R. 2658	*
9 VAC 25-260-140	Amended	18:24 VA.R. 3289	*
9 VAC 25-260-140	Erratum	18:25 VA.R. 3607	--
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	*
9 VAC 25-420	Repealed	18:26 VA.R. 3808	**
9 VAC 25-430	Repealed	18:26 VA.R. 3808	**
9 VAC 25-440	Repealed	18:26 VA.R. 3808	**
9 VAC 25-450	Repealed	18:26 VA.R. 3808	**
9 VAC 25-452	Repealed	18:26 VA.R. 3808	**
9 VAC 25-460	Repealed	18:26 VA.R. 3808	**
9 VAC 25-470	Repealed	18:26 VA.R. 3808	**
9 VAC 25-480	Repealed	18:26 VA.R. 3808	**
9 VAC 25-490	Repealed	18:26 VA.R. 3808	**
9 VAC 25-500	Repealed	18:26 VA.R. 3808	**
9 VAC 25-510	Repealed	18:26 VA.R. 3808	**
9 VAC 25-520	Repealed	18:26 VA.R. 3808	**
9 VAC 25-530	Repealed	18:26 VA.R. 3808	**
9 VAC 25-540	Repealed	18:26 VA.R. 3808	**
9 VAC 25-550	Repealed	18:26 VA.R. 3808	**
9 VAC 25-560	Repealed	18:26 VA.R. 3808	**
9 VAC 25-570	Repealed	18:26 VA.R. 3808	**
9 VAC 25-572	Repealed	18:26 VA.R. 3808	**
9 VAC 25-720-10 through 9 VAC 25-720-140	Added	18:26 VA.R. 3809-3852	**
9 VAC 25-750-10 through 9 VAC 25-750-50	Added	19:4 VA.R. 645-658	12/9/02
Title 11. Gaming			
11 VAC 10-130-80	Amended	19:3 VA.R. 478	9/27/02
Title 12. Health			
12 VAC 5-30	Repealed	19:3 VA.R. 478	1/1/03
12 VAC 5-31	Added	19:3 VA.R. 479-529	1/1/03
12 VAC 5-410-230	Amended	19:1 VA.R. 103	11/1/02
12 VAC 5-410-230	Erratum	19:3 VA.R. 549	--
12 VAC 5-410-390	Amended	19:1 VA.R. 103	11/1/02
12 VAC 5-410-1170	Amended	19:1 VA.R. 104	11/1/02
12 VAC 5-410-1180	Amended	19:1 VA.R. 104	11/1/02
12 VAC 30-70-201 emer	Amended	18:26 VA.R. 3906	9/1/02-8/31/03
12 VAC 30-70-425 emer	Added	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-70-426 emer	Added	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-80-20 emer	Amended	18:25 VA.R. 3571	8/1/02-7/31/03
12 VAC 30-80-30 emer	Amended	18:25 VA.R. 3573	8/1/02-7/31/03
12 VAC 30-80-30 emer	Amended	18:25 VA.R. 3576	8/1/02-7/31/03
12 VAC 30-90-18 emer	Added	18:25 VA.R. 3575	8/1/02-7/31/03

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

** Effective date suspended at publication for further public comment.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-90-19 emer	Amended	18:25 VA.R. 3575	8/1/02-7/31/03
12 VAC 30-120-210	Repealed	18:26 VA.R. 3853	10/16/02
12 VAC 30-120-211 through 12 VAC 30-120-219	Added	18:26 VA.R. 3855-3865	10/16/02
12 VAC 30-120-220	Repealed	18:26 VA.R. 3865	10/16/02
12 VAC 30-120-221 through 12 VAC 30-120-229	Added	18:26 VA.R. 3867-3875	10/16/02
12 VAC 30-120-230	Repealed	18:26 VA.R. 3875	10/16/02
12 VAC 30-120-231 through 12 VAC 30-120-237	Added	18:26 VA.R. 3878-3883	10/16/02
12 VAC 30-120-240	Repealed	18:26 VA.R. 3883	10/16/02
12 VAC 30-120-241 through 12 VAC 30-120-249	Added	18:26 VA.R. 3885-3893	10/16/02
12 VAC 30-120-249	Erratum	19:3 VA.R. 549	--
12 VAC 30-120-250	Repealed	18:26 VA.R. 3893	10/16/02
12 VAC 30-120-360	Amended	19:3 VA.R. 530	12/1/02
12 VAC 30-120-370	Amended	19:3 VA.R. 531	12/1/02
12 VAC 30-120-380	Amended	19:3 VA.R. 531	12/1/02
12 VAC 30-120-385	Repealed	19:3 VA.R. 531	12/1/02
12 VAC 30-120-390 through 12 VAC 30-120-420	Amended	19:3 VA.R. 531	12/1/02
12 VAC 30-120-700 (emer)	Amended	19:3 VA.R. 536	10/1/02-9/30/03
12 VAC 30-120-710 (emer)	Amended	19:3 VA.R. 539	10/1/02-9/30/03
12 VAC 30-120-720 (emer)	Amended	19:3 VA.R. 539	10/1/02-9/30/03
12 VAC 30-135-10 through 12 VAC 30-135-80 emer	Added	18:25 VA.R. 3579-3580	10/1/02-9/30/03
12 VAC 30-141-10 through 12 VAC 30-141-650 emer	Adding	19:1 VA.R. 138-150	9/1/02-8/31/02
12 VAC 30-141-10 through 12 VAC 30-141-650 emer	Added	18:25 VA.R. 3580-3590	8/1/02-7/31/03
12 VAC 35-105-20 emer	Amended	18:25 VA.R. 3591	9/19/02-9/18/03
12 VAC 35-105-30 emer	Amended	18:25 VA.R. 3597	9/19/02-9/18/03
12 VAC 35-105-280 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-590 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-660 emer	Amended	18:25 VA.R. 3598	9/19/02-9/18/03
12 VAC 35-105-800 emer	Amended	18:25 VA.R. 3599	9/19/02-9/18/03
Title 13. Housing			
13 VAC 10-20-20	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-20-40	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-20-90	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-40-20	Amended	19:2 VA.R. 349	9/20/02
13 VAC 10-50-90	Amended	19:2 VA.R. 349	9/20/02
Title 14. Insurance			
14 VAC 5-71-10 through 14 VAC 5-71-100	Amended	19:1 VA.R. 104	9/4/02
14 VAC 5-170-20	Amended	19:4 VA.R. 660	10/24/02
14 VAC 5-170-30	Amended	19:4 VA.R. 660	10/24/02
14 VAC 5-170-60	Amended	19:4 VA.R. 661	10/24/02
14 VAC 5-170-70	Amended	19:4 VA.R. 662	10/24/02
14 VAC 5-170-105	Amended	19:4 VA.R. 665	10/24/02
14 VAC 5-170-150	Amended	19:4 VA.R. 670	10/24/02
14 VAC 5-170-180	Amended	19:4 VA.R. 688	10/24/02
14 VAC 5-210-70	Amended	18:26 VA.R. 3896	9/1/02
14 VAC 5-210-90	Amended	18:26 VA.R. 3896	9/1/02
14 VAC 5-350-20	Amended	19:1 VA.R. 107	9/1/02
14 VAC 5-350-30	Amended	19:1 VA.R. 107	9/1/02
14 VAC 5-350-40 through 14 VAC 5-350-80	Repealed	19:1 VA.R. 108	9/1/02
14 VAC 5-350-85	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-95	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-110 through 14 VAC 5-350-140	Repealed	19:1 VA.R. 108	9/1/02
14 VAC 5-350-150	Amended	19:1 VA.R. 108	9/1/02
14 VAC 5-350-155	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-160	Amended	19:1 VA.R. 108	9/1/02
14 VAC 5-350-165	Added	19:1 VA.R. 108	9/1/02
14 VAC 5-350-170	Repealed	19:1 VA.R. 108	9/1/02

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-350-180	Repealed	19:1 VA.R. 108	9/1/02
14 VAC 5-350-210	Amended	19:1 VA.R. 108	9/1/02
14 VAC 5-350 (Forms)	Amended	19:5 VA.R. 814	--
14 VAC 5-385-10 through 14 VAC 5-385-150	Added	19:2 VA.R. 351	10/1/02
Title 16. Labor and Employment			
16 VAC 5-10-10	Amended	18:26 VA.R. 3897	11/3/02
16 VAC 5-10-20	Amended	18:26 VA.R. 3897	11/3/02
16 VAC 5-10-21	Added	18:26 VA.R. 3898	11/3/02
16 VAC 5-10-22	Added	18:26 VA.R. 3898	11/3/02
16 VAC 5-10-30	Amended	18:26 VA.R. 3898	11/3/02
16 VAC 5-20-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-20-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-32-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-32-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-60-10	Amended	18:26 VA.R. 3898	11/3/02
16 VAC 5-60-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-60-40	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-70-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-70-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-10	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-20	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-30	Amended	18:26 VA.R. 3900	11/3/02
16 VAC 5-80-40	Amended	18:26 VA.R. 3900	11/3/02
Title 18. Professional and Occupational Licensing			
18 VAC 85-80-10	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-26	Added	19:1 VA.R. 108	10/23/02
18 VAC 85-80-35	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-40	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-45	Added	19:1 VA.R. 108	10/23/02
18 VAC 85-80-60 through 18 VAC 85-80-110	Amended	19:1 VA.R. 108	10/23/02
18 VAC 85-80-120	Repealed	19:1 VA.R. 109	10/23/02
18 VAC 85-101-10	Amended	19:1 VA.R. 109	10/23/02
18 VAC 85-101-60	Amended	19:1 VA.R. 109	10/23/02
18 VAC 85-101-70	Amended	19:1 VA.R. 110	10/23/02
18 VAC 85-101-150	Amended	19:1 VA.R. 110	10/23/02
18 VAC 110-20-20	Amended	19:4 VA.R. 689	12/4/02
18 VAC 110-30-15	Amended	19:4 VA.R. 691	12/4/02
18 VAC 112-20-10	Amended	19:1 VA.R. 110	10/23/02
18 VAC 112-20-130	Amended	19:1 VA.R. 110	10/23/02
18 VAC 112-20-131	Added	19:1 VA.R. 110	10/23/02
18 VAC 112-20-135	Amended	19:1 VA.R. 110	10/23/02
18 VAC 112-20-136	Added	19:1 VA.R. 110	10/23/02
18 VAC 112-20-140	Amended	19:1 VA.R. 110	10/23/02
18 VAC 115-30-140	Amended	19:1 VA.R. 110	10/23/02
18 VAC 115-60-130	Amended	19:1 VA.R. 111	10/23/02
Title 20. Public Utilities and Telecommunications			
20 VAC 5-302-20	Amended	19:1 VA.R. 115	8/21/02
20 VAC 5-302-25	Added	19:1 VA.R. 117	8/21/02
20 VAC 5-302-35	Added	19:1 VA.R. 118	8/21/02
20 VAC 5-312-90	Amended	19:1 VA.R. 121	1/1/03
20 VAC 5-312-90	Erratum	19:5 VA.R. 819	--
20 VAC 5-312-100	Amended	18:26 VA.R. 3904	1/1/03
20 VAC 5-312-120	Added	18:26 VA.R. 3905	1/1/03
Title 22. Social Services			
22 VAC 5-10-10	Amended	19:1 VA.R. 124	10/23/02
22 VAC 5-10-20	Amended	19:1 VA.R. 124	10/23/02

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 5-10-100	Amended	19:1 VA.R. 124	10/23/02
22 VAC 5-20-20 through 22 VAC 5-20-100	Amended	19:1 VA.R. 124-132	10/23/02
22 VAC 5-20-110	Repealed	19:1 VA.R. 132	10/23/02
22 VAC 5-20-120	Amended	19:1 VA.R. 132	10/23/02
22 VAC 5-20-140	Amended	19:1 VA.R. 133	10/23/02
22 VAC 5-20-150	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-170	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-180	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-190	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-210	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-230	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-250	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-300	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-310	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-330	Amended	19:1 VA.R. 134	10/23/02
22 VAC 5-20-450	Amended	19:1 VA.R. 135	10/23/02
22 VAC 5-20-460	Amended	19:1 VA.R. 135	10/23/02
22 VAC 5-20-580	Amended	19:1 VA.R. 135	10/23/02
22 VAC 5-20-600	Amended	19:1 VA.R. 136	10/23/02
22 VAC 15-30 (Forms)	Amended	19:4 VA.R. 695	--
22 VAC 15-60-10 through 22 VAC 15-60-180	Repealed	19:2 VA.R. 351	11/6/02
22 VAC 20-20-10 through 22 VAC 20-20-110	Amended	19:4 VA.R. 694	1/1/03
22 VAC 40-60 (Forms)	Amended	19:4 VA.R. 695	--
22 VAC 40-90-10	Amended	19:2 VA.R. 352	11/6/02
22 VAC 40-90-20	Amended	19:2 VA.R. 353	11/6/02
22 VAC 40-90-60	Amended	19:2 VA.R. 353	11/6/02
22 VAC 40-92-10 through 22 VAC 40-92-180	Repealed	19:3 VA.R. 531	11/20/02
22 VAC 40-720-10	Amended	19:3 VA.R. 531	11/20/02
22 VAC 40-730-10	Amended	19:3 VA.R. 532	11/20/02
22 VAC 40-730-20	Amended	19:3 VA.R. 533	11/20/02
22 VAC 40-730-40 through 22 VAC 40-730-90	Amended	19:3 VA.R. 533	11/20/02
Title 24. Transportation and Motor Vehicles			
24 VAC 30-270	Repealed	19:3 VA.R. 533	9/18/02
24 VAC 30-271-10	Added	19:3 VA.R. 533	9/18/02
24 VAC 30-271-20	Added	19:3 VA.R. 533	9/18/02

NOTICES OF INTENDED REGULATORY ACTION

Symbol Key

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

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Juvenile Justice intends to consider amending regulations entitled: **6 VAC 35-30. Regulations for State Reimbursement of Local Juvenile Residential Facility Costs.** The purpose of the proposed action is to establish the process for evaluating requests from localities for state reimbursement of local juvenile residential facility construction costs, including criteria to assess need and establish priorities for construction projects, and a methodology for determining appropriate costs.

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

Statutory Authority: §§ 16.1-309.5 and 66-10 of the Code of Virginia.

Public comments may be submitted until December 13, 2002.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., Richmond, VA 23219, telephone (804) 371-0743 or FAX (804) 371-0773 or e-mail carignandr@djj.state.va.us.

VA.R. Doc. No. R03-50; Filed October 3, 2002, 11:26 a.m.

TITLE 8. EDUCATION

BOARD OF EDUCATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 that the Board of Education intends to consider amending regulations entitled: **8 VAC 20-21. Licensure Regulations for School Personnel.** The purpose of the proposed action is to incorporate recent enactments of federal and state laws: (i) the federal No Child Left Behind Act requires that all teachers of core academic subjects hired after the first day of the 2002-03 school year and teaching in a program supported with Title I, Part A, funds be "highly qualified"; and (ii) an amendment of § 22.1-298 of the Code of Virginia requires that persons seeking initial licensure or license renewal complete a study in child abuse recognition and intervention.

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

Statutory Authority: § 22.1-298 of the Code of Virginia and Title IX, Part C, § 9302 of ESEA (Public Law 107-110).

Public comments may be submitted until January 2, 2003.

Contact: Dr. Thomas Elliott, Assistant Superintendent, Teacher Licensure, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 371-2522, FAX (804) 225-2524, or e-mail telliott@mail.vak12ed.edu.

VA.R. Doc. No. R03-67; Filed November 13, 2002, 9:41 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-20. General Provisions (Rev. G02).** The purpose of the proposed action is to enlarge the scope of the Hampton Roads Emissions Control Area in order to render four previously exempt jurisdictions subject to the VOC emission standards for existing sources. This action is being taken pursuant to Virginia's obligation to implement contingency measures as a result of this area's violation of the 1-hour ozone standard.

Need: Among the primary goals of the federal Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than required by the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air. EPA requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, that shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards—that is, it would have to

Notices of Intended Regulatory Action

promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects or more restrictive requirements for new industry, or both. Generally, the plan is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures are directed at limiting emissions primarily from commercial/industrial facilities and operations and include the following: emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures which are directed at small businesses and consumer activities. Mobile source control measures are directed at tailpipe and other emissions primarily from motor vehicles and include the following: Federal Motor Vehicle Emission Standards, fuel volatility limits, reformulated gasoline, emissions control system anti-tampering programs, and inspection and maintenance programs. Transportation source control measures limit the location and use of motor vehicles and include the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and many others.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the Clean Air Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the Clean Air Act, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant--ozone--has proven problematic. While ozone is needed at the earth's outer atmospheric layer

to shield out harmful rays from the sun, excess concentrations at the surface have an adverse effect on human health and welfare. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides (NO_x), and sunlight. When VOC and NO_x emissions from mobile sources and stationary sources are reduced, ozone is reduced.

Congress enacted the 1977 Amendments to the Clean Air Act in order to address unsuccessful SIPs and areas that had not attained the NAAQS (that is, nonattainment areas). Although SIP revisions submitted pursuant to the requirements of the 1977 amendments did achieve some progress in eliminating nonattainment areas, some areas remained.

In 1990 Congress once again enacted comprehensive amendments to the Act to address SIP requirements for nonattainment areas. The new Act established a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of their class. In addition to the general SIP-related sanctions, nonattainment areas have their own unique sanctions. If a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements. The Clean Air Act includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

The new Act required EPA, based on the air quality data from each state, to propose geographic boundaries and pollution classification levels for all nonattainment areas to each state's governor. If states disagreed with EPA's proposals, they had the opportunity to propose different boundaries; however, EPA had the authority to make the final decision.

The process provided in the new Act yielded three nonattainment areas for Virginia. The classifications for Virginia's nonattainment areas were marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area.

Once the nonattainment areas were defined, each state was then obligated to submit a SIP demonstrating how it would attain the air quality standards in each nonattainment area. First, the new Act requires that certain specific control measures and other requirements be adopted and included in the SIP; a list of those that necessitated the adoption of state regulations is provided below. In addition, the state had to demonstrate that it would achieve a VOC emission reduction of 15%. Finally, the SIP had to include an attainment demonstration by photochemical modeling (including annual emission reductions of 3.0% from 1996 to 1999) in addition to the 15% emission reduction demonstration. In cases where the specific control measures shown below were inadequate

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to achieve the emission reductions or attain the air quality standard, the state was obligated to adopt other control measures as necessary to achieve this end.

ALL AREAS

- correct existing VOC regulatory program (controls on certain sources identified in EPA control technology guidelines)
- requirement for annual statements of emissions from industries
- permit program for new industry and expansions (with variable major source definition, variable offset ratio for addition of new pollution, and special requirements for expansions to existing industry in serious areas)
- procedures to determine if systems level highway plans and other federally financed projects are in conformity with air quality plans

MODERATE AND ABOVE AREAS

- requirement for controls for all major (100 tons per year) VOC sources
- requirement for vapor recovery controls for emissions from filling vehicles with gasoline (stage II)
- requirement for controls for all major (100 tons per year) NO_x sources
- case by case control technology determinations for all major VOC and NO_x sources not covered by a EPA control technology guideline

SERIOUS AND ABOVE AREAS

- requirement for controls for all major (50 tons per year) VOC sources
- requirement for controls for all major (50 tons per year) NO_x sources
- enhanced monitoring (source emissions) program
- correct existing motor vehicle emissions inspection and maintenance (I&M) program
- enhanced motor vehicle emissions I&M program
- clean fuel fleet vehicle program
- oxygenated fuels program

Since the initial classification of these three areas, Northern Virginia has remained a nonattainment area. Richmond and Hampton Roads were able to achieve the 1-hour ozone standard and were redesignated as maintenance areas. As a condition of being redesignated, each area established a plan that included specific strategies to maintain their air quality. No additional new requirements were necessary provided that an area did not measure ozone concentrations above allowable levels. In the event that an area did measure ozone concentrations above allowable levels, each maintenance plan included contingency measures. The contingency measures consisted of a scheduled series of additional steps to be taken in the event of ozone exceedances or violations. EPA redesignated Hampton Roads as a maintenance area and approved its maintenance plan and associated

contingency measures on June 26, 1997 (62 FR 34408 at 40 CFR 52.2420(c)(117)).

From 1999 to 2001, however, the Hampton Roads area experienced four exceedances at the Tidewater Community College monitor in Suffolk, resulting in a violation of the 1-hour ozone standard. (More than three exceedances in a three-year period result in a violation.) Consequently, EPA Region III notified Virginia by letter dated October 29, 2001, that the Commonwealth is now obligated to implement the contingency measures of the 1-hour maintenance plan established for this area. Virginia now needs to strengthen the provisions of this contingency plan.

Since the initial regulatory promulgation of the volatile organic compounds emissions control areas in 1979, James City County, York County, Poquoson City, and Williamsburg City have been exempt from the emission standards for VOCs in 9 VAC 5 Chapter 40. These standards apply to existing sources conducting activities such as open burning, asphalt application, solvent metal cleaning, metal can coating, and graphic arts operations. Originally, these four jurisdictions were determined to be too rural to make a significant contribution to air pollution in the area. Two decades later, however, they have undergone significant development and are no longer rural. In light of the Hampton Roads area's violation of the 1-hour ozone standard, the exemption of these jurisdictions from the VOC emission standards must be now rescinded, and the contingency measures of the maintenance plan for the area must be revised to include a commitment and schedule to implement this course of action.

Potential issues: The first issue will be to enlarge the regulatory scope of the Hampton Roads emissions control area for volatile organic compounds to include James City County, York County, Poquoson City, and Williamsburg City. The second issue will be to make any other changes that may be necessary to maintain regulatory consistency.

Alternatives: Alternatives to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulation to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to enlarge the scope of the Hampton Roads volatile organic compounds emissions control area in light of Virginia's obligation to implement contingency measures as a result of this area's violation of the 1-hour ozone standard.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because Virginia's failure to strengthen and implement its contingency plan could jeopardize the Commonwealth's authority to make its own air quality policy decisions, could

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result in the EPA assuming control of Virginia's air quality plan, and could result in the levying of sanctions on Virginia such as the loss of federal funds for highways or more restrictive requirements for new industry.

3. Take no action to amend the regulation. This option is not being selected because Virginia's failure to strengthen and implement its contingency plan could jeopardize the Commonwealth's authority to make its own air quality policy decisions, could result in the EPA assuming control of Virginia's air quality plan, and could result in the levying of sanctions on Virginia such as the loss of federal funds for highways or more restrictive requirements for new industry.

Public Participation: The department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the department in the development of the proposal, (ii) the impacts of the proposed regulation on farm and forest lands, (iii) the costs and benefits of the alternatives stated in this notice or other alternatives, and (iv) potential pollution prevention benefits that could be realized. All comments must be received by the department by 4:30 p.m. on the day of the public meeting (see information below) in order to be considered. It is preferred that all comments be provided in writing to the department, along with any supporting documents or exhibits; however, oral comments will be accepted at the meeting. Comments may be submitted by mail, facsimile transmission, e-mail, or by personal appearance at the meeting, but must be submitted to Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia, 23240 (e-mail: krsands@deq.state.va.us) (fax number: 804-698-4510). Comments by facsimile transmission will be accepted only if followed by receipt of the signed original within one week. Comments by e-mail will be accepted only if the name, address and phone number of the commenter are included. All testimony, exhibits and documents received are a matter of public record. Only comments (i) related to the potential issues, alternatives, and costs and benefits (see supporting information below) as specified in this notice and (ii) provided in accordance with the procedures specified in this notice will be given consideration in the development of the proposed regulation amendments.

A public meeting will be held by the department to receive comments on the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register.

After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Ad Hoc Advisory Group: The department is soliciting comments on the advisability of forming an ad hoc advisory group, using a standing advisory committee, or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be used is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. Any comments relative to this issue must be

submitted to the agency contact in writing by 4:30 p.m. the last day of the comment period.

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

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

Public comments may be submitted until 4:30 p.m. on January 10, 2003, to the Director, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240.

Contact: Kathleen R. Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TTY ☎

VA.R. Doc. No. R03-68; Filed November 13, 2002, 8:18 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled: **12 VAC 5-585. Biosolids Use Regulations.** The purpose of the proposed action is to address certain issues raised by local governments including (i) posting of informational signs at permitted sites prior to and during land application of biosolids; (ii) evidence of financial responsibility (such as liability insurance or other financial resources) in a determined amount, resulting from the land application of biosolids; (iii) notification of local governments prior to the land application of biosolids at specific sites; (iv) development and implementation of spill prevention and response plans by permitted entities; and (v) methods for communicating information on complaints and reported incidents related to or arising from the land application of biosolids.

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

Statutory Authority: § 32.1-164 of the Code of Virginia.

Public comments may be submitted until 5 p.m., December 6, 2002.

Contact: Cal Sawyer, Director, Division of Wastewater Engineering, Department of Health, 1500 E. Main St., Suite 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5566 or e-mail csawyer@vdh.state.va.us.

VA.R. Doc. No. R03-57; Filed October 16, 2002, 10:51 a.m.

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 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care: Pharmacy Services.** The purpose of the proposed action is to conform the DMAS definition of unit dose to the definition used by the Board of Pharmacy and to change the reimbursement rate for the service of unit dose dispensing to a per capita monthly fee.

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 December 4, 2002, to Alissa Nashwinter, Division of Program Operations, 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 23219, telephone (804) 786-7959, FAX (804) 786-1680 or e-mail vsimmons@dmas.state.va.us.

VA.R. Doc. No. R03-51; Filed October 10, 2002, 8:41 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Accountancy intends to consider amending regulations entitled: **18 VAC 5-21. Board of Accountancy Rules and Regulations.** The purpose of the proposed action is to revise and clarify the following sections: (i) definitions; (ii) fees; (iii) qualifications for licensure (includes clarified language about the current CPA exam, and new language about the forthcoming computer-based CPA exam); (iv) issuance of a license to initial applicants, through endorsement, and by substantial equivalency; (v) registration of CPA firms (includes clarified language about the peer review requirements); (vi) standards of conduct and practice; and (vii) continuing professional education requirements for initial applicants, license holders and non-CPA owners. The board may propose new provisions governing: (i) the practice of CPAs in the Commonwealth who have not been issued a Virginia CPA license; (ii) the requirements for non-CPA owners in CPA firms; and (iii) enforcement actions against regulants.

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

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public comments may be submitted until December 18, 2002.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505 or FAX (804) 367-2174.

VA.R. Doc. No. R03-64; Filed October 30, 2002, 10:55 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled: **22 VAC 40-770. Standards and Regulations for Agency Approved Providers.** The purpose of the proposed action is to consider amendments to make the regulation consistent with changes to federal and state laws. The regulation addresses standards used by local departments of social services to approve and regulate service providers including foster and adoptive parent, family and in-home day care providers, home-based services providers, and adult foster care and day-care providers.

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

Statutory Authority: §§ 63.2-217 and 63.2-900 of the Code of Virginia.

Public comments may be submitted until January 2, 2003.

Contact: Karin Clark, Adoption Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1251, FAX (804) 692-1284 or e-mail kac900@dss.state.va.us.

VA.R. Doc. No. R03-66; Filed November 13, 2002, 10:35 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 2. AGRICULTURE

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

Extension of Public Comment Period

Title of Regulation: **2 VAC 5-320. Regulations for the Enforcement of the Endangered Plant and Insect Species Act (amending 2 VAC 5-320-10).**

The State Board of Agriculture and Consumer Services noticed a public comment period on the proposed Regulations for the Enforcement of the Endangered Plant and Insect Species Act (2 VAC 5-320) in the September 9, 2002, issue of the *Virginia Register of Regulations* (18:26 VA.R. 3671-3674 September 9, 2002). The board is extending the public comment period on the proposal until January 15, 2003.

Public comments on the proposed regulations will be received until 5 p.m. on January 15, 2003.

Agency Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail ffulgham@vdacs.state.va.us.

VA.R. Doc. No. R00-271; Filed November 7, 2002, 9:26 a.m.

Extension of Public Comment Period

Title of Regulation: **2 VAC 5-360. Regulations for the Enforcement of the Virginia Commercial Feed Act (amending 2 VAC 5-360-10).**

The State Board of Agriculture and Consumer Services noticed a public comment period on the proposed Regulations for the Enforcement of the Virginia Commercial Feed Act (2 VAC 5-360) in the September 9, 2002, issue of the *Virginia Register of Regulations* (18:26 VA.R. 3674-3686 September 9, 2002). The board is extending the public comment period on the proposal until January 15, 2003.

Public comments on the proposed regulations will be received until 5 p.m. on January 15, 2003.

Agency Contact: J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank Street, Room 402, Richmond, VA 23219, telephone (804) 786-2476, FAX (804) 786-1571 or e-mail jrogers@vdacs.state.va.us.

VA.R. Doc. No. R01-109; Filed November 7, 2002, 9:26 a.m.

TITLE 11. GAMING

STATE LOTTERY BOARD

Title of Regulation: **11 VAC 5-10. Guidelines for Public Participation in Regulation Development and Promulgation (amending 11 VAC 5-10-10 through 11 VAC 5-10-70; adding 11 VAC 5-10-80).**

Statutory Authority: §§ 2.2-4007 and 58.1-4007 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 14, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Barbara L. Robertson, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main Street, Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775 or e-mail brobertson@valottery.state.va.us.

Basis: Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to adopt regulations governing the establishment and operation of a lottery, and to amend, repeal or supplement the regulations as necessary. This Code section also provides that department regulations be promulgated in accordance with the provisions of the Administrative Process Act that requires agencies to provide for public participation in the promulgation of regulations.

Purpose: The proposed amendments include a requirement of the Code of Virginia that the department must consider and respond to any petition for a new or amended regulation in accordance with § 2.2-4007 A of the Code of Virginia; clarify existing language; include editorial revisions; and eliminate several unnecessary requirements. These regulations have not been revised since 1994 and certain revisions are needed. None of the revisions will affect the health, safety or welfare of the public.

Substance: The proposed amendments add the provision that the department will consider and respond to any petition for a new or amended regulation as provided in the Code of Virginia. Current regulation language provides no time frame for the response. The amendments also eliminate certain unnecessary requirements, including the provision that lists of possible interested parties be obtained annually even though no regulatory action is anticipated, and the provision that the board must order the printing and distribution of final regulations. Numerous editorial revisions also are included.

Issues: The advantage to the department is that the process for public participation in the promulgation of lottery regulations is clarified and simplified, while agency compliance with the requirements of the Administrative

Process Act is maintained. There are no disadvantages to the public or the Commonwealth.

Fiscal Impact: There is no anticipated economic impact to the Commonwealth, localities, the public or the department.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations will clarify that the State Lottery Department (the department) is required to respond to regulatory requests from citizens within a certain number of days and that the notice of intended regulatory action is published in the Virginia Register. Also, the requirement that the State Lottery Board (the board) orders printing and distribution of regulations, the requirement for the department to obtain a list of interested parties, and the requirement to conduct biennial periodic reviews of regulations will be eliminated. Finally, an individual oral or written comment, as opposed to both being together, will be accepted as a request in cases where members of the public wish to suspend a regulatory process.

Estimated economic impact. These regulations establish the public participation guidelines for promulgation of lottery related rules. The proposed amendments consist of clarifications, editorial changes, elimination of some unnecessary requirements, and elimination of some other requirements the department is not required to follow. The department indicates that these regulations have not been updated since 1994.

A set of amendments consists of clarifications of the regulatory language. One proposed change is that the department will be required to respond to regulatory requests from citizens within a specified number of days as required by the Code of Virginia. This change is unlikely to create any economic effects because the department did not receive any requests in the past and even if a request were received, the department indicates that it would have been responded to within the required time frame. It will also be clarified that the notice of intended regulatory action is published in the Virginia Register. Since this is same as the current practice, no significant economic effect is expected. Additionally, it is proposed to eliminate the language that the board orders the printing and distribution of regulations because these activities will be performed regardless. Similarly, no significant economic effect is expected from this change as well. The other changes under this category are editorial in nature and are not discussed in this report.

The proposed changes will further eliminate the requirement that a list of possible interested parties be obtained annually even if there is no regulatory change. Currently, the department obtains a list of registered lobbyists from the Office of the Secretary of the Commonwealth and list of statewide associations from the Virginia Chamber of Commerce annually. This process consumes small staff time to make phone calls and to file the lists every year. Thus, there may be very small ongoing cost savings to the department. The proposed changes will also eliminate the requirement to conduct a periodic review of regulations every two years because the department is exempt from this Administrative Process Act requirement. Instead it is proposed to conduct periodic reviews on a continuous basis as needed as opposed to conducting biennial reviews. It is not known if the staff time required to conduct periodic reviews will be more or less than the time required for periodic review every two years. However, the department believes that the difference in staff time, more or less, should be insignificant. Finally, the proposed changes will make it slightly easier for the public to suspend the regulatory process as individual oral or written requests would be sufficient to do so as opposed to having to be submitted together. The department indicates that the regulatory process has never been suspended in the past. The economic effects of this change will mainly depend on the nature of future regulatory actions where the public may wish to suspend the regulatory process.

Businesses and entities affected. About 5,000 lottery retailers and all lottery players are subject to these public participation guidelines. Based on a survey conducted by the department in 2002, approximately 3.5 million adults have played a Virginia lottery game at some time in their lives and approximately 2.9 million have played in the past 12-month period.

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

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

Effects on the use and value of private property. The proposed changes are unlikely to have any effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Lottery Department concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) provide that the department will consider and respond to petitions for rulemaking as provided in the Code of Virginia; (ii) eliminate the requirement to conduct biennial periodic reviews of regulations and provide a process for conducting periodic reviews; (iii) eliminate the requirement that the board order printing and distribution of regulations; and (iv) eliminate the requirement that the department obtain a list of interested parties.

Proposed Regulations

11 VAC 5-10-10. Generally.

A. In developing any regulation, the State Lottery Board (board) and the State Lottery Department (department) are committed to obtaining comments from interested people.

B. Anyone who is interested in participating in the process of developing regulations should notify the department in writing. This notification should be sent to: *the Director, of the State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220 at the headquarters office.*

1. The department will maintain a list of the people who notified the department in writing.
2. The department will mail to everyone on the list a copy of the Notice of Intended Regulatory Action discussed in 11 VAC 5-10-40 ~~of these guidelines.~~

11 VAC 5-10-20. Identification of needed regulations.

A. Anyone may identify the need for a new regulation or for an amendment, or addition to, or a repeal of any existing regulation. The request for a new regulation or suggested change to a current regulation should be made in writing and sent to: *the Director, of the State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220 at the headquarters office.*

B. The department ~~and board, at their discretion, may shall~~ consider *and respond to* any regulatory request or change in accordance with § 2.2-4007 A of the Code of Virginia.

11 VAC 5-10-30. Identification of interested parties.

Before the department develops a regulation, it will identify ~~persons~~ *people* who would be either interested in or affected by the proposal. The methods for identifying interested parties may include, but not be limited to, the following:

1. Obtaining the statewide listing of business, professional and civic associations published by the Virginia State Chamber of Commerce. ~~This list will be used to identify groups which might be interested in the regulation.;~~
2. Using department files to identify people who have raised questions or expressed an interest in the regulations.;
3. Using a list, compiled by the department, of ~~persons~~ *people* who previously participated in public proceedings.;
- and
4. Obtaining ~~annually~~ from the Secretary of the Commonwealth a list of all ~~persons~~ *people*, associations and others who have registered as lobbyists for the General Assembly session. ~~This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.~~

11 VAC 5-10-40. Notification of interested parties.

A. Generally.

The department will prepare a Notice of Intended Regulatory Action (Notice) before developing any regulation. The notice will *be published in The Virginia Register of Regulations (Virginia Register) and will* identify the subject matter and purpose of the new regulation(s). The notice will specify a time

deadline and location for interested ~~persons~~ *people* to submit written comments.

B. Notifying those interested.

The methods for notifying interested ~~persons~~ *people* may include, but not be limited to, the following:

1. Sending ~~the a~~ notice to all persons identified as interested parties through the methods described in 11 VAC 5-10-30; and
2. Publishing ~~the a~~ notice in the Virginia Register of ~~Regulations (Virginia Register).~~

Failure of ~~these persons and organizations~~ *interested parties* to receive the ~~documents~~ *notice* for any reason shall not affect the validity of any regulation otherwise properly adopted under the Administrative Process Act (APA).

11 VAC 5-10-50. Public participation in regulation development.

~~A. Initial comment. After interested parties have responded to the notice, the department will determine the level of interest.~~
4- It is the general policy of the department not to utilize standing or ad hoc advisory panels; however, if the Governor or more than 25 ~~persons~~ *people* express interest in the proposed regulation, the department may schedule ~~consultation in the form of~~ informal meetings before the development of the regulation, *or the department may ask for additional written comments, concerns or suggestions on the development of the regulation from those who responded to the notice. The meetings will determine the specific areas of interest and concern and will gather factual information on the subject of the regulation.*

~~2. Instead of informal meetings, the department may ask for additional written comments, concerns or suggestions on the development of the regulation from those who responded to the notice.~~

~~3. The department may decide that the notice resulted in receipt of enough information so that it can develop the regulation without an informal meeting or additional written comments.~~

B. ~~Preparing a working draft.~~ After the initial public input on the intended regulatory action, the department will develop a working draft of the proposed regulation for the board to review, revise and approve, after consultation with the director.

~~C. Within two years of the promulgation of a regulation, the department shall evaluate it for effectiveness and continued need. The department may conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulations. Notice of such proceedings shall be transmitted to the Registrar for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.~~

11 VAC 5-10-60. Submission of regulation under the Administrative Process Act APA.

A. ~~After the drafting process ends,~~ The board-approved regulation will be submitted to the Registrar of Regulations

under pursuant to the Administrative Process Act (APA), Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 § 2.2-4006 et seq. of the Code of Virginia. The board-approved regulation will be published as a proposed regulation in the Virginia Register.

B. The department will furnish a copy of the regulation published in the Virginia Register to persons people who make such a request. A copy of the "Notice of Comment Period" form may will be sent with the copy of the regulation.

C. If the department board elects to hold a public hearing, the time, date, and place will be specified. In addition, the cutoff date for people to notify the department that they will participate in the public hearing will be set out. People who choose to participate in the public hearing may be asked to submit, in advance, written copies of their comments. These copies will help to ensure that comments are accurately recorded in the formal transcript of the hearing.

D. When the board issues an order adopting a regulation, the department may elect to send a notice to people who participated in the APA comment process. The notice will state that the regulation will be published in the Virginia Register and will specify the issue number.

E. If the department receives requests from at least 25 persons people for an opportunity to submit oral and or written comments, or both, on the changes to the regulation, the department shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made proposed are minor or inconsequential in their impact. Department denial of petitions for a comment period on changes to the regulations shall be subject to judicial review.

11 VAC 5-10-70. Publication and distribution of final regulation.

A. The board will adopt all final regulations after consultation with the director. The final regulations will be submitted for publication in the Virginia Register.

~~B. The board will order the department to print all adopted final regulations and make appropriate distribution.~~

~~C. The distribution of any regulation will be made with a goal of increasing public knowledge of the policies of the department and compliance with the department's regulations.~~

11 VAC 5-10-80. Periodic review of regulation.

Periodically, the department shall evaluate each regulation for effectiveness and continued need. The department may conduct an informal proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

VA.R. Doc. No. R00-241; Filed November 12, 2002, 2:13 p.m.

Title of Regulation: 11 VAC 5-20. Administration Regulations (amending 11 VAC 5-20-10, 11 VAC 5-20-60, 11 VAC 5-20-70, 11 VAC 5-20-80, 11 VAC 5-20-120 through

11 VAC 5-20-180, and 11 VAC 5-20-420; repealing 11 VAC 5-20-90, 11 VAC 5-20-100, and 11 VAC 5-20-110).

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: March 5, 2003 - 9:30 a.m.

Public comments may be submitted until 5 p.m. on February 14, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Barbara L. Robertson, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main Street, Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775 or e-mail brobertson@valottery.state.va.us.

Basis: Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to adopt regulations governing the operation of a lottery, and to amend, repeal or supplement the regulations as necessary. Further, this section requires that regulations include, but not be limited to, advertisement of the lottery, apportionment of the total revenues accruing from the sale of lottery tickets, and other matters necessary for the efficient and economical operation and administration of the lottery.

Purpose: The proposed amendments will delete obsolete and unnecessary requirements and language, and will provide flexibility for the department to operate more efficiently and effectively in a timely manner. While the amendments are not essential to protect the health, safety or welfare of the citizens of the Commonwealth, these regulations have not been revised since 1996 and updating is necessary to coincide with current department operating procedures.

The Notice of Intended Regulatory Action stated that the repeal of certain procurement procedures would be proposed. Procurement-related revisions, however, will not be included in this regulatory action, but will be considered at a later date.

Substance: The major revisions proposed include the following:

1. Clarifies processes for informal retailer licensing conferences and formal hearings. Revisions (i) add the presumption that the appellant would receive written notice three days after mailing to his last known address; (ii) provide that appeal request forms must be received by the department director rather than by a lottery employee or a department regional office; and (iii) add that, by mutual agreement, the parties may extend the conference date beyond the 30-day time limit for informal conferences and the 45-day time limit for formal hearings.

2. Deletes the provision from the "advertising" section that winners of certain jackpot or other top lottery prizes participate in press conferences to enhance the public's winner awareness and moves it to the proposed lottery game regulations.

3. Revises the approximate percentages for the allocation of lottery revenues among prizes, retailer compensation, operating expenses and net income to clarify the allocation as determined by the lottery board.

Proposed Regulations

4. Revises and simplifies provisions related to ethics in public contracting to conform to those requirements in the Virginia Public Procurement Act and the State and Local Government Conflict of Interests Act.

5. Requires that external audits of the department be conducted annually rather than monthly, which has been the practice for several years.

6. Deletes specific details regarding banking arrangements. These arrangements have been established in concurrence with the State Treasurer and in accordance with applicable Treasury directives and are not required in department regulations.

7. Deletes provisions that certain board committees may act on behalf of the board. All board committees are "advisory" only and make recommendations to the full board for its consideration and action. No committee acts on behalf of the board.

Issues: Amendments to the regulation will result in less burdensome and less intrusive requirements. Amendments consist primarily of clarifications, editorial changes, elimination of several unnecessary provisions and the elimination of requirements that the department is not required to follow.

The revisions represent no actual policy or procedural change to department operations. None of the revisions are expected to be controversial in nature, and no disadvantages to the public or to the Commonwealth are anticipated.

Fiscal Impact: Because there are no policy or procedural revisions made to department operations, no economic impact is projected. These regulations, however, apply to all lottery game players (estimated at 3.5 million) and lottery vendors, approximately 5,000 lottery retailers, the five members of the State Lottery Board and all employees of the State Lottery Department.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. These regulations establish the administrative rules for the State Lottery Department (the department). The proposed amendments consist of clarifications, editorial changes, elimination of some unnecessary requirements, and elimination of some other requirements the department is not required to follow. The agency indicates that current regulations have not been updated since 1996.

Estimated economic impact. A set of amendments eliminates the requirements that are included in the Code of Virginia. One is deleting the language that the department cannot use funds for the primary purpose of inducing people to play the lottery because the same requirement appears in section 58.1-4022 E of the Code of Virginia. Also, the details of ethics in contracting will be eliminated from the current regulations, but a reference to Virginia Public Procurement Act and Virginia State and Local Government Conflict of Interests Act will be provided as they contain detailed information on ethics issues. Similarly, the requirement prohibiting a board member from taking part in deliberations on matters where he has a conflict of interest will be removed as these issues are addressed in the Virginia State and Local Government Conflict of Interests Act. These changes may introduce small benefits to interested parties in terms of eliminating overlapping provisions between the statute and the regulations, but also small costs in terms of time to locate these requirements in the statute.

Another set of proposed rules are changes to reflect the current administrative procedures followed by the department in practice. One amendment will remove the requirement that the department approve all lottery retailers' advertising materials and will allow the use of those advertising materials unless the department objects. This proposed procedure is currently followed in practice. Also, the requirement for the Auditor of Public Accounts to conduct monthly audits of the accounts and transactions will be deleted as the auditor conducts only annual audits of the department in practice. Additionally, the State Lottery Board (the board) will be allowed to elect its officers (e.g. chairman and vice chairman) at other times than its January meeting because they do not meet every month. Further, the percentages for apportionment of lottery revenues are updated to approximately reflect the current distribution of the revenues among prizes, retailer compensation, operating expenses, and net income. With another amendment, the language will be revised to require the department to give the notice of special board meetings to the public contemporaneously with that provided to the board members instead of giving the notice to board members at least two days before the meeting. Currently, the department gives contemporaneous notices to the public and the board members. It will be further clarified that formal hearings are conducted only upon request of the appellant and are not conducted automatically. Two other changes clarify the presumption that the appellant is notified three days after the mailing of the written notice to the appellant's last known address and that an appeal request form that is delivered by hand or mailed by the appellant to a department regional office or a lottery sales representative is not deemed to be received by the department director. Finally, the language will be amended to more closely reflect the appeal procedures followed in practice under the Administrative Process Act. These include stating that if the department and the appellant agree, informal conferences may be held more than 30 days after the filing of an appeal, that the appellant has an option to request to participate through a telephone, and, similarly, that the board may conduct a formal hearing on a licensing action more than 45 days of the receipt of a notice of appeal, if the appellant agrees. The proposed clarifications reflect the procedures that are followed in practice. Thus, the proposed

regulations are not expected to have any economic effects other than improving the clarity of the language.

Another set of the proposed changes will remove several requirements because they are unnecessary. The requirements to cooperate with other state agencies, explanation of what the internal operations of the department include and what the lottery expenses include, and the requirement that the audit costs should be paid from the lottery fund will be repealed because they are believed to be redundant. It is also proposed to delete the requirements on selection of and compensation to banks/depositories that provide services to the department because these procedures are determined by the State Treasury agreements and policies. The proposed changes will also remove the language authorizing the committees of the board to act on behalf of the board because the committees function only in an advisory capacity. The requirements on licensing actions will be moved to the proposed licensing regulations that are separate from these amendments to eliminate duplicate language. Similarly, none of these amendments are expected to have any economic effects, but mainly improve the clarity of the regulatory requirements.

Businesses and entities affected. The proposed regulations mainly apply to the department. In addition to the department, about 5,000 lottery retailers and all lottery players are subject to these regulations. Based on a survey conducted by the department in 2002, approximately 3.5 million adults have played a Virginia lottery game at some time in their lives and approximately 2.9 million have played in the past 12-month period.

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

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

Effects on the use and value of private property. The proposed changes are unlikely to have any effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Lottery Department concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) clarify the process for retailer licensing informal conferences and formal hearings; (ii) move the requirement from this chapter to the proposed Lottery Game regulations that certain winners participate in press conferences; (iii) revise the approximate apportionment of lottery sales revenue; (iv) clarify the requirement for ethics in public contracting; (v) revise the schedule for external audits; (vi) eliminate specific banking requirements; and (vii) clarify board committee responsibilities.

11 VAC 5-20-10. Definitions.

The words and terms, when used in any of the department's regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Appeal" means a ~~request presented~~ *proceeding initiated by a retailer, vendor bidder or offeror (for a contract negotiated on a sole source basis), contractor or individual for an informal conference or formal hearing contesting the director's decision (i) to refuse to issue or renew, to suspend or to revoke a lottery license for the appellant; or award a contract to another vendor (ii) regarding a procurement action.*

"Award" means a decision to contract with a specific vendor for a specific contract.

"Bank" means ~~and includes~~ any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America ~~whose principal place of business is within the Commonwealth of Virginia and~~ which is designated by the State Treasurer to perform functions, activities or services in connection with the operations of the lottery for the deposit ~~and~~, handling ~~and~~ safekeeping of lottery funds, ~~the~~ accounting ~~of~~ for those funds and the safekeeping of records.

"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids.

"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.

"Board" means the State Lottery Board established by the State Lottery Law.

"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

"Competitive negotiation" means a method for purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request For Proposals. Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request For Proposals, is accepted.

"Conference" or *"consultation"* means ~~the~~ *a type of appeal in the nature of an informational or factual inquiry proceeding of an informal nature provided for in § 9-6-14:14 2.2-4019 of the Administrative Process Act.*

"Conference officer" or "hearing officer" means the director, or a person appointed by the director, who is empowered to preside at informal conferences or consultations and to provide a recommendation ~~or~~, conclusion ~~in a case or~~ decision *in such matter.*

"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.

"Contract" means ~~an~~ *a binding agreement, enforceable by law, between two or more competent parties. It includes any type of agreement or order for the procurement supply of goods or services.*

"Contract administration" means the management of all facets of a contract to assure that the contractor's total performance

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is in accordance with the contractual commitments and that the obligations of the purchase are fulfilled.

"Contracting officer" means the person(s) authorized to sign contractual documents which obligate the State Lottery Department and to make a commitment against State Lottery Department funds.

"Contractor" means an individual or firm which has entered into an agreement to provide goods or services to the State Lottery Department.

"Department" means the State Lottery Department created by the State Lottery Law.

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or any state agency, which that performs any or all of the following activities or services for the lottery:

1. The safekeeping and distribution of tickets to retailers,
2. The handling of lottery funds,
3. The deposit of lottery funds, or
4. The accounting for lottery funds.

"Director" means the Director of the State Lottery Department or his designee.

"Electronic funds transfer (EFT)" means a computerized transaction that withdraws or deposits money against from or to a bank account.

"Goods" means any all material, equipment, supplies, printing, and automated data processing hardware and software.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.

"Household" means members of a group who live together as a family unit. It includes, but is not limited to, members who may be claimed as dependents for income tax purposes reside at the same address.

"Informalities" means defects or variations of a bid from the exact requirements of the Invitation for Bids which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Inspection" means the close and critical examination of goods and services delivered to determine compliance with applicable contract requirements or specifications. It is the basis for acceptance or rejection.

~~"Instant ticket vending machine" or "ITVM" means a remote machine allowing players to purchase lottery instant game tickets.~~

"Invitation for Bids (IFB)" means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.

"Kickbacks" means gifts, favors or payments to improperly influence procurement decisions.

"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

"Letter contract" means a written preliminary contractual instrument that authorizes a contractor to begin immediately to produce goods or perform services.

"Lottery" or "state lottery" means the lottery or lotteries established and operated in response pursuant to the provisions of the state lottery law § 58.1-4000 et seq. of the Code of Virginia.

"Negotiation" means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

"Noncompetitive negotiations" means the process of arriving at an agreement through discussion and compromise when only one procurement source is practicably available or competitive procurement procedures are otherwise not applicable.

"Nonprofessional services" means personal services not defined as "professional services."

"Notice of Award" means a written notification to a vendor stating that the vendor has received a contract with the department.

"Notice of Intent to Award" means a written notice which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.

"Performance bond" means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.

"Person" means a natural person and may extend and be applied to groups of persons, as well as corporations, companies, partnerships, and associations a corporation, company, partnership, association, club, trust, estate, society, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, unless the context indicates otherwise. In the context of the licensing of lottery sales agents, "person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including counties, cities, municipalities, agencies and instrumentalities.

~~"Personal interest," "personal interest in a contract," or "personal interest in a transaction" means financial benefit or liability accruing to an officer or employee or to a member of his immediate family in any matter considered by the department.~~

"Personal services contract" means a contract in which the department has the right to direct and supervise the employee(s) of outside business concerns as if the person(s) performing the work were employees of the department or a contract for personal services from an independent contractor.

"Procurement" means the ~~procedures~~ process for obtaining goods or services. ~~It includes, including~~ all activities from the planning steps and preparation and to processing of a request through the processing of a final invoice for payment.

"Professional services" means services within the practice of accounting, architecture, behavioral science, dentistry, insurance consulting, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, veterinary medicine and lottery on-line and instant ticket services.

"Protest" means a written complaint about an administrative a procurement action or decision brought by a vendor bidder or offeror to the department with the intention of receiving a remedial result.

"Purchase order" (signed by the procuring activity only) means the form which is used to procure goods or services when a bilateral contract document, signed by both parties, is unnecessary, particularly for small purchases. The form may be used for the following:

1. To award a contract resulting from an Invitation For Bids (IFB).
2. To establish a blanket purchase agreement.
3. As a delivery order to place orders under state contracts or other requirements-type contracts which were established for such purpose.

"Request for Information (RFI)" means a document used to get information from the general public or potential vendors on a good or service. The department may act upon the information received to enter into a contract without issuing an IFB or an RFP.

"Request for Proposals (RFP)" means a document used to solicit offers from vendors for buying goods or services. It permits negotiation with vendors (to include prices) as compared to competitive bidding used in the invitation for bids.

"Responsible vendor" means a person or firm who has the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;

2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;

3. Have a satisfactory record of performance; and

4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

"Responsive vendor" means a person or firm who has submitted a bid, proposal, offer or information which conforms in all material respects to the solicitation.

"Retailer" means a person or business licensed by the department as an agent to sell lottery tickets or shares.

"Sales," "gross sales," "annual sales" and similar terms mean total ticket sales including any discount allowed to a retailer for his compensation and, any discount or adjustment allowed for the retailer's payment of prizes of less than \$604.

~~"Self-service terminal" or "SST" means a remote electromechanical machine allowing players to purchase tickets for on-line lottery games available through clerk-activated terminals.~~

"Services" means any work performed by a vendor an independent contractor where the work is service rendered does not consist primarily labor or duties and is other than providing of acquisition of equipment, or materials, or the rental of equipment, materials and supplies or printing.

"Sole source" means that only one source is practicably available to furnish a product or service.

"Solicitation" means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department or telephone calls by the department to obtain bids or proposals or information for the purpose of entering into a contract.

"Surety bond" means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department in the event the retailer fails to meet his obligations to the department.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

~~"Vendor" means one who can sell to, supply or install provides goods or services for to the department.~~

11 VAC 5-20-60. Advertising.

A. Advertising may include, but is not limited to, print advertisements, radio and television advertisements, billboards, point of purchase materials and point of sale display materials. ~~The department will not use funds for advertising which is for the primary purpose of inducing people to play the lottery.~~

B. Any lottery retailer may use his own advertising materials if unless the department has approved its use in writing before it is shown to the public objects thereto. The department shall develop written guidelines for giving such approval materials.

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C. The department may provide information displays or other material to the retailer. ~~The retailer, who shall position the material so it can be seen easily by the general public.~~

D. The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

~~E. The department may use interviews, pictures or statements from people who have won lottery prizes to show that prizes are won and awarded; however, in no case shall the use of interviews, pictures or statements be for the primary purpose of inducing persons to participate in the lottery.~~

~~F. The department may use other informational and advertising items which may include any materials deemed appropriate advertising, informational, and educational media which are not for the primary purpose of inducing people to play the lottery.~~

11 VAC 5-20-70. Operations of the department.

~~A. The department will operate under the internal administrative, accounting and financial controls specifically developed for the State Lottery Department under the applicable policies required by the Departments of Accounts, Planning and Budget, Treasury, State Internal Auditor and by the Auditor of Public Accounts.~~

~~1. Internal operations include, but are not limited to, ticket controls, money receipts and payouts, payroll and leave, budgeting, accounting, revenue forecasting, purchasing and leasing, petty cash, bank account reconciliation and fiscal report preparation.~~

~~2. Internal operations apply to automated and manual systems.~~

~~B. A. The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.~~

~~C. B. Apportionment of moneys received from lottery sales will the sale of tickets or shares shall be divided approximately as follows:~~

~~50% 55% Prizes, as provided for in the rules of specific games~~

~~5.0% Lottery retailer compensation~~

~~45% 7.0% State Lottery Fund Account Operating expenses (On and after July 1, 1989, Administrative costs of the lottery shall not exceed 10% of total annual estimated gross revenues to be generated from lottery sales.)~~

~~5.0% Lottery retailer compensation~~

~~33% Net income~~

~~The percentages may vary from year to year based upon the amount of prize payouts.~~

~~D. C. The State Lottery Fund will be established as an account in the Commonwealth's accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Funding will be from gross sales.~~

1. Within the State Lottery Fund, there shall be a "Lottery Prize Special Reserve Fund" subaccount created in the State Lottery Fund account which will be used when lottery prize payouts exceed department cash on hand. ~~Five percent~~ *Unless otherwise provided in the Appropriation Act, 5.0%* of monthly gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or \$5 million dollars, whichever is less.

a. The calculation of the 5.0% will be made for each instant or on-line game.

b. The funding of this subaccount may be adjusted at any time by the board.

2. Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director with concurrence of the State Comptroller and the Auditor of Public Accounts.

3. In accordance with the Appropriation Act, the State Comptroller provides an interest-free line of credit not to exceed \$25,000,000 to the department. This line of credit is in lieu of the Operations Special Reserve Fund required to be established by the Comptroller in accordance with § 58.1-4022 B of the Code of Virginia. Draw-downs against this line of credit are available immediately upon request of the department.

~~E. Lottery expenses include, but are not limited to, ticket costs, vendor fees, consultant fees, advertising costs, salaries, rents, utilities, and telecommunications costs.~~

~~F. The cost of any audit shall be paid from the State Lottery Fund.~~

~~1. The Auditor of Public Accounts or his designee shall conduct a monthly post-audit of all accounts and transactions of the department. When, in the opinion of the Auditor of Public Accounts, monthly post-audits are no longer necessary to ensure the integrity of the lottery, the Auditor of Public Accounts shall notify the board in writing of his opinion and fix a schedule of less frequent post-audits. The schedule of post-audits may, in turn, be further adjusted by the same procedure to require either more or less frequent audits in the future.~~

~~2. Annually, the Auditor of Public Accounts shall conduct a fiscal and compliance audit of the department's accounts and transactions.~~

~~G. D. The board and director may address other matters not mentioned in Chapters 20 (11 VAC 5-20-10 et seq.), 30 (11 VAC 5-30-10 et seq.), 31 (11 VAC 5-31), and 40 (11 VAC 5-40-10 et seq.), 41 (11 VAC 5-41) which that are needed or desired for the efficient and economical operation and administration of the lottery.~~

11 VAC 5-20-80. Approval of banks.

A. The State Treasurer, with the concurrence of the director, and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department.

B. A bank or banks shall serve as *agent* or agents for electronic funds transfers between the department and lottery retailers as required by Chapters 20 (11 VAC 5-20-40 ~~et seq.~~), 30 (11 VAC 5-30-40 ~~et seq.~~), 31 (11 VAC 5-31), and 40 (11 VAC 5-40-40 ~~et seq.~~), 41 (11 VAC 5-41) and by contracts between the department, the State Treasury, retailers, and the banks.

~~C. In selecting the bank or banks to provide these services, the State Treasurer and the director shall consider quality of services offered, the ability of the banks to guarantee the safekeeping of department accounts and related materials, the cost of services provided and the sophistication of bank systems and products.~~

~~D. There shall be no limit on the number of banks approved under this section.~~

11 VAC 5-20-90. Approval of depositories. (Repealed.)

~~The director may contract with depositories to distribute lottery tickets and materials from the department's central warehouse to the department's regional offices and from the department to retailers, and to collect funds, lottery tickets and lottery materials from retailers. Additionally, the director may contract for other financial services to process subscriptions and other deposit applications.~~

11 VAC 5-20-100. Compensation. (Repealed.)

~~A. The contract between each bank or depository and the department shall fix the compensation for services rendered to the department.~~

~~B. Compensation of banks will be in the form of compensating balances, direct fees, or some combination of these methods, at the discretion of the department.~~

~~C. Depositories will be compensated based on vouchers for services rendered.~~

11 VAC 5-20-110. Depository for transfer of tickets. (Repealed.)

~~A. The department may designate one or more depositories to transfer lottery tickets, lottery materials, and related documents between the department and lottery retailers.~~

~~B. In determining whether to use depositories for transferring tickets, materials and documents between the department and lottery retailers, the department may consider any relevant factor including, but not limited to, cost, security, timeliness of delivery, marketing concerns, sales objectives and privatization of governmental services.~~

11 VAC 5-20-120. Officers of the board.

A. The board shall have a chairman and a vice chairman who shall be elected by the board members.

B. The board will elect its officers annually at its January meeting, *or as soon thereafter as reasonably possible*, to serve for the calendar year.

11 VAC 5-20-130. Board meetings.

A. The board will hold regular public meetings to receive information and recommendations from the director on the

operation and administration of the lottery and to take official action. The board may also request information *or comment* from the public.

B. The board may hold ~~additional~~ *special* meetings as may be necessary to carry out its work. The chairman may call a special meeting at any time and shall call a special meeting when requested to do so by at least two board members or at the request of the director. *Public* notice of special meetings shall be given *contemporaneously with the notice provided* to all board members ~~at least two calendar days before the meeting~~. Written notice is preferred but telephonic notice may be accepted by any board member in lieu of written notice.

~~C. Three or more~~ *A majority of* board members shall constitute a quorum for the conduct of business at both regular and special meetings of the board. ~~A simple majority vote at a regular meeting is sufficient to take official action but official action at a special meeting requires three affirmative votes.~~ The chairman is eligible to vote at all meetings.

~~D. If any board member determines that he has a conflict of interest or potential conflict relating to a matter to be considered, that board member shall not take part in such deliberations.~~

11 VAC 5-20-140. Committees of the board.

A. The board chairman may, at his discretion, appoint such ~~ad hoc~~ committees as he deems necessary to assist the board in its work.

B. ~~An ad hoc~~ *A* committee may be established to advise the board on a matter referred to it ~~or to act on a matter on behalf of the board if so designated~~.

~~1. A committee established to act on a matter on behalf of the board shall be composed entirely of board members and shall have at least three members.~~

~~a. Three members shall constitute a quorum.~~

~~b. Official action of such a committee shall require not fewer than three affirmative votes with each member including the chairman having one vote.~~

~~c. If a committee's vote results in an affirmative vote of only two members, the committee shall present a recommendation to the board and the board shall then take action on the matter.~~

~~2. A committee established to act in an advisory capacity to the board may include members of the general public. At least two members of the committee shall be board members and the chairman shall be a board member appointed by the board chairman.~~

~~a. 1. A majority of the members appointed to an advisory committee constitutes shall constitute a quorum.~~

~~b. 2. Recommendations of an advisory committee may be adopted by a majority vote of those present and voting. The chairman of an advisory committee shall be eligible to vote on all recommendations.~~

~~c. 3. All actions of advisory committees shall be presented to the board in the form of recommendations.~~

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11 VAC 5-20-150. Conferences on denial, suspension or revocation of a retailer's license.

~~A. An instant lottery retailer applicant or an instant lottery retailer surveyed for an on-line license who is denied a license or a retailer whose license is denied for renewal or is suspended or revoked or any retailer that believes it is eligible for placement of an instant ticket vending machine (ITVM) or self-service terminal (SST) based on criteria established by the department but which has been denied such placement may appeal the licensing decision and request a conference on the licensing action.~~

B. The conduct of license appeal conferences will conform to the provisions of Article 3 (§ 9-6.14:11 et seq.) of Chapter 4.1:1 of Title 9 § 2.2-4018 of the Code of Virginia relating to case decisions.

1. An initial conference consisting of an informal fact finding process will be conducted by the ~~director or the appointed conference officer in private~~ to attempt to resolve the issue to the satisfaction of the parties involved.
2. If an appeal is not resolved through the informal fact finding process, *at the request of the appellant*, a formal hearing will be conducted by the board in public. The board will then issue its decision on the case.
3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to court review.

11 VAC 5-20-160. Procedure for appealing a licensing decision.

~~A. Upon receiving a notice that (i) an application for an instant game a license, or the survey of an instant retailer for licensing as an on-line retailer, or the renewal of a license, has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, or (iii) any retailer that believes it is eligible for placement of an instant ticket vending machine (ITVM) or self-service terminal (SST) based on criteria established by the department, the applicant or licensed retailer may appeal in writing for by filing a written notice of appeal requesting a conference on the licensing action. The notice of appeal shall be submitted within 30 days of receipt of the notice of the licensing action.~~

1. Receipt of a notice of the licensing action that is mailed in an envelope bearing a United States Postal Service postmark is presumed to have taken place not later than the third day following the day of mailing of the notice to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer unless a more current address has been provided to the department by the applicant or licensed retailer.
2. The notice of appeal will be timely if it bears a United States Postal Service postmark showing mailing on or

~~before the 30th day prescribed in 41 VAC 5-20-160 subsection A of this section.~~

B. ~~An~~ A notice of appeal may be mailed or hand delivered to the director at the State Lottery Department headquarters office.

1. ~~An~~ A notice of appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by subsection A of this section.
2. Delivery to a State Lottery Department regional offices office or to lottery sales personnel by hand or by mail is not effective sufficient.
3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

C. The notice of appeal shall state:

1. The decision of the director which is being appealed;
2. The legal and factual basis for the appeal;
3. The retailer's license number or the Retailer License Application Control Number; and
4. Any additional information the appellant may wish to include concerning the appeal.

11 VAC 5-20-170. Procedures for conducting informal fact finding licensing conferences.

A. The conference officer will conduct an informal fact finding conference with the appellant for the purpose of resolving the licensing action at issue.

B. The conference officer will hold the conference as soon as possible but not later than 30 days after the notice of appeal is filed, unless an alternate date is designated by the conference officer or his designee and accepted by the appellant. A notice setting out the conference date, time and location will be sent to the appellant, by certified mail, return receipt requested, at least 10 days before the day set for the conference, unless a shorter time is agreed to by the appellant.

~~C. All informal conferences shall be held in Richmond, Virginia, unless the conference officer decides otherwise. A conference may be conducted by telephone, at the option of the appellant.~~

D. The conferences shall be informal. ~~They shall not be open to the public.~~

1. The conferences will be electronically recorded. The recordings will be kept until any the time limits limit for any subsequent appeals have appeal has expired.
2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.
3. The appellant may appear in person or may be represented by counsel to present his facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the conference officer's prerogative to regulate the order of presentation in a manner which, *in his sole discretion, best serves the interest of fairly developing the factual background of the appeal facts.*

6. The conference officer may exclude information at any time which he believes, *in his sole discretion*, is not germane or which repeats information already received.

7. The conference officer shall declare the conference completed when ~~both parties have finished presenting their information~~ *the time established by the conference officer has expired.*

E. Normally, the conference officer shall issue his decision within 15 days after the conclusion of an informal conference. However, for a conference with a court reporter, the conference officer shall issue his decision within 15 days after receipt of the transcript of the conference. *In all cases the agency shall comply with the APA.* The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

F. After receiving the conference officer's decision on the informal conference, the appellant may elect to appeal to the board for a formal hearing on the licensing action. The *request for appeal shall be:*

1. *Be submitted in writing within 15 days of receipt of the conference officer's decision on the informal conference;*
2. *Be mailed or hand delivered to the chairman of the board at the headquarters of the State Lottery Department.*
3. *Be governed by the same procedures in 11 VAC 5-20-160 B for filing the original notice of appeal govern the filing of the notice of appeal of the conference officer's decision to the board.*
4. ~~The appeal shall State:~~
 - a. The decision of the conference officer which is being appealed;
 - b. The *legal and factual* basis for the appeal;
 - c. The retailer's license number or the Retailer License Application Control Number; and
 - d. Any additional information the appellant may wish to include concerning the appeal.

11 VAC 5-20-180. Procedures for conducting formal licensing hearings.

A. The board will conduct a formal hearing ~~within 45 days of~~ *at its next regularly scheduled meeting following the receipt of an a notice of appeal on a licensing action, if the date of the scheduled meeting permits the required 10 days notice to the appellant, or at a date to be determined by the chairman of the board and accepted by the appellant.*

~~B. Three or more~~ *A majority of members of the board are sufficient is required* to hear an appeal. If the chairman ~~and vice chairman~~ of the board ~~is~~ *are* not present, the members present shall choose one from among them to preside over the hearing.

C. The board chairman, at his discretion, may designate ~~an ad hoc~~ a committee of the board to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board. If the chairman of the board is not present, the members of the ~~ad hoc~~ committee shall choose one from among them to preside over the hearing.

~~D. If any board member determines that he has a conflict of interest or potential conflict, that board member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the board chairman shall appoint an ad hoc substitute for the hearing.~~

~~E. D.~~ A notice setting the hearing date, time and location will be sent to the appellant by certified mail, return receipt requested, at least 10 days before the day set for the hearing, *unless a shorter time is agreed to by the appellant.* ~~All hearings will be held in Richmond, Virginia, unless the board decides otherwise.~~

~~F. E.~~ The ~~hearings~~ *hearing* shall be conducted in accordance with the provisions of the ~~Virginia Administrative Process Act (APA) (§ 9-6.14:4 2.2-4018 et seq.)~~. ~~The hearings and shall be open to the public.~~

1. The ~~hearings~~ *hearing* will be electronically recorded and the ~~recordings~~ *recording* will be kept until any time limits for any subsequent court appeals have expired.
2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.
3. The provisions of ~~§§ 9-6.14:12 2.2-4020 through 9-6.14:14 2.2-4023~~ of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

~~G. F.~~ Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing. *In all cases the agency shall comply with the APA.*

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained ~~in~~ *by* the department and become a part of the case file.
2. The written decision will contain:
 - a. A statement of the facts to be called "Findings of Facts";
 - b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and

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c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

* * * * *

~~H. G. After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the Administrative Process Act APA.~~

Title of Regulation: **11 VAC 5-30. Instant Game Regulations (REPEALING).**

11 VAC 5-20-420. Ethics in contracting.

Statutory Authority: § 58.1-4007 of the Code of Virginia..

~~A. Except for more stringent requirements set forth in this section, The department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Article 4 6 (§ 11-72 2.2-4300 et seq.) of Chapter 7 43 of Title 11 2.2 of the Code of Virginia, and will be subject to the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).~~

Public Hearing Date: N/A -- Public comments may be submitted until February 14, 2003.

(See Calendar of Events section for additional information)

~~B. A department employee who has responsibility to buy from vendors may not:~~

Basis: Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to adopt regulations governing the operation of a lottery, and to amend, repeal or supplement the regulations as necessary.

- ~~1. Be employed by a vendor at the same time;~~
- ~~2. Have a business associate or a member of his household be an officer, director, trustee, partner or hold a similar position with a vendor or play a role in soliciting contracts for vendors;~~
- ~~3. Himself or his business associate or a member of his household own or control an interest in a vendor of at least 5.0%;~~
- ~~4. Himself or his business associate or a member of his household have a personal interest in a contract procured for the department; or~~
- ~~5. Himself or his business associate or a member of his household negotiate or have an arrangement about prospective employment with a vendor.~~

Purpose: To reduce and simplify the regulatory language, current department regulations (Instant Game and On-Line Game) will be reorganized into two new categories: Licensing and Lottery Game Regulations. Duplicative language will be eliminated and revisions will be made in the new chapters to update the regulations to reflect changes in operational procedures since 1996, when the current regulations were last amended. The revisions will have no effect on the health, safety or welfare of citizens, other than to simplify the understanding of department regulations.

Substance: The current regulation is being repealed in its entirety and its provisions are being revised and consolidated into two new regulations.

~~C. No vendor or employee of the department involved in purchasing will offer, request or accept, at the present or in the future, any payment, loan, advance, deposit of money, services or anything of more than nominal value for which nothing of comparable value is exchanged.~~

Issues: The repeal of this regulation and its revision and consolidation with other existing regulations will simplify and clarify lottery retailer licensing and game requirements. Some provisions will be removed entirely because they are already contained in the Code of Virginia and will continue to be enforced. Others are redundant or unnecessary and will be eliminated from the new categories.

There are no disadvantages to the public, the Commonwealth or the department by this action.

~~D. No vendor will demand or receive from any of his suppliers or subcontractors, as an incentive for a contract, any kickback.~~

Fiscal Impact: Approximately 4,900 lottery retailers who sell instant games and 3.5 million players who purchase the games are subject to these regulations.

~~E. Each vendor shall give the department a certified statement that the proposal, bid, or contract or any claim is not the result of, or affected by, collusion with another vendor. The statement will also state that no act of fraud has been involved in negotiating, signing and meeting the contract.~~

There is no anticipated economic impact on the Commonwealth, localities, the public or the agency.

~~F. Any department employee or former employee who dealt in an official capacity with vendors on procurement actions who intends to accept employment from any such vendor within one year of terminating his employment with the department shall give notice to the director of his intention prior to his first day of employment with the vendor.~~

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

~~G. B. Any contract which violates the contracting ethics in the Code of Virginia and this chapter may be voided and rescinded immediately by the department.~~

VA.R. Doc. No. R00-242; Filed November 12, 2002, 2:14 p.m.

Summary of the proposed regulation. The proposed changes include repeal of numerous requirements stated in the Code of Virginia, some other requirements that are no longer applicable, and several other requirements that are addressed in non-regulatory documents published by the State Lottery Department (the department).

Estimated economic impact. These regulations apply to instant lottery games offered by the department. Instant games give players the chance to win a prize or entry into a prize drawing. Whether the player has won is revealed immediately after scratching off the latex covering over a portion of the ticket. Instant games are also known as "scratchers." Currently, the department offers about 60 different types of instant games with top prizes varying from \$50 to \$1 million. Last year the revenues from instant games were about \$460 million. These revenues are allocated among the winners for prizes, retailers for compensation, the department for operating expenses, and the Lottery Proceeds Fund for public education.

The proposed changes are, in large part, designed to help reorganize two of the department's current regulations into two new regulations. Currently, the department has instant game regulations (11 VAC 5-30) and online game regulations (11 VAC 5-40) in place. The instant game regulations, which are being repealed by these amendments, contain rules for both licensing of lottery retailers and the rules for gaming. Licensing rules establish eligibility criteria for retailers, application procedures, general licensing standards, license fees, rules for termination of licenses, rules for inspection of retailers, etc. And, gaming rules contain provisions on prize structures, ticket prices, chances of winning, retailer compensation, retailer transactions, payment of prizes, etc. Similarly, online regulations, which are being promulgated by a separate regulatory action, contain requirements for both licensing of lottery retailers and the requirements for gaming. Since the two current regulations contain similar provisions for different games, there is overlapping regulatory language on licensing and gaming. In order to reduce and simplify the regulatory language, the State Lottery Board (the board) proposes to reorganize the lottery regulations that contain provisions for instant and online games under two new categories: licensing (11 VAC 5-31) and gaming (11 VAC 5-41) regulations. In short, the board proposes to reorganize instant and online game regulations under licensing and gaming regulations.

In addition to the reorganization, the board proposes to update the regulations to reflect the changes in practice that occurred since 1996 when these regulations were last amended. Although this proposed change will repeal all of the instant game regulations, some of the current requirements will appear in new replacement regulations without any change and some with modifications. The new or modified requirements are discussed in proposed replacement regulations as appropriate. This report discusses only those provisions that will not appear in the proposed licensing and gaming regulations that are separate from this regulatory action because they will be completely removed by these changes.

One of the proposed amendments will repeal the requirement that the retailer license fees should recover the administrative costs because the same requirement is stated in § 58.1-4010 of the Code of Virginia and will continue to be enforced. Similarly, the requirement to pay tickets by cash, check, cashier's check, travelers check, or money order, but not by credit cards, food stamps, or food coupons will be removed from the regulations. This requirement is in § 58.1-4007 A 2 of the Code of Virginia and will continue to be enforced under the statutory language. Finally, the language that the value of unclaimed low-tier (\$25 or less) winning tickets revert to the State Lottery Fund will be removed because this requirement is contained in § 58.1-4020 C of the Code of Virginia, but no change in practice will take place. These three changes may introduce small benefits to affected entities in terms of eliminating overlapping provisions between the statute and the regulations, but also small costs in terms of time in locating these requirements in the statute.

The proposed changes will also repeal some other provisions because they are redundant or unnecessary. These include omitting the specific requirement that the board determine the details of a prize structure such as prize amounts, types of noncash prizes and the amount and type of jackpot prize because these details are essential components of the prize structure and the language to require the board to approve the prize structures for all games will be retained in replacement regulations. Also, with the proposed changes the language on prize amounts that can be claimed from the lottery regional offices and from the departments headquarters will be deleted. Additionally, the language allowing prizes to be claimed by a legal entity will be removed due to the amendments to § 58.1-4019 B of the Code of Virginia which require that all prizes must be claimed by a natural person to prevent hiding winner's identity under a limited liability corporation or other types of organizations. Related to this statutory requirement the definition of the life of a claim on behalf of a group, company, corporation will be removed because only natural persons can claim prizes. Moreover, the requirement that the board approve licensing fees at its November meeting will be removed which will allow the board to discuss this issue annually at any of its meetings. Further, the requirement to print or stamp retailer's name, address, and the retail number on the back of the ticket for identification purposes will be deleted. The use of barcodes allows low-tier prizes to be paid by any of the retailers not just by the one who sold the ticket. As a result, the requirement to pay low-tier winning tickets at the retailer where the ticket is sold has not been enforced in practice and will be removed from the regulations and it is no longer necessary for the retailer's name, address, etc. to be included on the back of the ticket. Removal of any of these requirements is unlikely to create any significant economic effects.

Finally, removal of several other requirements may provide some flexibility to the department at the expense of reducing public participation in regulation development. The requirements for retailers related to return of unsold tickets, which include rules for timing, deadlines, and methods for returning unbroken or broken ticket packs for credits is currently contained in the retailer manual and will be removed from the regulations. The language regarding ticket returns in the manual is essentially the same as in this regulation,

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except that no deadline is given in the manual on the return of partial packs of tickets, and retailers are now allowed 35 days instead of 21 days after the end of a game to return tickets for credit. Similarly, the requirements for validation of tickets which include ticket inspections, reporting of ticket numbers, validation codes and numbers, and obtaining authorization numbers are currently addressed in the retailer manual and will be repealed from the regulations. Ticket scanning equipment, at each retail location, accomplishes this automatically. Addressing these requirements elsewhere is expected to provide some flexibility to the department in changing procedures on returning unsold tickets, validation of tickets, and sale of tickets after the end of the game so as to respond promptly to changing business conditions, but also may reduce the public participation regarding any potential changes on these issues, as potential changes will be implemented without having to go through the usual regulatory process.

Businesses and entities affected. Lottery retailers selling instant games and the instant game players are subject to these regulations. According to the department, 4,971 retailers are licensed to sell instant games. Although the number of instant game players is not known, based on a survey conducted by the department in 2002, about 3.5 million adults have played an instant or online Virginia lottery game some time in their lives and approximately 2.9 million have played in the past 12-month period.

Localities particularly affected. The proposed regulations apply to all localities in Virginia.

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 significantly affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Lottery Department concurs with the economic impact analysis prepared by the Department of Planning and Budget. However, the Lottery wishes to make the following comments:

As noted in the analysis, several requirements have been removed from regulations and will be contained in retailer manuals, which are provided to each licensed lottery retailer. This allows the department to respond more promptly to changing business conditions.

The Lottery has several established methods of soliciting public participation from its retailers. Several years ago, the Lottery formed a Retailer Advisory Group, comprised of representative retailers from across the state. Additionally, the Lottery conducts retailer forums in all regions of the state every year. Also, lottery sales employees visit every retailer at least twice monthly and relay all retailer concerns to Lottery management. Likewise, the Lottery has significant contact with players and citizens in general. Comments regarding any Lottery activities or policies can be sent to the Lottery's public affairs office or emailed to the Lottery's web site.

These proposed changes affect in no way any locality in Virginia. They apply solely to lottery retailers and players.

These proposed changes have no effect on employment or the use or value of private property.

Summary:

The proposed regulatory action repeals this regulation. This regulation and the department's On-Line Game Regulations (11 VAC 5-40) are being reorganized and replaced by two new proposed regulations: Licensing Regulations (11 VAC 5-31), and Game Regulations (11 VAC 5-41). Because the current two regulations contain similar provisions for different types of games, there is a significant amount of redundant language regarding licensing and gaming. The new regulations will revise, consolidate and reduce the language into two more meaningful categories: licensing and games.

VA.R. Doc. No. R00-243; Filed November 12, 2002; 2:11 p.m.

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Title of Regulation: **11 VAC 5-31. Licensing Regulations (adding 11 VAC 5-31-10 through 11 VAC 5-31-200).**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: March 5, 2003, 9:30 a.m.

Public comments may be submitted until 5 p.m. on February 14, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Barbara L. Robertson, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main Street, Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775 or e-mail brobertson@valottery.state.va.us.

Basis: Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to promulgate regulations governing the operation of the lottery, including provisions for the licensing of retailers to sell lottery products. Further, §§ 58.1-4009 through 58.1-4012, 58.1-4014 and 58.1-4021 set out specific requirements for licensing lottery retailers and provide that the following must be addressed in department regulations: display of license, bonding, license fee, retailer compensation, suspension or revocation of license, sale of tickets and banking arrangements.

Purpose: The regulation will combine provisions for lottery instant and online game retailer licensing that are currently contained in two separate existing regulations (Instant Game, 11 VAC 5-30 and On-Line Game, 11 VAC 5-40). It will reduce or eliminate duplication of similar provisions for different types of games and will update the language based upon provisions of the law and department operational practices that have occurred since 1996, when the two existing regulations were last revised. The two current regulations are proposed for repeal. The revisions will have no effect on the health, safety or welfare of citizens, other than to simplify the understanding of department regulations.

Substance: The proposed regulation establishes lottery retailer licensing requirements, including provisions for retailer eligibility, application procedures, bonding requirements, bank account and payment procedures, license terms and periodic

reviews, fees, retailer compensation, standards of conduct, criteria for license denial or revocation, and audit of retailer records.

The proposed regulation contains essentially the same provisions as those currently set out in the department's Instant Game and On-Line Game Regulations, with the following primary revisions:

1. The department will issue a general license to sell lottery tickets instead of separate instant and an on-line licenses;
2. General licensing eligibility criteria are expanded to include "ease of physical access" by players to the retail locations;
3. Greater flexibility is provided for timing of periodic rather than annual licensing reviews by the department;
4. The basis for continued license eligibility will include maintaining a standard of sales level;
5. Retailer compliance with written licensing and equipment agreements will be required; and
6. The specific costs for lottery equipment services are deleted from regulations and included in individual retailer contracts.

Issues: The primary advantage to the public, including approximately 3.5 million lottery players and approximately 5,000 lottery retailers, is that the proposed regulation will replace two existing, obsolete regulations (Instant Game Regulations, 11 VAC 5-30 and On-Line Game Regulations, 11 VAC 5-40) and will be issued as one single source for lottery licensing requirements. It will reflect current provisions of the law as well as current department practice. Language duplication in the two existing regulations and the burden of multiple regulations will be eliminated.

Also, in order to perform department functions in an enterprise environment and to simplify the regulations, operating procedures not specifically required by the Code of Virginia to be included in regulations are removed and are contained in retailer manuals or contracts, which each retailer receives. Operational revisions that have been made due to technological advances make it easier and more convenient for the department, retailer and player to participate in lottery games and have resulted in no negative effect or comment received from the public.

There are no disadvantages to the public, the agency or the Commonwealth by the promulgation of this regulation.

Fiscal Impact: Because the proposed requirements are currently enforced in practice, no significant economic impact is projected. This regulation will affect approximately 5,000 lottery retailers, the five members of the State Lottery Board and employees of the State Lottery Department.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or

other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed amendments include numerous editorial and other changes, which will update the regulations to reflect the operational and procedural changes occurred in practice since 1996 when these regulations were last amended.

Estimated economic impact. These regulations will apply to licensing of both instant and online lottery games offered by the State Lottery Department (the department). Both games give players the chance to win a prize or entry into a prize drawing. For instant games, whether the player has won is revealed immediately after scratching off the latex covering over a portion of the ticket. Instant games are also known as "scratchers." Currently, the department offers about 60 different types of instant games with top prizes varying from \$50 to \$1 million. Online games, on the other hand, are played through sales terminals linked to central computers via communications networks. The department also offers five types of online games, which include Pick 3, Pick 4, Cash 5, Lotto South, and Mega Millions. The prizes offered by online games may be high, ranging from \$2 to multi-millions for Lotto South and Mega Millions. For example, on May 9, 2000, the jackpot for an online game then known as the Big Game reached a record \$363 million. The jackpot for Mega Millions, a recently adopted multi-state game in place of the Big Game, is believed to have the potential to reach up to \$500 million. Last year, revenues from instant and online games were slightly over \$1 billion. Of this amount, approximately \$557 million was distributed to winners, \$56 million was distributed to retailers, \$73 million was kept by the department as operating expenses, and \$329 million was revenues to the Lottery Proceeds Fund for public education.

The proposed changes are, in large part, designed to help reorganize two of the department's current regulations into two new regulations. Currently, the department has instant game regulations (11 VAC 5-30) and online game regulations (11 VAC 5-40) in place. The instant game regulations contain requirements for both licensing of lottery retailers and for gaming. Licensing regulations establish eligibility criteria for retailers, application procedures, general licensing standards, license fees, requirements for termination of licenses, requirements for inspection of retailers, etc.; and gaming regulations contain provisions on prize structures, ticket prices, chances of winning, retailer compensation, retailer transactions, payment of prizes, etc. Similarly, online regulations contain requirements both for licensing of lottery retailers and for gaming. Since the two current regulations contain similar provisions for different games, there is significant overlapping regulatory language on licensing and gaming. In order to reduce and simplify the regulatory language, the State Lottery Board (the board) proposes to reorganize the lottery regulations that contain provisions for instant and online games under two new categories: licensing

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(11 VAC 5-31) and gaming (11 VAC 5-41) regulations. In short, the board proposes to reorganize instant and online game regulations under licensing and gaming regulations.

In addition to the reorganization, the board proposes to update the regulations to reflect the changes in practice that occurred since 1996 when these regulations were last amended. Although this proposed action will introduce a completely new regulation, most of the proposed requirements are in current regulations, which are being repealed under a separate regulatory action. The requirements, which are simply a replica of current requirements, are not discussed in this report. This report discusses only new or modified provisions.

Several proposed changes are editorial. One is the proposed promulgation of copies of licensing forms that must be submitted to the department as regulations instead of listing their names in the regulations. Also, several requirements for retailers that appear throughout the regulations such as bonding requirements, electronic fund transfer requirements, annual license fee requirements, license cancellation requirements, promotional point of sale material display requirements, and service charge requirements for outstanding debt are included in retailer contract which will be promulgated as part of these regulations. Moreover, the details of general licensing standards will be moved from instant and online game regulations and will be promulgated as forms in these licensing regulations. These details include how the retail applicant's financial responsibility and security, accessibility of a retailer to public, sufficiency of other retailers in the area, volume of expected lottery sales, and the ability of good customer service are determined. All of these details except the details on the sufficiency of other retailers in the area are included in the retailer licensing application, retailer location form, or the retailer contract, all of which are promulgated as forms with these proposed regulations. Since these changes are editorial in nature, no significant economic effect is expected.

Similarly, other proposed new or modified regulations discussed below are not expected to introduce any major additional costs or benefits associated with enforcement because they are already enforced in practice. One proposed change will add that if the retailer fails to properly care for, prevent abuse of, position, or display the vacuum fluorescent display unit, the director of the department may cancel a retailer license as is the case with other lottery equipment. Vacuum fluorescent display is new equipment and the proposed regulations will mention it along with other types of lottery equipment that are already included in the regulations. Also, the proposed changes will add requirements for inspection and examination of lottery equipment during inspection of premises and records. Currently, retailers are required to provide access to lottery materials and tickets for inspection purposes, but in practice the department also inspects the lottery equipment. Moreover, in addition to the current requirement that the retailer maintain a separate bank account, the proposed changes will add the requirement that the bank account must be styled in the name of the retailer followed by "Virginia Lottery Trust." According to § 58.1-4021 of the Code of Virginia, all proceeds from the sale of lottery tickets received by a retailer constitute a trust fund until deposited into the State Lottery Fund. Another change

clarifies that in the event that retailer fails to make a deposit of lottery receipts, interest and service charges may be waived if the retailer is not faulty. Similar to the other provisions, this has been the current practice. Overall, none of these changes are expected to create any significant economic effects at this time because they are already being enforced in practice.

Similar to other changes already discussed, provisions regarding several operational requirements that have been enforced in practice will be included in the regulations. The changes under this category appear to be policy related and imposed at the discretion of the department to change the department's operations or procedures. One proposed change under this category will remove the requirement that the retailer's eligibility is reviewed on an annual basis. The department indicates that contrary to this annual review requirement in the regulations, periodic reviews are conducted in practice because the department found out that annual review of about 5,000 retailers was prohibitively costly. The department also indicates that the most important aspects of the annual review are collecting license fees and making sure that the liability of retailers covered under the bond. Currently, annual fees are collected and bonding is verified annually, but a full license renewal review is conducted only at such time that a retailer problem is reported or identified, at the department's discretion. It is indicated that periodic reviews are initiated only in circumstances such as when the retailer fails to make the deposits, there is a change in the retailer's organization, or when a criminal, credit, or financial review is required.

Another policy related change is updating the regulations to incorporate the changes in retailer bonus compensation that occurred in practice. Previously, retailers who sold the low-tier (\$25 or less) winning tickets used to receive the prizes as bonus compensation if the ticket is not claimed within 180 days of announced end of the game. Currently, with the approval of the board, the department pays 1% of the cash value of all prizes the retailer paid as bonus instead of the cash value of the unclaimed low-tier tickets. The proposed changes will replace the previous method of determining retailer bonus compensation with the current bonus method enforced in practice. With the 1% cashing bonus, retailers have been receiving more compensation than with the former method. For example, since the cashing bonus was implemented in 1998, the department has paid retailers a total additional bonus of \$18,065,227 versus \$17,419,887 that they would have received in low-tier unclaimed prizes. The department believes that this change has resulted in greater convenience to the players because of the ease of cashing winning tickets.

Finally, the proposed changes will increase the maximum amount of the surety bond a retailer may be required to submit from \$5,000 to \$50,000 for instant game retailers and from \$10,000 to \$100,000 for online game retailers. In practice, the instant game retailers are generally required to submit \$10,000 in bonds already and most online retailers are required to submit \$20,000 in bonds. In some cases, the amount of bonding required from online retailers already reaches up to \$100,000. According to the department, approximately 69 retailers out of about 3,000 online game retailers have bonds over \$20,000. When the department

started requiring bonds in excess of the amounts allowed under the current regulations, bonding costs to retailers must have increased. In short, the department already requires retailers to submit bonds in excess of what is required under the regulations. Similar to others, these proposed amendments will not change the way the regulations are currently implemented and consequently are not expected to create any significant economic effects upon promulgation.

The department's current approach to implement operational or procedural changes on issues such as retailer compensation, bonding requirements, and other similar issues without going through the regulatory process and then updating the regulations to reflect what is implemented in practice is problematic as the agency is operating contrary to its regulation in this case. The lack of authority to enforce these provisions combined with discrepancies between regulations and procedures followed in practice creates the potential for costly litigation expenses. However, this does not mean that the department would not forgo potential benefits if operational or procedural changes are implemented in practice only after going through the usual regulatory process as timely response to developments in the market place the department operates in may be valuable. One way to reduce potential costs associated with delay would be to seek an expedited process for promulgating regulations. This might take the form of an exemption, or the use of an expedited process such as the "fast track" process proposed in the 2002 General Assembly Session (SB 536).

Businesses and entities affected. Lottery retailers selling instant and online games are subject to these regulations. According to the department, 4,971 retailers are licensed to sell both instant and online games.

Localities particularly affected. The proposed regulations apply to all localities in Virginia.

Projected impact on employment. No significant impact on employment is expected upon promulgation of the proposed amendments.

Effects on the use and value of private property. The proposed changes are not expected to affect the use and value of private property upon promulgation.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Lottery concurs with the economic impact analysis prepared by the Department of Planning and Budget; however, it wishes to make the following comment:

As noted in the analysis, certain operational and procedural changes have been made without going through the regulatory process, and regulations are being updated now to reflect these changes, thus causing the department to operate contrary to certain regulations.

The Lottery acknowledges this situation; however, in order for the department to perform its functions effectively, it must operate in an enterprise environment. The department is attempting to simplify the current regulations by removing operating procedures not specifically required by the Code of Virginia to be included. When the Lottery was first established, regulations were drafted based on those in place in

comparable states because Virginia had no prior experience with this type of revenue-producing enterprise. Following the initial adoption, numerous emergency revisions were made to more accurately reflect this state's lottery environment.

The Lottery operates in a competitive business atmosphere and, consequently, is exempt of certain personnel and procurement restrictions that apply to typical state agencies. The Lottery, however, continually solicits input from its several audiences (Retailer Advisory Group, retailer forums, focus groups, players) to ensure the fiscal strength of the operation.

As suggested in the economic impact analysis, the Lottery will attempt to use an expedited process such as the "fast track" process that was proposed in the 2002 General Assembly Session. This bill, however, was carried over to the 2003 Session and is not yet in effect.

Further, there was a period of time during which agencies were permitted only to eliminate regulations, not to amend them or create new ones.

Summary:

The State Lottery Department is proposing a new regulation that sets out the requirements for licensing lottery retailers for both instant and online games. This new regulation consolidates, revises and replaces lottery licensing provisions currently contained in the department's Instant Game Regulations (11 VAC 5-30) and On-Line Game Regulations (11 VAC 5-40), both of which will be repealed.

CHAPTER 31. LICENSING REGULATIONS.

11 VAC 5-31-10. Definitions.

The following words and terms when used in any of the department's regulations shall have the same meanings as defined in this chapter unless the context clearly indicates otherwise:

"License" means the certificate issued by the department to a retailer who has met the requirements established by the department to sell lottery products.

"Lottery retailer," "lottery sales agent" or "retailer" means a person licensed by the director to sell and dispense lottery tickets or shares.

"Person," for purposes of licensing, means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, as well as all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, municipalities, agencies and instrumentalities thereof.

"Vacuum fluorescent display" means a player display unit that, when connected to the lottery terminal, presents messages to the customer, such as customer transaction totals, validation and cancellation amounts, and jackpot drawing messages.

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11 VAC 5-31-20. Eligibility.

A. Any person who is 18 years of age or older and who is bondable may submit an application for licensure as a lottery retailer in accordance with the provisions and requirements of the department's licensing procedures, except no person may submit an application for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;
2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as a board member, officer or employee of the department; or
3. Who is a board member, officer or employee of any vendor to the department of lottery ticket goods or services, working directly on a contract with the department, or whose business owns, is owned by or controlled by, or affiliated with that vendor.

B. The submission of an application, forms or data for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

11 VAC 5-31-30. Application procedure.

Any eligible person shall first file an application with the department by completing all information requested on forms supplied for that purpose, along with submitting the required fees.

11 VAC 5-31-40. General standards for licensing.

A. The director or his designee may license those persons who, in his opinion, will best serve the public interest and convenience and public trust in the lottery and promote the sale of lottery tickets. Before issuing or renewing a license, the director may consider factors including, but not limited to, the following:

1. The financial responsibility and security of the applicant and his business or activity;
2. The accessibility of his place of business or activity to the public;
3. The sufficiency of existing lottery retailers to serve the public convenience;
4. The volume of expected lottery ticket sales;
5. The ability to offer a high level of customer service to lottery players;
6. Whether the place of business caters to or is frequented predominantly by persons under 18 years of age;
7. Whether the nature of the business constitutes a threat to the health or safety of prospective lottery patrons;
8. Whether the nature of the business is consonant with the probity of the Commonwealth; and
9. Whether the applicant or retailer has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery.

B. The director may develop and, by director's order, publish additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.

C. After notification of selection as a lottery retailer, the retailer shall submit all required forms and information to the department to be considered for licensing. Failure to submit required forms and information within the times specified by the department's licensing procedures may result in the loss of the opportunity to become or remain a licensed retailer.

11 VAC 5-31-50. Bonding of lottery retailers.

A. A lottery retailer shall have and maintain a surety bond from a surety company entitled to do business in Virginia. The surety bond shall be in the amount and penalty of up to \$50,000 for instant game retailers and \$100,000 per clerk-activated terminal for on-line game retailers and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

B. The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

11 VAC 5-31-60. Lottery bank accounts and electronic funds transfer (EFT) authorization.

A. A lottery retailer shall have and maintain a separate bank account in a bank participating in the Automatic Clearing House (ACH) system. This account shall be styled in the name of the retailer followed by "Virginia Lottery Trust" and shall be used exclusively for lottery business.

B. The lottery account shall be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the EFT process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the EFT process in accordance with the department's licensing procedures, unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. The director will establish a schedule for processing the EFT transactions against retailers' lottery trust accounts and issue instructions regarding the settlement of accounts.

11 VAC 5-31-70. License term and periodic review.

A. A general license for an approved lottery retailer shall be issued subject to a periodic determination of continued retailer eligibility and the payment of any fees fixed by the board.

B. The director may issue special licenses to persons for specific events and activities in accordance with the requirements of the department's licensing procedures.

11 VAC 5-31-80. License fees.

The initial general license fee shall be \$50 and the periodic review fee shall be \$25 and shall be paid in accordance with

the department's licensing procedures. The license fees, where applicable, shall be paid for each location. These fees are nonrefundable.

11 VAC 5-31-90. Transfer of license prohibited.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable or assignable to any other person or location.

11 VAC 5-31-100. Display of license.

Each licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

11 VAC 5-31-110. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

11 VAC 5-31-120. Training of retailers and their employees.

Each retailer or his designated representative or representatives and anyone that operates an on-line terminal at the retailer's location is required to participate in training. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.

11 VAC 5-31-130. Retailers' conduct.

A. Each retailer shall comply with all applicable state and federal laws and regulations, as well as all rules, policies and procedures of the department, license terms and conditions, specific rules for all applicable lottery games, directives and instructions that may be issued by the director, and licensing and equipment agreements and contracts signed by the retailer.

B. Retailers shall sell lottery tickets at the price fixed by the board.

C. Tickets shall be sold during all normal business hours of the lottery retailer and when the equipment is available, unless the director approves otherwise.

D. Tickets shall be sold only at the location listed on each retailer's license from the department.

E. Retailers shall not exchange instant ticket packs or tickets or on-line ticket stock with one another, but may transfer instant ticket packs or tickets between or among locations under the same ownership.

F. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex or electronically-produced coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold.

G. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. An employee not yet 18 years of age, but who is at least 16 years of age, may sell or otherwise vend lottery tickets at the retailer's place of business so long as the employee is supervised by the manager or supervisor in charge at the location where the tickets are being sold.

11 VAC 5-31-140. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transactions or checks.

A. Payments shall be due from retailers as specified by the director in accordance with department policies.

B. Any retailer who fails to make payment when payment is due will be contacted by the department and instructed to make immediate deposit of the funds due. If the retailer is not able to deposit the necessary funds or if the item is returned to the department unpaid for a second time, the retailer's license may be inactivated. If inactivated, the license will not be reactivated until payment is made by cashier's check, certified check or EFT transaction, and if the retailer is deemed a continuing credit risk by the department, not until an informal conference is held to determine if the licensee is able and willing to meet the terms of his retailer contract. Additionally, interest may be charged on the moneys due plus a \$25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 58.1-15 of the Code of Virginia. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

C. In addition to the penalty authorized by subsection B of this section, the director may assess a \$25 service charge against any retailer whose payment through EFT transaction or by check is dishonored.

D. The service charge, interest and penalty charges may be waived if it is determined by the department that the event that otherwise would result in the assessment of a service charge, interest or penalty is not in any way the fault of the lottery retailer.

11 VAC 5-31-150. Licensed retailers' compensation.

A. A licensed retailer shall receive 5.0% compensation based on his net ticket sales and 1.0% of the cash value of all prizes which the retailer paid.

B. The board shall approve any bonus or incentive system for payment to retailers. The director may then award such cash bonuses or other incentives to retailers.

C. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of the source.

11 VAC 5-31-160. Denial, suspension, revocation or noncontinuation of license.

A. The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in § 58.1-4009 of the Code of Virginia,

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these regulations, and in the department's licensing procedures, or if:

1. The person's place of business caters to or is frequented predominantly by persons under 18 years of age, but excluding family-oriented businesses;
 2. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;
 3. The nature of the person's business is not consonant with the probity of the Commonwealth;
 4. The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery; or
 5. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations or procedures.
- B. The director may suspend, revoke, or refuse to continue a license for any of the reasons enumerated in § 58.1-4012 of the Code of Virginia, in subsection A of this section, in the department's procedures, or for any of the following reasons:
1. Failure to maintain the required lottery trust account;
 2. Failure to comply with lottery game rules;
 3. Failure to properly care for, or prevent the abuse of, the department's equipment, or failure to properly position and display the vacuum fluorescent display;
 4. Failure to meet minimum point of sale standards; or
 5. Failure to continue to meet the eligibility criteria and standards for licensing.
- C. Any person refused a license under subsections A or B of this section may appeal the director's decision in the manner provided by 11 VAC 5-20-150.
- D. Before taking action under subsection C of this section, the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a conference. Such notice shall be given to the retailer in accordance with the provisions of the department's regulations.
- E. If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into alleged violations is concluded.
- F. A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

11 VAC 5-31-170. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 15 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property has been surrendered.

11 VAC 5-31-180. Inspection of premises.

Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials, equipment or tickets are stored or kept in order to inspect the lottery materials, equipment or tickets and the licensed premises.

11 VAC 5-31-190. Examination of records and equipment; seizure of records and equipment.

A. Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing and copying, and make all equipment related to his lottery activities available for inspection, as required by the director or department representatives, between the hours of 8 a.m. and 5 p.m. Mondays through Fridays during the normal business hours of the licensed retailer.

B. All books, records and equipment pertaining to the licensed retailer's lottery activities may be seized with good cause by the director or department representatives without prior notice.

11 VAC 5-31-200. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

<p>NOTICE: The forms used in administering 11 VAC 5-31, Licensing Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, 2nd Floor, Richmond, Virginia.</p>

FORMS

- Retailer License Application, SLD-0062 (rev. 8/97).
- Retailer Location Form, SLD-0055 (rev. 3/99).
- Personal Data Form, SLD-0061 (rev. 4/99).
- On-Line Game Survey, SLD-0120.
- Licensed Retailer Certificate (rev. 9/94).

Instant Ticket Game/Contest Product Licensing Application (rev. 7/96).

Retailer Contract (rev. 12/99).

Retailer Contract Addendum (rev. 12/00).

Authorization Agreement for Preauthorized Payments, SLD-0035A.

A/R Online Accounting Transaction Form, X-0105 (eff. 11/00).

Retailer Activity Form, SLD-0081 (rev. 2/95).

On-Line Weekly Settlement Envelope, SLD-0127.

Cash Tickets Envelope, SLD-0125.

Cancelled Tickets Envelope, SLD-0124.

Ticket Problem Report, SLD-0017 (eff. 9/92).

Weekly Settlement Form, SLD-0128 (eff. 2/89).

VA.R. Doc. No. R00-244; Filed November 12, 2002, 2:12 p.m.

Title of Regulation: 11 VAC 5-40. On-Line Game Regulations (REPEALING).

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 14, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Barbara L. Robertson, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main Street, Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775 or e-mail brobertson@valottery.state.va.us.

Basis: Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to adopt regulations governing the operation of a lottery, and to amend, repeal or supplement the regulations as necessary.

Purpose: To reduce and simplify the regulatory language, current department regulations (Instant Game and On-Line Game) will be reorganized into two new categories: Licensing and Lottery Game Regulations. Duplicative language will be eliminated and revisions will be made in the new chapters to update the regulations to reflect changes in operational procedures since 1996, when the current regulations were last amended. The revisions will have no effect on the health, safety or welfare of citizens, other than to simplify the understanding of department regulations.

Substance: The current regulation is being repealed and its provisions are being revised and consolidated into two new regulations.

Issues: The repeal of this regulation and its revision and consolidation with other existing regulations will simplify and clarify lottery retailer licensing and game requirements. Some provisions will be removed entirely because they are already contained in the Code of Virginia and will continue to be

enforced. Others are redundant or unnecessary and will be eliminated from the new categories.

There are no disadvantages to the public, the Commonwealth or the department by this action.

Fiscal Impact: Approximately 3,700 lottery retailers who sell on-line games and 3.5 million players who purchase the games are subject to these regulations.

There is no anticipated economic impact on the Commonwealth, localities, the public or the agency.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed changes include repeal of numerous requirements stated in the Code of Virginia, some other requirements that are no longer applicable, and several other requirements that are addressed in nonregulatory documents published by the State Lottery Department (the department).

Estimated economic impact. These regulations apply to online lottery games offered by the department. Online games give players the chance to win a prize. They are played through sales terminals linked to central computers via communications networks. Currently, the department offers five types of online games, which include Pick 3, Pick 4, Cash 5, Lotto South, and Mega Millions. The prizes offered by online games may be high, ranging from \$2 to multi-millions for Lotto South and Mega Millions. For example, on May 9, 2000, the jackpot for an online game then known as the Big Game reached a record \$363 million. The jackpot for Mega Millions, a recently adopted multi-state game in place of the Big Game, is believed to have the potential to reach up to \$500 million. Last year the revenues from online games were about \$543 million. These revenues are allocated among the winners for prizes, retailers for compensation, the department for operating expenses, and the Lottery Proceeds Fund for public education.

The proposed changes are, in large part, designed to help reorganize two of the department's current regulations into two new regulations. Currently, the department has online game regulations (11 VAC 5-40) and instant game regulations (11 VAC 5-30) in place. The online game regulations, which are being repealed by these amendments, contain rules for both licensing of lottery retailers and the rules for gaming. Licensing rules establish eligibility criteria for retailers, application procedures, general licensing standards, license fees, rules for termination of licenses, rules for inspection of

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retailers, etc.; and gaming rules contain provisions on prize structures, ticket prices, chances of winning, retailer compensation, retailer transactions, payment of prizes, etc. Similarly, instant game regulations, which are being promulgated by a separate regulatory action, contain requirements for both licensing of lottery retailers and the requirements for gaming. Since the two current regulations contain similar provisions for different games, there is overlapping regulatory language on licensing and gaming. In order to reduce and simplify the regulatory language, the State Lottery Board (the board) proposes to reorganize the lottery regulations that contain provisions for online and instant games under two new categories: licensing (11 VAC 5-31) and gaming (11 VAC 5-41) regulations. In short, the board proposes to reorganize online and instant game regulations under licensing and gaming regulations.

In addition to the reorganization, the board proposes to update the regulations to reflect the changes in practice that occurred since 1996 when these regulations were last amended. Although this proposed change will repeal all of the online game regulations, some of the current requirements will appear in new replacement regulations without any change and some with modifications. The new or modified requirements are discussed in proposed replacement regulations as appropriate. This report discusses only those provisions that will not appear in the proposed licensing and gaming regulations that are separate from this regulatory action because they will be completely removed by these changes.

One of the changes is removing the requirement to pay tickets by cash, check, cashier's check, travelers check, or money order, but not by credit cards, food stamps, or food coupons. This requirement is in § 58.1-4007 A 2 of the Code of Virginia and will continue to be enforced under the statutory language. Similarly, the language on penalty for counterfeited, forged, or altered tickets will be repealed because the same requirement is stated in § 58.1-4017 of the Code of Virginia and will continue to be enforced. However, these two changes may introduce small benefits to affected entities in terms of eliminating overlapping provisions between the statute and the regulations, but also small costs in terms of time in locating these requirements in the statute.

The proposed changes will also repeal some other provisions because they are redundant or unnecessary. These include omitting the specific requirement that the board determine the details of a prize structure such as prize amounts, types of noncash prizes and the amount, type of jackpot prize, chances of winning, and percent return of gross sales to winners because these details are essential components of the prize structure and the language to require the board to approve the prize structures for all games will be retained in replacement regulations. Additionally, the definition of life of a claim on behalf of a group, company, corporation will be removed because only natural persons can claim prizes due to the amendments to § 58.1-4019 B of the Code of Virginia, which require that all prizes must be claimed by a natural person to prevent hiding winner's identity under a limited liability corporation or other types of organizations. Removal of any of these requirements is unlikely to create any significant economic effects.

Finally, removal of several other requirements may provide some flexibility to the department at the expense of reducing public participation in regulation development. The requirements for ticket cancellation, which include rules for deadline for cancellation, methods of cancellation, issuing credits to retailers for tickets that could not be cancelled, and audit method of cancelled tickets are currently contained in the rules for each game and will be removed from the regulations. Similarly, the requirements on providing prompt service to customers and consequences of not doing so will be repealed from the regulations. Also, the requirement that the conduct of subscriptions is subject to all applicable regulations will be removed because this requirement is included in game rules. Addressing these requirements elsewhere is expected to provide some flexibility to the department in changing procedures on ticket cancellations, providing prompt service to customers, and the conduct of subscriptions so as to respond promptly to changing business conditions, but also may reduce the public participation regarding any potential changes on these issues, as potential changes will be implemented without having to go through the usual regulatory process.

Businesses and entities affected. Lottery retailers selling online games and the online game players are subject to these regulations. According to the department, 3,712 retailers are licensed to sell online games. Although the number of online game players is not known, based on a survey conducted by the department in 2002, about 3.5 million adults have played an online or instant Virginia lottery game some time in their lives and approximately 2.9 million have played in the past 12-month period.

Localities particularly affected. The proposed regulations apply to all localities in Virginia.

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 significantly affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Lottery concurs with the economic impact analysis prepared by the Department of Planning and Budget. However, the Lottery wishes to make the following comment:

As noted in the analysis, several requirements have been removed from regulations since they are already contained in the game rules that are written for each game. Game rules are readily available to players. Players may request copies from the Lottery via phone, mail or email. Copies also are available for review at each of the six Lottery regional offices across the state.

Summary:

This proposed regulatory action repeals this regulation. This regulation and the department's Instant Game Regulations (11 VAC 5-30) are being reorganized and replaced by two new proposed regulations: Licensing Regulations (11 VAC 5-31) and Game Regulations (11 VAC 5-41). Because the current two regulations contain similar provisions for

different types of games, there is a significant amount of redundant language regarding licensing and gaming. The new regulations will revise, consolidate and reduce the language into two more meaningful categories: licensing and games.

VA.R. Doc. No. R00-245; Filed November 12, 2002, 2:08 p.m.

Title of Regulation: 11 VAC 5-41. Lottery Game Regulations (adding 11 VAC 5-41-10 through 11 VAC 5-41-350).

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: March 5, 2003 - 9:30 a.m.

Public comments may be submitted until February 14, 2003. (See Calendar of Events section for additional information)

Basis: Section 58.1-4007 of the Code of Virginia authorizes the State Lottery Board to promulgate regulations governing the operation of the lottery, and to amend, repeal or supplement the regulations as necessary. In addition, this section specifies certain matters related to the conduct of lottery games that are required in regulations, including but not limited to types of games, price of tickets, ticket sales, drawings and payment of prizes.

Purpose: The proposed regulation contains procedures specifically related to all types of lottery games, including operational parameters for the conduct of games, validation requirements and payment of prizes. The proposed regulation consolidates, revises and replaces the requirements for the conduct of lottery games that currently are contained in the department's Instant Game Regulations (11 VAC 5-30) and On-Line Game Regulations (11 VAC 5-40), both of which will be repealed. This proposed regulation will reduce or eliminate duplication of similar provisions for different types of games and will update the language based upon provisions of the law and department operational practices that have occurred since 1996, when the two existing regulations were last revised. The revisions will have no effect on the health, safety or welfare of citizens, other than to simplify the understanding of department regulations.

Substance: The proposed regulation sets out many of the same provisions as currently are contained in the department's Instant Game and On-Line Game Regulations. In addition to combining most of the game requirements from the current two regulations, the following additions, not previously included, are proposed:

1. Incorporates the instant ticket full redemption program facilitated by the use of barcoding (not available when the current Instant and On-Line Game regulations were last revised in 1996) that permits players to cash winning tickets at any lottery retail location or lottery office rather than at the place of purchase.
2. Adds reference to "natural person" to comply with the 1999 amendment to the Code (§ 58.1-4019 B) that provides that only a natural person, not a company, corporation, etc., may claim a lottery prize.

3. Adds provisions for player selection of "cash option" as a jackpot prize payment choice (not available to players until 1997).

4. As a result of recent litigation, clarifies the meaning of a winning ticket.

5. Provides flexibility for the director to reimburse lottery retailers for errors that may not be the result of their mistakes.

6. Allows flexibility for board-approved ticket price changes.

7. Clarifies that invalid free ticket prizes resulting from tickets purchased by individuals who are ineligible to play the lottery games will revert to the State Lottery Fund.

8. Provides that the player assumes all risk for mailing a winning ticket through the mail; and

9. Requires that all retailers must cash winning tickets up to \$601 regardless of the location from which the winning ticket was purchased. Previously the retailer could elect to cash any prize amount less than \$601.

Issues: The primary advantage to the public, including approximately 3.5 million lottery players and approximately 5,000 lottery retailers, is that the proposed regulation will replace two existing, obsolete regulations (Instant Game Regulations (11 VAC 5-30) and On-Line Game Regulations (11 VAC 5-40)) and will be issued as one single source for lottery game requirements. It will reflect current provisions of the law as well as current department practice. Language duplication in the two existing regulations and the burden of multiple regulations will be eliminated.

Also, in order to perform department functions in an enterprise environment and to simplify the regulations, operating procedures not specifically required by the Code of Virginia to be included in regulations are not included and are contained in retailer manuals or contracts, which each retailer receives. Operational revisions that have been made due to technological advances make it easier and more convenient for the department, retailer and player to participate in lottery games and have resulted in no negative effect or comment received from the public.

There are no disadvantages to the public, the agency or the Commonwealth by the promulgation of this regulation.

Fiscal Impact: Because the policy or procedural revisions made to department operations are already in place, no significant economic impact is projected. This regulation will affect approximately 3.5 million lottery players, 5,000 lottery retailers, the five members of the State Lottery Board and employees of the State Lottery Department.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities

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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 amendments include numerous editorial and other changes, which will update the regulations to reflect the operational and procedural changes occurred in practice since 1996 when these regulations were last amended.

Estimated economic impact. These regulations will apply to both instant and online lottery games offered by the State Lottery Department (the department). Both games give players the chance to win a prize or entry into a prize drawing. For instant games, whether the player has won is revealed immediately after scratching off the latex covering over a portion of the ticket. Instant games are also known as "scratchers." Currently, the department offers about 60 different types of instant games with top prizes varying from \$50 to \$1 million. Online games, on the other hand, are played through sales terminals linked to central computers via communications networks. The department also offers five types of online games, which include Pick 3, Pick 4, Cash 5, Lotto South, and Mega Millions. The prizes offered by online games may be high ranging from \$2 to multi-millions for Lotto South and Mega Millions. For example, on May 9, 2000, the jackpot for an online game then known as the Big Game reached a record \$363 million. The jackpot for Mega Millions, a recently adopted multi-state game in place of the Big Game, is believed to have the potential to reach up to \$500 million. Last year, revenues from instant and online games were slightly over \$1 billion. Of this amount, approximately \$557 million was distributed to winners, \$56 million was distributed to retailers, \$73 million was kept by the department as operating expenses, and \$329 million was revenues to the Lottery Proceeds Fund for public education.

The proposed changes are, in large part, designed to help reorganize two of the department's current regulations into two new regulations. Currently, the department has instant game regulations (11 VAC 5-30) and online game regulations (11 VAC 5-40) in place. The instant game regulations contain regulations for both licensing of lottery retailers and for gaming. Licensing requirements establish eligibility criteria for retailers, application procedures, general licensing standards, license fees, rules for termination of licenses, rules for inspection of retailers, etc. And, gaming requirements contain provisions on prize structures, ticket prices, chances of winning, retailer compensation, retailer transactions, payment of prizes, etc. Similarly, online regulations contain requirements both for licensing of lottery retailers and for gaming. Since the two current regulations contain similar provisions for different games, there is significant overlapping regulatory language on licensing and gaming. In order to reduce and simplify the regulatory language, the State Lottery Board (the board) proposes to reorganize the lottery regulations that contain provisions for instant and online games under two new categories: licensing (11 VAC 5-31) and gaming (11 VAC 5-41) regulations. In short, the board

proposes to reorganize instant and online game regulations under licensing and gaming regulations.

In addition to the reorganization, the board proposes to update the regulations to reflect the changes in practice that occurred since 1996 when these regulations were last amended. Although this proposed action will introduce a completely new regulation, most of the proposed requirements are in current regulations, which are being repealed under a separate regulatory action. The requirements, which are simply a replica of current requirements, are not discussed in this report. This report discusses only new or modified provisions.

Several proposed changes are editorial. One is the proposed use of the term "barcode" in the regulations. Technological advances in the last decade allow the department to use barcodes for lottery tickets in practice. Similarly, the proposed regulations incorporate the term "cash option" in the regulations because this prize payment option was not available to players until 1997. Also proposed is a provision to permit the director to delay payment of a prize if there is a question whether a cash option election is made and a provision that the director may not accelerate payment unless the cash option is elected. Additionally, the term "natural person" will be used in the regulations due to the amendments to the § 58.1-4019 B of the Code of Virginia, which require that all prizes must be claimed by a natural person to prevent hiding winner's identity under a limited liability corporation or other types of organizations. Further, it will be clarified that the director of the department has the authority to reimburse retailers for prize claims a retailer paid in error. Under the current language, the same authority exists. Another proposed change will add that the player assumes all risk for mailing a ticket through the mail. This has been the current practice. Finally, based on the Attorney General's recommendation, it will be clarified that when there is more than one ticket issued with winning numbers, a holder of one of the winning ticket is entitled only to his or her share of the prize, regardless of whether the other holders of tickets with the winning numbers actually claim their share of the prize. Since these proposed requirements are editorial, no significant economic effect is expected.

Similar to other changes already discussed, provisions regarding several operational requirements that have been enforced in practice will be included in the regulations. These changes appear to be policy related and imposed at the discretion of the department to change the department's operations or procedures. One of these proposed changes will update the language to require all retailers to cash winning tickets up to \$601 regardless of the location from which the winning ticket was purchased as currently enforced in practice. Previously, the retailer could elect to cash any prize amount from \$26 to \$601, but most chose to cash either up to \$101 or \$601 and they could only cash the instant tickets they sold because of the lack of barcode technology. This proposed change will not have any effect on current enforcement of this rule. Additionally, it is proposed that the liability of the department may end sooner than the prize payment if so provided in game rules as currently enforced. Similar to other changes, this change will not have any effect in practice. Further, a definition for the term "probability game" is added as a potential future lottery product. In a probability

game, all tickets are potential winning tickets and the outcome of the game is determined by scratching a limited number of play spots chosen by the player as opposed to scratching all available spots. The department indicates that these games are not planned but may be offered in the future. These proposed amendments also will not change the way the regulations are currently implemented and consequently are not expected to create any economic effects upon promulgation.

The proposed changes will also provide authority to the department to require prize winners to participate in press conferences as well as to use their names, photographs, the name of city or town they live in for public information purposes. Among these, enforcement of the requirement to participate in press conferences may be problematic. Since the department does not plan to withhold winnings¹ if the winner refuses to participate in the press conference, it is unclear how this requirement could be enforced.² Also, there is a chance that a winner may attend the press conference, but at the same time he may refuse to cooperate. It is highly unlikely that the outcome of such a press conference would be beneficial either for the department or for the winners. Finally, compliance with this requirement may be physically impossible in some cases for the winners, or may be possible at a tremendous cost. In short, the compliance with the requirement to participate in press conferences appears to be very difficult to enforce without the winner's consent. Thus, it may be worthwhile to revise this requirement to provide discretion to the winners so that they can choose what to do.

The department's current approach to implement operational or procedural changes on issues such as cashing winning tickets and other similar issues without going through the regulatory process and then updating the regulations to reflect what is implemented in practice is problematic as the agency is operating contrary to its regulation in this case. The lack of authority to enforce these provisions combined with discrepancies between regulations and procedures followed in practice creates the potential for costly litigation expenses. However, this does not mean that the department would not forgo potential benefits if operational or procedural changes are implemented in practice only after going through the usual regulatory process as timely response to developments in the market place the department operates in may be valuable. One way to reduce potential costs associated with delay would be to seek an expedited process for promulgating regulations. This might take the form of an exemption, or the use of an expedited process such as the "fast track" process proposed in the 2002 General Assembly Session (SB 536).

Businesses and entities affected. Lottery retailers selling instant and online games and the game players are subject to these regulations. According to the department, 4,971 retailers are licensed to sell both instant and online games. Based on a survey conducted by the department in 2002, about 3.5 million adults have played an instant or online Virginia lottery game

some time in their lives and approximately 2.9 million players have played in the past 12-month period.

Localities particularly affected. The proposed regulations apply to all localities in Virginia.

Projected impact on employment. No significant impact on employment is expected upon promulgation of the proposed amendments.

Effects on the use and value of private property. The proposed changes are not expected to affect the use and value of private property upon promulgation.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Lottery concurs with the economic impact analysis prepared by the Department of Planning and Budget, with the following exception and comment:

The analysis correctly points out that the regulations will provide authority to the department to require certain prize winners to participate in press conferences as well as to use their names, photographs and name of city or town for public information purposes. The analysis expresses concern about the department's ability to enforce this requirement.

Although this authorization is already contained in individual game rules, which are considered part of the regulations, the department does not intend to insist that any winner appear in a press conference if it would not be beneficial to the winner and the department. Names, prize amounts and hometowns, however, will be released. The principal asset of the Lottery is its reputation and integrity. Providing public information is an important part of maintaining this asset. Identification of lottery winners assures the public that prizes are disbursed in a legitimate manner to real people, and not to hidden entities. The General Assembly supported that concern when they passed a bill in 1999 requiring that only "natural persons" may purchase lottery tickets and claim prize winnings (§ 58.1-4019 B). The intent of the legislators was to prevent winners from hiding their identity behind business entities. The only method of assuring the public of Lottery compliance with this requirement is to publicly disclose winner information.

Also, as noted in the analysis, certain operational and procedural changes have been made without going through the regulatory process, and regulations are being updated now to reflect these changes, thus causing the department to operate contrary to certain regulations.

The Lottery acknowledges this situation; however, in order for the department to perform its functions effectively, it must operate in an enterprise environment. The department is attempting to simplify the current regulations by removing operating procedures not specifically required by the Code of Virginia to be included. When the Lottery was first established, regulations were drafted based on those in place in comparable states because Virginia had no prior experience with this type of revenue producing enterprise. Following the initial adoption, numerous emergency revisions were made to more accurately reflect this state's lottery environment.

The Lottery operates in a competitive business atmosphere and, consequently, is exempt of certain personnel and procurement restrictions that apply to typical state agencies.

¹ Source: State Lottery Department.

² It is also unclear whether the agency has statutory authority to enforce this provision.

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The Lottery, however, continually solicits input from its several audiences (Retailer Advisory Group, retailer forums, focus groups, players) to ensure the fiscal strength of the operation.

As suggested in the economic impact analysis, the Lottery will attempt to use an expedited process such as the "fast track" process that was proposed in the 2002 General Assembly Session. This bill, however, was carried over to the 2003 Session and is not yet in effect.

Further, there was a period of time during which agencies were permitted only to eliminate regulations, not amend them or create new ones.

Summary:

The proposed regulation sets out the requirements for the conduct of lottery games. The new regulation consolidates, revises and replaces provisions regarding lottery games that currently are contained in the department's Instant Game Regulations (11 VAC 5-30) and On-Line Game Regulations (11 VAC 5-40), both of which are being repealed.

CHAPTER 41. LOTTERY GAME REGULATIONS.

11 VAC 5-41-10. Definitions for lottery games.

The following words and terms when used in any of the department's regulations shall have the same meanings as defined in this chapter unless the context clearly indicates otherwise:

"Altered ticket" means a lottery ticket that has been forged, counterfeited or tampered with in any manner.

"Barcode" means the individual coded number assigned to a lottery ticket for the purpose of electronic scanning, validation, redemption or other tracking purpose.

"Breakage" means the money accumulated from the rounding down of the parimutuel prize levels to the next lowest whole dollar amount.

"Certified drawing" means a drawing in which lottery officials and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.

"Drawing" means a formal process of randomly selecting numbers or items in accordance with the specific game rules for those games requiring the random selection of numbers or items.

"Game" means any individual or particular type of lottery authorized by the board.

"Instant game" means a game that, when played, reveals immediately whether the player has won a prize or entry into a prize drawing, or both.

"Misprinted ticket" means a lottery ticket that contains a manufacturing or printing defect.

"Natural person" means a human being, and not a corporation, company, partnership, association, trust or other entity.

"On-line system" means the department's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.

"On-line terminal" or "terminal" means a device that is authorized by the department to function in an on-line, interactive mode with the department's computer system for the purpose of issuing tickets or an electronic facsimile thereof, and entering, receiving and processing game-related transactions.

"On-line ticket" means a computer-generated or electronically-produced ticket on lottery stock issued by an on-line lottery retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.

"Pack" means a set quantity of consecutively numbered scratch tickets that all bear an identical pack number unique to that pack among all the tickets manufactured for that particular game.

"Prize" means any cash or noncash award to a holder of a winning lottery game ticket.

"Prize structure" means the percentage of sales that is dedicated to prizes.

"Probability game" means a game in which all of the tickets sold are potentially winning tickets, and the outcome of the game depends entirely upon the player's scratch choice of a limited number of play spots.

"Roll stock" or "ticket stock" means the paper roll issued by the department placed into the lottery retailer terminal from which a unique lottery ticket is generated by the computer, displaying the selected items or numbers.

"Scratch ticket" means an instant game ticket with a latex or electronically produced covering over the game symbols located in the play area. Each ticket has a unique barcode, validation number and ticket number.

"Share" means a percentage of ownership in a winning ticket or subscription plan.

"Ticket number" means the preassigned unique number or combination of letters and numbers which identifies that particular ticket as one within a particular game or drawing.

"Validation" means the process of reviewing and certifying a lottery ticket to determine whether it is a winning ticket.

"Validation number" means the unique number or number-and-letter code used to determine whether a lottery ticket is a winning ticket.

"Winning ticket" means that ticket that meets the criteria and specific rules for winning prizes as published for each game by the director.

11 VAC 5-41-20. Development of lottery games.

The director shall select, operate, and contract for the operation of lottery games that meet the general criteria set forth in this chapter and in applicable game rules.

11 VAC 5-41-30. Prize structure.

A. The prize structure for each lottery game shall be approved in advance by the board and may be adjusted in accordance with policy adopted by the board.

B. Prizes may be cash or noncash awards, including game tickets.

11 VAC 5-41-40. Chances of winning.

The director shall publicize the overall chances of winning a prize in each lottery game. The chances may be printed on the ticket or contained in informational materials, or both.

11 VAC 5-41-50. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board. The ticket price shall not operate to prevent the sale of more than one lottery play on a single ticket. Unless authorized by the board, lottery retailers may not discount the sale price of tickets or provide free lottery tickets as a promotion with the sale of tickets. This section shall not prevent a licensed retailer from providing free game tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not violate any law.

B. This section shall not apply to the redemption of a winning ticket, the prize for which is one or more free tickets.

11 VAC 5-41-60. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. Retailers may sell tickets from new instant games upon receipt of the tickets from the

department, but shall not sell tickets for an instant game after the announced end of that game.

C. Retailers may sell on-line tickets up to a designated time prior to the drawing as specified in the on-line game rules. That time will be designated by the director.

11 VAC 5-41-70. Ticket cancellation.

A ticket may be canceled in accordance with the procedures contained in the rules for each game.

11 VAC 5-41-80. Ticket returns.

A. Ticket sales to retailers are final. The department will not accept returned, unsold tickets for credit except as provided for in the department's policy for scratch ticket returns.

B. Once tickets are accepted by a retailer, the department will not replace mutilated or damaged tickets, or be responsible for lost, stolen or destroyed tickets, unless specifically authorized by the director.

11 VAC 5-41-90. End of game; suspension.

Each lottery game will end on a date announced in advance by the director. The director may suspend or terminate any lottery game without advance notice if he finds that this action will best serve and protect the public interest.

11 VAC 5-41-100. Validation requirements.

A. To receive payment for a prize, a Virginia lottery game ticket shall be validated by the retailer or the department as set out in this chapter and in any other manner that the director may prescribe in the specific rules for the lottery game, which shall include the following:

1. The original ticket must be presented for validation;
2. The ticket validation number shall be present in its entirety;
3. The ticket shall not be mutilated, altered, or tampered with in any manner. If a ticket is partially mutilated or if the ticket is not intact and cannot be validated through normal procedures but can still be validated by other validation tests, the director may pay the prize for that ticket;
4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket;
5. The ticket shall have been issued by the department or by a licensed lottery retailer in an authorized manner;
6. The ticket shall not have been cancelled or previously paid;
7. The ticket shall be validated in accordance with procedures for claiming and paying prizes as set out in the game rules;
8. The ticket data shall have been recorded in the central computer system before the on-line game drawing or the instant game ticket sale, and the ticket data shall match this computer record in every respect;
9. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department; and
10. The ticket shall pass all other confidential security checks of the department.

B. Any lottery cash prize or free ticket (at its equivalent value) resulting from a ticket that is purchased or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.

11 VAC 5-41-110. Use of playslips.

A. A playslip issued by the department may be used to select a player's number or numbers to be played in an on-line game. If a playslip is used to select the player's number or numbers for an on-line game, the playslip number selections shall be manually marked and not marked by any electro-mechanical, electronic printing or other automated device.

B. Any playslip marked by methods other than those authorized by this chapter is invalid and subject to seizure by the department if presented for play at any lottery terminal. Any tickets produced from the use of invalid playslips are also invalid and subject to seizure by the department.

C. Nothing in this chapter shall be deemed to prevent a person with a physical handicap who is unable to mark a playslip manually from using any device intended to permit

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such person to make such a mark for his sole personal use or benefit.

11 VAC 5-41-120. Replacement of ticket.

If a misprinted or otherwise defective ticket is purchased, the department's only liability or responsibility shall be to replace the misprinted ticket with an unplayed ticket of equal price from the same or another current game or to refund the purchase price of the defective ticket.

11 VAC 5-41-130. Winning tickets.

A. When more than one ticket containing the winning numbers is issued for the same drawing of the same game, the holder of each ticket is entitled only to his share of the prize, regardless of whether the other holders of tickets with the winning numbers actually claim their share of the prize.

B. The department shall not redeem prizes for tickets that would have been winning tickets but for the fact that they have been cancelled by the retailer.

C. When the department's internal controls indicate that a winning ticket was issued but no claim is made for the prize, there shall be a rebuttable presumption that such ticket was in fact issued and the prize shall be paid in accordance with the provisions of § 58.1-4020 of the Code of Virginia and regulations of the department.

11 VAC 5-41-140. Where prizes claimed.

Winners may claim game prizes from any licensed lottery retailer or from the department in the manner specified in this chapter or in the game rules.

11 VAC 5-41-150. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, money order, other cash equivalent or by any combination of these methods.
2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge, interest and penalty payments for referring a debt to the department for collection that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.
3. During normal business hours of the lottery retailer when the validations equipment is operational and the ticket claim can be validated, a lottery retailer shall pay any lottery prize of \$601 or less, unless otherwise determined by the director, regardless of the location from which the winning ticket was purchased.
4. A prize claim shall be paid only at the location specified on the retailer's license or at a lottery office.
5. The department will reimburse a retailer for all valid prizes paid by the retailer within the specified prize redemption period for the game from which the prize resulted.

6. In no case shall a retailer impose a fee, additional charge or discount for cashing a winning lottery game ticket.

7. Retailers who pay claims without validating the tickets do so at their own financial risk.

8. Federal Internal Revenue Code, 26 USC § 6050I requires lottery retailers who receive more than \$10,000 in cash in one transaction or two or more related transactions in the aggregate, from a single player or his agent, to file a return or such information with the Internal Revenue Service (IRS). The IRS encourages retailers to report all suspicious transactions, even if they do not meet the \$10,000 threshold. For purposes of this requirement only, "cash" includes coin and currency only and does not include bank checks or drafts, traveler's checks, wire transfers, or other negotiable or monetary instruments.

11 VAC 5-41-160. No reimbursement for retailer errors.

Unless otherwise determined by the director, the department shall not reimburse retailers for prize claims a retailer has paid in error.

11 VAC 5-41-170. Retailer to void winning ticket.

After a winning ticket is validated and the prize is paid to the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be by hole punching, unless otherwise prescribed by the director. Failure to physically void a paid ticket may result in the retailer not receiving credit for paying the prize.

11 VAC 5-41-180. When prize shall be claimed from the department.

A. The department will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present the signed ticket to any department office or mail the signed ticket to the department's headquarters;
2. If a ticket holder is unable to return to any retailer to claim a prize that the retailer otherwise would pay, the ticket holder may present the signed ticket at any department office or mail the signed ticket to the department's headquarters; or
3. If the prize amount is more than \$601, the ticket holder may present the signed ticket at any department office or mail the signed ticket to the department headquarters.

B. The department may require a claim form.

C. A player shall bear all risk of loss or damage by sending the ticket through the mail.

11 VAC 5-41-190. Department action on claims for prizes submitted to department.

A. The department shall validate the winning ticket claim according to procedures contained in this chapter.

B. If the claim cannot be validated, the department will promptly notify the ticket holder.

C. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be presented or mailed to the winner.

D. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the winner.

11 VAC 5-41-200. Withholding, notification of prize payments.

A. When paying any prize of \$601 or more, the department shall:

1. File the appropriate income reporting forms with the Virginia Department of Taxation and the federal Internal Revenue Service; and
2. Withhold federal and state taxes from any winning ticket in excess of \$5,001.

B. Additionally, when paying any cash prize of \$100 or more, the department shall withhold any moneys due for delinquent debts as provided by the Commonwealth's Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia.

11 VAC 5-41-210. Ticket is bearer instrument.

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the owner of the ticket.

11 VAC 5-41-220. Payment made to bearer.

Payment of any prize will be made to the bearer of a validated winning ticket for that prize upon submission of the ticket and a prize claim form, if one is required, unless otherwise delayed in accordance with this chapter. If a validated winning ticket has been signed, the bearer may be required to present proper identification.

11 VAC 5-41-230. How prize claim entered.

A prize claim shall be entered in the name of a natural person as prescribed by § 58.1-4019 B of the Code of Virginia. In all cases, the identity and social security number of all natural persons who receive a prize or share of a prize greater than \$100 from a winning ticket redeemed at any department office shall be provided.

1. A nonresident alien shall furnish his Immigration and Naturalization Service (INS) Number.
2. Two or more natural persons claiming a single prize may file IRS Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person or persons to whom winnings are taxable.
3. Two or more natural persons wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form

is an irrevocable election that may only be changed by an appropriate judicial order.

11 VAC 5-41-240. Delay of payment allowed.

A. The director may refrain from making payment of a prize pending a final determination by the director under any of the following circumstances:

1. If a dispute arises, or it appears that a dispute may arise, relative to any prize;
2. If there is any question regarding the identity of the claimant;
3. If there is any question regarding the validity of any ticket presented for payment;
4. If there is any question whether a claimant has made a valid cash option election; or
5. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the Setoff Debt Collection Act (Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia) if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the department.

B. The director may, at any time, delay any periodic or installment payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given.

C. No liability for interest for any delay of any prize payment in accordance with subsections A and B, or any delay beyond the department's control, shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between or among competing claimants.

11 VAC 5-41-250. No accelerated payments.

Unless the cash option payment is selected by the player, or unless otherwise permitted by federal or state law, the director shall not accelerate payment of a prize for any reason.

11 VAC 5-41-260. Using winners' names.

The department may require prize winners to participate in press conferences and to use the names and photographs of such prize winners and the city, town or county in which they live, as well as the prize amounts won for public information purposes and to foster the integrity of the games. No consideration shall be paid by the department for this purpose, unless authorized by the director.

11 VAC 5-41-270. Grand prize event.

If a lottery game includes a grand prize event, the following general criteria shall be used:

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1. Entrants in the event shall be selected from tickets that meet the criteria stated in specific game rules set by the director;

2. Participation in the drawings shall be limited to those tickets that are actually purchased by the entrants on or before the date announced by the director;

3. If, after the event is held, the director determines that a ticket should have been entered in the event, the director may place that ticket into a grand prize drawing for the next equivalent event, which action shall be the extent of the department's liability; and

4. The director shall determine the dates, times and procedures for selecting grand prize winners for each on-line game, and the proceedings for selection of the winners shall be open to the public.

11 VAC 5-41-280. When prize payable over time.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest \$1,000 to facilitate purchase of an appropriate funding mechanism.

11 VAC 5-41-290. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, the prize will be payable in installments, as provided by specific game rules, for the lifetime of the winner and will cease upon the death of the winner. When the prize is won by two or more persons on a single ticket, each winner's share of the prize shall expire upon his death, unless otherwise specified in the game rules.

11 VAC 5-41-300. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the board, the director and employees of the department, terminates upon final payment of a lottery prize, or sooner if so provided in the game rules or these regulations.

11 VAC 5-41-310. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to play a game according to the rules of that specific game or to claim a prize or by the department or a retailer to identify or to void the ticket.

11 VAC 5-41-320. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets. The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information that demonstrates that the original ticket meets the following criteria and can be validated through other means. Such information may include, but is not limited to, the following:

1. The claim form, if required, and a photocopy of the ticket, or photocopy of the original claim form, if required, and ticket, are timely filed with the department;

2. The prize for which the claim is filed is a winning prize that has not been claimed within the required redemption

period, as verified in the department's records. In no case will the claim be paid within the redemption period; and

3. The claim is filed within the redemption period, as established by the game rules.

11 VAC 5-41-330. Unclaimed prizes.

A. Except for a free ticket prize, a claim for a lottery game winning ticket must be mailed in an envelope bearing a United States Postal Service postmark or received for payment as prescribed in this chapter within either 180 days after the date of the drawing for which the ticket was purchased, or of the event which caused the ticket to be a winning entry, or, in the case of an instant game ticket, within 180 days after the announced end of the game. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, the winning ticket will be accepted for validation on the next business day only at a lottery office.

B. Any lottery cash prize that remains unclaimed after either 180 days following the drawing that determined the prize or 180 days after the announced end of the instant game shall revert to the State Literary Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admission to events and the like.

C. All claims for on-line game winning tickets for which the prize is a free ticket must be mailed in an envelope bearing a United States Postal Service postmark or received for redemption as prescribed in this chapter within 60 days after the date of the drawing for which the ticket was purchased. In the event the sixtieth day falls on a Saturday, Sunday or legal holiday, a claimant may only redeem his winning ticket for a free ticket at an on-line lottery retailer on or before the sixtieth day.

Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the sixtieth day, claims for such prizes will not be accepted at any lottery office after the sixtieth day. This section does not apply to the redemption of free tickets awarded through the subscription program.

D. Any instant game winning ticket of \$25 or less that has been purchased, but that is not claimed within 180 days after the announced end of the instant game, shall revert to the State Lottery Fund.

E. In case of a prize payable over time, if such prize is shared by two or more winning tickets, one or more of which is not presented to the department for payment within the prize redemption period as established by the game rules, the department will transfer that portion of the prize to the Literary Fund in accordance with procedures approved by the State Treasurer.

F. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 USCA Appx § 525), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable, and in no event later than 180 days after discharge from active military service.

11 VAC 5-41-340. Director may postpone drawing.

The director may postpone any drawing at any time and publicize the postponement if he finds that the postponement will best serve and protect the public interest.

11 VAC 5-41-350. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

NOTICE: The forms used in administering 11 VAC 5-41, Lottery Game Regulations, are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, 2nd Floor, Richmond, Virginia.

FORMS

Pick 3 Playslip (3/01).

Pick 4 Playslip (3/01).

Cash 5 Playslip (2/99).

Lotto South Playslip (7/01).

Mega Millions Playslip (2/02).

Winner Claim Form, SLD-0007 (rev. 7/97).

Agreement to Share Ownership and Proceeds of Lottery Ticket.

Lotto South and Mega Millions Payout Election Form (5/02).

Prizewinner Designation of Beneficiary(ies).

VA.R. Doc. No. R00-246; Filed November 12, 2002, 2:10 p.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-550. Board of Health Regulations Governing Vital Records (amending 12 VAC 5-550-30, 12 VAC 5-550-70, 12 VAC 5-550-90 through 12 VAC 5-550-150, 12 VAC 5-550-190, 12 VAC 5-550-200, 12 VAC 5-550-210, 12 VAC 5-550-230 through 12 VAC 5-550-260, 12 VAC 5-550-280 through 12 VAC 5-550-320, 12 VAC 5-550-360 through 12 VAC 5-550-390, 12 VAC 5-550-410, 12 VAC 5-550-430 through 12 VAC 5-550-450, 12 VAC 5-550-470, 12 VAC 5-550-510, and 12 VAC 5-550-520; adding 12 VAC 5-550-5; repealing 12 VAC 5-550-10 and 12 VAC 5-550-40).

Statutory Authority: §§ 32.1-12 and 32.1-250 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 3, 2003.

(See Calendar of Events section

for additional information)

Agency Contact: Deborah Little-Bowser, State Registrar of Vital Records, Department of Health, 1601 Willow Lawn Drive, Suite 275, Richmond, VA 23220, telephone (804) 662-6600, FAX (804) 786-0648 or e-mail dlittle@vdh.state.va.us.

Basis: Sections 32.1-12 and 32.1-250 of the Code Virginia authorize the Board of Health to promulgate procedural rules for the conduct of activities for vital records and health statistics system and to promulgate regulations. The board has the responsibility to promulgate, amend, and repeal, as appropriate, regulations necessary to implement the vital records and health statistics system, and to collect, catalog, and evaluate information reported to it. The scope of this mandate is appropriate for the adequate and effective administration of the vital records and health statistics division and for the program necessary to operate it.

Purpose: The purpose of the regulations and the intended amendments is to ensure the uniform and efficient administration of the system of vital records through the establishment and enforcement of regulations setting the minimum standards for completing and filing vital records in compliance with state and federal laws. The purpose of the regulations cannot be served adequately without a reliable and efficient system in which good and permanent vital record files are acquired and preserved for safekeeping and current health statistics are effectively reported.

Most of the Regulations Governing Vital Records have not been amended since they were promulgated in 1950. The content of the regulations needs updating to reflect current societal practices, to improve clarity of language in specific sections, and to add other requirements, such as in the reporting of deaths, the registration of delayed birth registrations and the evidence needed for home births. These amendments would make the regulations easier to comprehend by the affected entities and the public while at the same time would make it more difficult for fraud to occur.

Moreover, additional provisions need to be amended and added in light of current changes in reporting methodology and technology. For example, added provisions would allow for the electronic reporting of birth data directly from the hospitals to the State Registrar of Vital Records as allowed by the Code of Virginia as amended in 1994. By electronic reporting, the entire birth registration process is more accurate and much faster, and thus, for example, health data relating to infants at birth becomes available in a more timely way for appropriate public response to such matters as serious congenital anomalies.

Fees for the issuance of vital records have been the same since 1994 and no fees have been charged for amendments or filing of a delayed birth registration. The cost of labor and materials has increased during this period.

Substance: The proposed amendments are necessary to recognize the growing number of home births that are not registered by attendants at delivery and to assist in defining the kinds of evidence necessary to establish the required registration information, as well to update certain terms and provisions as a result of state or federal law. Additions or enhancements to the regulations include:

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1. Clarification for filing a late or delayed birth record;
2. Clarification on matters such as primary and secondary evidence required to place a delayed birth on file, who is eligible to receive birth and death records, and additions to the definition section to adequately reflect terms currently used in the industry, for example, "funeral service licensee" instead of "funeral director";
3. Incorporation of mandated requirements by statute. Sections 32.1-263 B, 32.1-267 B and 32.1-268 A of the Code of Virginia require social security numbers or control numbers issued by the Department of Motor Vehicles to be included in the data collected on death, marriage and divorce records. In compliance with the Taxpayer Relief Act of 1997 (PL 105-34), the Social Security Administration (SSA) is required to obtain parents' social security numbers on original social security number cards for individuals who have not attained age 18 and share this information with the Internal Revenue Service (IRS). Parents may request social security cards for their newborns, by participating in the Enumeration At Birth program (EAB). Under this program parents sign the birth record requesting that vital records submit required data to SSA and the social security card is sent directly to the parent. This program requires that the social security number of a parent or parents be submitted to SSA when social security cards are requested;
4. Removal of issuance of birth registration card; and
5. Fee increase and charges for service rendered.

Issues: The primary advantage of these amendments is that they clarify for citizens the requirements for filing a home birth, or late or delayed birth record. Conflicting language has been removed and clearer language was substituted when indicated.

These regulations contain procedural rules for the registration and reporting of vital events including birth, death, fetal death, marriage, divorce and adoption and any changes to a vital record. They spell out the rules for detailing standards and requirements for collecting and reporting vital event information.

Aspects of the regulations affect about 100 hospitals, 480 funeral homes, 35 local health departments and their corresponding districts, four medical examiner district offices, numerous city and county clerks' offices and the citizens of the Commonwealth.

The affected organizations and individuals reviewed these regulations under Executive Order 15 (94) and discussed potential alternatives to the regulations to determine if less burdensome alternatives might exist. As the information contained in the vital records is both sensitive and confidential, the advisory committee did not find the requirements for the administration of the system overly burdensome. No known alternatives exist that would better protect the public in this regard.

There are no known disadvantages to the public, private persons, the agency or the Commonwealth presented by these proposed regulations.

Fiscal Impact: The proposed amendments to the Regulations Governing Vital Records will have minimal fiscal impact on the agency and regulated entities. Currently all birthing facilities in the Commonwealth have voluntarily complied with the reporting of births electronically to the State Registrar. The regulations officialize what is customary practice for reporting births. The Virginia Department of Health has made the statutory changes to the forms used by reporting sources for marriage, divorce and annulments.

The proposed regulations do not require additional changes to currently utilized forms used by reporting sources.

Projected Costs to Virginia Department of Health. There are no anticipated additional costs to the Virginia Department of Health as a result of the proposed amended regulations.

Projected Costs to Reporting Sources. There are 68 hospitals with birthing facilities in the Commonwealth. All facilities have volunteered to report births electronically and there are no costs to reporting sources as a result of the proposed regulations.

Projected Cost to Citizens Requesting Amendments to Vital Records or Requesting to place a delayed birth on file. There will be a fee charged to citizens who are requesting to amend a vital record or place a delayed birth on file with the Office of Vital Records and Health Statistics, one year after the event. Once the changes have been made or the delayed birth is placed on file there is the required \$10 fee for the certified copy of the vital record.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed regulations will (i) modify and update the language to reflect the current practices followed by the Virginia Department of Health Office of Vital Records (the agency), (ii) increase the fee charged to customers from \$8 to \$10 per certified copy of a vital record, (iii) provide authority to the agency to charge a \$10 fee for amendments to vital records and filing a delayed birth certificate, and (iv) allow for administratively amending a mother's name and a given name of a child on a birth certificate with supporting evidence.

Estimated economic impact. These regulations contain rules for filing, protecting, amending, and issuing certified copies of vital records, which include birth, marriage, divorce, and death records. The agency registers and maintains the original certificates of births, deaths, divorces, and copies of marriage certificates that occur in the Commonwealth, and provides

qualified applicants with certified copies of the records associated with these events. In addition, other record services such as filing of a delayed birth certificate, addition of a father's name to a child's birth certificate, and other types of corrections or amendments to facts shown on a certificate are provided.

According to the agency, these regulations have not been substantively updated since 1950; only minor changes were made since that time. The proposed changes will modify or update about 40 sections of the regulations. The intent of most of the proposed amendments is to improve the clarity of the language and to update it to reflect current practices followed by the agency. The major changes under this category include adding new definitions; outlining the acceptable evidence needed to file a home birth; recognizing genetic testing to add a father's name to his child's birth certificate; requiring preoperative diagnosis, postoperative diagnosis, and a description of the procedure in addition to a court order when a gender reassignment application is received; and recognizing electronic reporting of birth data directly from the hospitals. The procedures related to all of these issues are currently followed in practice and are not likely to introduce any significant additional costs. However, these clarifications may be beneficial in the sense that the public and reporting entities may be better informed about the procedures followed in practice, the public and other entities may provide valuable input on the proposed changes during the regulation development process, and consistency between procedures in practice and regulations may reduce potential losses from litigation.

Three of the proposed changes are more than mere clarifications and are likely to result in significant economic effects. As of July 2002, the agency has increased the fee it charges to its customers from \$8 to \$10 per certified copy of a vital record. A portion of this fee is retained by the agency to provide funding for automation of historical vital records. The agency recently completed the first part of the automation project, which involved entering paper versions of birth records for the 1930-1978 period in electronic format. The next stage of this ongoing automation effort is to enter birth record information for the 1912-1929 period in electronic format. Also, the agency implemented an electronic birth certificate system funded by this fund and plans to develop or purchase an electronic death registration system. Prior to July 2002, of the \$8 fee, \$4 was retained in the automation fund and the rest of the fee was transferred to the General Fund as state revenues. The moneys in the automation fund are used to pay for salary, office supplies, and electronic or nonelectronic equipment needed to complete the automation projects. The proposed \$2 increase in the fee is not expected to have an impact on the automation fund because all of the additional \$2 currently is and will be transferred to the General Fund while the automation fund portion of the fee remains the same at \$4. At a minimum, the agency issued 317,825 certifications in 2001. This implies that the revenues transferred to the general fund from the collected fee should increase at least by about \$635,650 annually while the cost of obtaining a certified copy increases by \$2 for the customers. The increase in the fee is not expected to significantly affect the number of requests for certificates because most customers probably have strong incentives to obtain these

records such as the need to provide a certified copy for legal purposes.

Another change that will likely be significant is the proposed \$10 fee for amendments to vital records and filing a delayed birth certificate. This change will expand the types of services the agency has the authority to charge a fee for. In 2001, the agency processed at least 19,154 amendments involving adoption, court orders, paternity, and affidavits. Thus, the agency is expected to realize an increase in its fee collections by about \$191,540 annually. Of that amount, about \$115,000 will be transferred to the General Fund and about \$77,000 will be retained by the agency for the expenses associated with amending the records. Since the costs associated with amending vital records were not covered before, but will be covered under the proposed regulations, the agency will benefit from this change. Also, the Commonwealth is likely to benefit from increased revenue transfers to the general fund. On the other hand, the costs to customers will increase by \$10 when they request an amendment or file a delayed birth certificate. This fee may provide small incentives for timely registration of births and improve the accuracy of birth statistics maintained in the Commonwealth. The number of requests for other types of amendments may not be as sensitive to the proposed fee as birth registrations because they may be most likely to be necessitated by an unpredictable event.

The last change that is expected to have significant economic effects is related to the administrative discretion that will be provided to the agency when amending birth records. With the proposed regulations, the agency will have the discretion to administratively amend a mother's maiden name on the child's birth certificate with an affidavit and her birth certificate and to amend the given name of the child/registrant with an affidavit and with acceptable evidence if the name was not known or not used by the registrant. This proposed change will reduce the costs borne by customers to make these amendments to birth records. Currently, the customers have to obtain a court order, which costs about \$500 to \$1,000 for lawyer fee to file a petition in the court to amend the incorrect information on a birth certificate and \$35 for the court fees.¹ With the proposed change, amendments can be made administratively by paying the \$10 amendment fee. If the costs to provide evidence to the court or the agency do not vary significantly, customers will likely save about \$525 to \$1,025 per application. During 2001 the agency amended 1,315 vital events using court orders and estimates that 85% to 90% of those were based on the type of amendments that will be made administratively under the proposed changes. Thus, the number of amendments for these cases is expected to be about 1,150. Given the estimated number of amendments, the cost savings to customers may be about \$604,000 to \$1,178,750 annually.

The lawyers or law firms, the court system, and the agency are also likely to be affected by this change. The number of cases in which lawyers file a petition in the court to amend vital records will likely decrease as well as their business revenues. Based on the number of cases and the amount of fees charged by lawyers, the revenue losses to lawyers or law

¹ Source: The Office of Vital Records, Virginia Department of Health.

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firms may be \$575,000 to \$1,150,000. Also, the workload of the court system will also decrease which will likely decrease court fees by about \$40,000. The agency, on the other hand, is expected to realize an increase in its fee collections by approximately \$11,500. Of that amount, about \$6,900 will be transferred to the General Fund and about \$4,600 will be retained by the agency for expenses associated with administratively amending the records.

Businesses and entities affected. The proposed regulations may affect about 100 hospitals, 480 funeral services, 35 local health departments, 4 medical examiner offices, numerous city and county clerk's offices, and the public. Based on the number of applications processed in 2001, over 337,000 applicants may be affected annually.

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

Projected impact on employment. The proposed authority for administrative amendments may reduce the number of court cases and may negatively affect the demand for legal services. This may have a negative impact on employment in legal services industry.

Effects on the use and value of private property. If there is a significant reduction in the profits in the legal services industry, there may be a reduction in value of businesses in that industry as well.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Health concurs with the economic impact assessment prepared by the Department of Planning and Budget regarding the proposed Regulations Governing Vital Records.

Summary:

The proposed amendments (i) provide for the electronic reporting of births; (ii) allow delayed reporting of births when warranted; (iii) specify information needed to evidence home births; (iv) establish protections against the unauthorized, unwarranted, and indiscriminate disclosure of vital records; (v) increase the fee for issuance of a vital record and charge an administrative fee when documents are amended or when a delayed birth certificate is requested one year or more after the event; and (vi) allow for administratively amending a mother's name and a given name of a child on a birth certificate with supporting evidence.

12 VAC 5-550-5. Definitions.

In addition to the words and terms defined in § 32.1-249 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Department " means Virginia Department of Health.

"Immediate family" means a registrant mother, father (name must be shown on the certification), sibling, current spouse and adult children.

"Informant" means person providing information to complete the filing of a vital record in order to document a vital event.

"Midwife" means a registered nurse who has met the additional requirements of education and examination for licensure as a nurse practitioner in the Commonwealth.

"Primary evidence" means valid first-hand documentation established before the registrant's 18th birthday, such as school admission records, physician's records, immunization records, passport, federal census abstracts, baptismal records and insurance applications.

"Registrant" means the person whose personal information is registered and filed in the systems of vital records.

"Secondary evidence" means valid documentation established after the registrant's eighteenth birthday such as marriage records, child's birth certificate, school records, social security records, driver's records, work permit and employment records. Such evidence must be at least five years old.

12 VAC 5-550-10. Authority for chapter. (Repealed.)

~~Chapter 7 of Title 32.1 of the Code of Virginia establishes the vital records and health statistics system in the Commonwealth. The Board of Health is directed to promulgate procedural rules for the conduct of activities under this chapter and to promulgate regulations.~~

12 VAC 5-550-30. Administration of chapter.

~~This chapter is administered by the State board of Health, the State Health commissioner, and the State Registrar of Vital Records and Health Statistics.~~

~~The Board of Health is the governing body of the State Department of Health, which is the Vital Records and Health Statistics Agency. In this capacity, the board has the responsibility to promulgate, amend, and repeal, as appropriate, regulations necessary to implement the vital records and health statistics system, and to collect, catalog, and evaluate information reported to it.~~

~~The State Health Commissioner is the chief executive officer of the State Department of Health. The commissioner has the authority to act, within the scope of regulations promulgated by the board, for the board when it is not in session.~~

~~The State Registrar shall carry out the provisions of Chapter 7 (§ 32.1-249 et seq.) of Title 32.1 of the Code of Virginia and the regulations of the board.~~

12 VAC 5-550-40. Application of chapter. (Repealed.)

~~This chapter has general application throughout the Commonwealth.~~

12 VAC 5-550-70. State Registrar.

The State Registrar shall prepare, print, and supply all blanks and forms to be used in registering, recording, and preserving data of vital records and health statistics or in otherwise carrying out the purpose of the statutes governing vital statistics. He shall prepare and issue such detailed instructions concerning use of all forms, approved electronic media and supplies as may be required to secure the uniform observance of the statutes and the maintenance of an

adequate system for the collection, registration, and preservation of data of vital records and health statistics throughout the Commonwealth.

12 VAC 5-550-90. Use of forms.

No forms or *electronic media* other than those *approved and* supplied by the State Registrar shall be used for vital event registration. All such forms, records, and reports are property of the Commonwealth of Virginia. As such, they shall be protected from unauthorized use, access, and distribution and shall be surrendered to the State Registrar or his representative upon demand.

12 VAC 5-550-100. Birth certificate items.

~~The certificate of birth to be used shall be:~~

~~4- A. Certificate of Live Birth, Commonwealth of Virginia, for current registrations at time of birth, and shall contain the following items: child's full name; place of birth; usual residence of mother; sex of child; single or plural birth, and birth order of plural birth; date of birth; full name of father (except when mother is not married to the father); age of father (except when mother is not married to the father); birthplace of father (except when mother is not married to the father); full maiden name of mother; age of mother; birthplace of mother; certification of parent (if available); certification of attendant at the birth, including title, address and date signed; date the certificate was received by the registrar; registrar's signature; registration area and certificate numbers; state birth number; and supplemental confidential data to consist of the following items: medical record and social security numbers of the mother; medical record number of the child; hispanic origin, if any, and race of mother; education of mother; mother transferred prior to delivery; hispanic origin, if any, and race of father (except when mother is not married to the father); social security numbers of the father; education of father (except when mother is not married to the father); pregnancy history of the mother, including date of last live birth and date of last other termination of pregnancy; date of last normal menses and physician's or midwife's estimate of gestation; month of pregnancy prenatal care began; source of prenatal care; number of prenatal visits; birthweight of child in grams; mother married to father of child; Apgar score of child at one minute and five minutes; obstetric procedures and method of delivery; newborn conditions and congenital malformations or anomalies of child, if any; infant transferred; medical history for this pregnancy; other history for this pregnancy; and events of labor and delivery; and an optional item for the parent to request the State Registrar to report the birth to the Social Security Administration for account number issuance may be added to the Certificate of Live Birth if the State Registrar and the Social Security Administration develop procedures for such.~~

2- B. Delayed Certificate of Birth, Commonwealth of Virginia, for delayed registrations of birth, and shall contain the following items: full name at time of birth; sex; place of birth; date of birth; name of father (except when mother was not married to father at the time of birth or during the 10 months next preceding the birth); race of father (except when mother was not married to the father); birthplace of father (except when mother was not married to the father); full maiden name

of mother; race of mother; birthplace of mother; certification and signature of applicant; address of applicant; relationship of applicant to registrant; statement and signature of notary public (or other official authorized to administer oaths); description of documentary evidence submitted; certification and authorized signature of the State Registrar; date certificate filed by the State Registrar; and number of certificate.

C. *Certificate of Live Home Birth, Commonwealth of Virginia, is required to be registered within 30 days after time of birth and shall be registered with the local health department in which the birth occurred. The local registrar or the deputy registrar shall forward such registration of Live Home Birth filed within 30 days to the State Registrar. The Certificate of Live Home Birth, Commonwealth of Virginia, for registrations at time of birth, shall contain the following items: child's full name; place of birth; usual residence of mother; sex of child; single or plural birth and birth order of plural birth; date of birth; full name of father (except when the mother is not married to the father); age of father (except when the mother is not married to the father); birthplace of father (except when the mother is not married to the father); full maiden name of mother; age of mother; birthplace of mother; certification of parent (if available); certification of attendant at birth, including title, address, and date signed; date the certificate was received by the registrar; registrar's signature; registration area and certificate numbers; state birth number; and supplemental confidential data to consist of the following items: medical record and social security numbers of the mother; hispanic origin, if any, and race of mother; education of mother; mother transferred prior to delivery; hispanic origin, if any, and race of father (except when mother is not married to the father); social security number of the father; education of father (except when mother is not married to the father); pregnancy history of the mother, including date of last live birth and date of last other termination of pregnancy; date of last normal menses and physician's or midwife's estimate of gestation; month of pregnancy prenatal care began; source of prenatal care; number of prenatal visits; birth weight of child in grams; mother married to father of child; Apgar score of child at one minute and five minutes; obstetric procedures and method of delivery; newborn conditions and congenital malformations or anomalies of child, if any, infant transferred; medical history of this pregnancy; other history of this pregnancy; events of labor and delivery and an optional item for the parent to request the State Registrar to report the birth to the Social Security Administration for account number issuance. If the Certificate of Live Home Birth is not filed at the time of birth or within 30 days, supporting documents to establish a registration may be required and shall be as follows:*

1. Evidence of pregnancy, such as but not limited to:
 - a. Prenatal record,
 - b. A statement from a physician or other health care provider qualified to determine pregnancy,
 - c. A home visit by a public health nurse or other health care provider, or
 - d. Other evidence acceptable to the State Registrar.

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2. Evidence that the infant was born alive, such as but not limited to:

- a. A statement from the physician or other health care provider who saw or examined the infant,
- b. An observation of the infant during a home visit by a public health nurse, or
- c. Other evidence acceptable to the State Registrar.

3. Evidence of the mother's presence in the Commonwealth of Virginia on the date of the birth, such as but not limited to:

- a. If the birth occurred in the mother's residence,
 - (1) A driver's license or state-issued identification card that includes the mother's current residence on the face of the license/card,
 - (2) A rent receipt that includes the mother's name and address,
 - (3) Any type of utility, telephone, or other bill that includes the mother's name and address, or
 - (4) Other evidence acceptable to the State Registrar.

b. If the birth occurred outside of the mother's place of residence and the mother is a resident of the Commonwealth of Virginia, such evidence shall consist of the following:

- (1) An affidavit from the owner, supervisor, manager and tenant of the premises where the birth occurred stating that the mother was present on those premises at the time of the birth;
- (2) Evidence of the affiants' residence similar to that required in subdivision 3 of this subsection; and
- (3) Evidence of the mother's residence in the Commonwealth of Virginia similar to that required in subdivision 3 a of this subsection.

c. If the mother is not a resident of the Commonwealth of Virginia, evidence that the home birth took place in Virginia must consist of clear and convincing evidence acceptable to the State Registrar, such as affidavits of the persons present at the time of the birth, proof of such affiants' residence as set out in subdivision 3 a of this subsection, ambulance records, police records, or the like.

12 VAC 5-550-110. Death certificate items.

The certificate of death to be used shall be the Certificate of Death, Commonwealth of Virginia, and shall contain the following items: full name of decedent; place of death; usual residence; date of death; sex; hispanic origin, if any, and race; education; date of birth; age; birthplace; citizenship; usual occupation and industry; veteran status; social security number or control number issued by the Department of Motor Vehicles; father's name; mother's maiden name; marital status and name of spouse, if married or widowed; informant's name and relationship to decedent; medical certification of cause of death; autopsy; if female, was there a pregnancy during past three months; and supplementary data concerning death due

to external causes; certification of attending physician or medical examiner, including title, address, and date signed; disposition of the body; signature of funeral director or person legally filing this certificate service licensee; name and address of funeral home; date received by registrar; registrar's signature; registration area and certificate numbers; and state file number.

12 VAC 5-550-120. Fetal death or induced termination of pregnancy report items.

~~The record of fetal death or induced termination of pregnancy to be used shall be:~~

4- A. The Report of Fetal Death Commonwealth of Virginia, and shall contain the following items for spontaneous fetal deaths: place of occurrence; usual residence of patient (mother); full maiden name of patient; medical record number and social security number of patient; hispanic origin, if any, and race of patient; age of patient; education of patient; sex of fetus; patient married to father; previous deliveries to patient; single or plural delivery and order of plural delivery; date of delivery; date of last normal menses and physician's estimate of gestation; weight of fetus in grams; month of pregnancy care began; number of prenatal visits; when fetus died; congenital malformations, if any; events of labor and delivery; medical history for this pregnancy; other history for this pregnancy; obstetric procedures and method of delivery; autopsy; medical certification of cause of spontaneous fetal death; signature of attending physician or medical examiner including title, address and date signed; method of disposal of fetus; signature and address of funeral director service licensee or hospital representative; date received by registrar; registrar's signature; registration area and report numbers.

2- B. The Report of Induced Termination of Pregnancy, Commonwealth of Virginia, and shall contain the following items for induced terminations of pregnancy: place of occurrence; usual residence of patient; patient identification number; age of patient; hispanic origin, if any, and race of patient; education of patient; patient married to father; date of pregnancy termination; pregnancy history of patient; date of last normal menses and physician's estimate of gestation; type of termination procedures; pregnancy terminated because of genetic defect; signature, title, and address of person completing this report; registration area and report numbers.

12 VAC 5-550-130. Marriage return and certificate items.

The record of marriage to be used shall be the Marriage Return and Certificate, Commonwealth of Virginia, and shall contain the following items: city or county of the court of issuance; court clerk's number; for the groom: full name, age, date and place of birth, *social security number or control number issued by the Department of Motor Vehicles*, race, marital status if previously married, number of marriage, education, usual residence, the names of parents; for the bride: full name, maiden name, age, date and place of birth, *social security number or control number issued by the Department of Motor Vehicles*, race, marital status if previously married, number of marriage, education, usual residence, and names of parents; signature of clerk of court and date of license; date and place of marriage; whether civil

or religious ceremony; certification and signature of officiant indicating title, address, and year and court of qualification; date received by clerk of court from officiant; and state file number.

12 VAC 5-550-140. Report of divorce or annulment items.

The report of divorce or annulment to be used shall be the Report of Divorce or Annulment, Commonwealth of Virginia, and shall contain the following items: city or county of court of issuance; for the husband: full name, date and place of birth, ~~face social security number or control number issued by the Department of Motor Vehicles~~, education, number of marriage, usual residence; for the wife: full maiden name, date and place of birth, ~~face social security number or control number issued by the Department of Motor Vehicles~~, education, number of the marriage, usual residence; date and place of marriage; identity of plaintiff and to whom divorce granted; number and custody of children under 18 in this family; date of separation; date of divorce; legal grounds or cause of divorce; signature of attorney or petitioner; certification and signature of clerk of court indicating type of decree; court file number; date final order entered; and state file number.

12 VAC 5-550-150. Requirements for completion.

All certificates and records provided for in the statutes governing vital event registration shall be prepared on a typewriter with a black ribbon whenever possible or shall be printed legibly in black ink *or written legibly in black unfading ink or entered on electronic media approved by the State Registrar*. All signatures required shall be entered in black ink. No certificate shall be considered as complete and correct and acceptable for filing *that*:

1. ~~That~~ Does not supply all items of information called for thereon or satisfactorily account for their omission.
2. ~~That~~ Contains alterations or erasures.
3. ~~That~~ Does not contain original signatures.
4. ~~That~~ Is marked "copy" or "duplicate."
5. ~~That~~ Is a carbon copy *or photocopy*.
6. ~~That~~ Is prepared on an improper form.
7. ~~That~~ Contains obviously improper or inconsistent data.
8. ~~That~~ Contains any data relative to the putative father of a child born out of wedlock without his written consent or unless determined by a court of competent jurisdiction as required by § 32.1-257 of the Code of Virginia.
9. ~~That~~ Contains an indefinite cause of death denoting only symptoms of disease or conditions resulting from disease.
10. ~~That~~ Is not prepared in conformity with these regulations or instructions issued by the State Registrar.

12 VAC 5-550-190. Local records.

On forms furnished by the State Registrar *or on electronic media approved by the State Registrar*, each registrar shall record the following information from the original records before forwarding such original records to the State Registrar:

1. For birth records: the full name of the child; sex and race of child; date of birth; place of birth; names of parents; residence of parents; date filed; *and* local certificate number; ~~congenital malformations of child; and premature indicator.~~
2. For death records: the full name of the decedent; race and sex of decedent; date of *death* and place of death; ~~residence of decedent; cause of death;~~ date filed; and local certificate number.
3. For spontaneous fetal death records: surname of family; race and sex of fetus; date and place of delivery; ~~names and residence of parents; causes of death;~~ date filed; and local report number.

12 VAC 5-550-200. Reporting periods.

A. Special registrars shall, ~~on the 5th day and the 20th day of each month, transmit all original certificates filed with them during the period preceding such dates to the city or county registrar having jurisdiction over the special registration district upon receiving all information on the properly completed forms, forward them to the State Registrar on the fifth day of the month.~~ If no birth, death, or fetal death was registered in any month, that fact shall be reported on the ~~5th~~ *fifth* day of the following month on a form provided for that purpose.

B. City and county registrars shall, ~~on the 10th day and 25th day of each month,~~ transmit *weekly* to the State Registrar all complete original certificates filed with them or received by them from special registrars during the period preceding such dates. Each shipment of certificates sent by special registrars and by city and county registrars shall be accompanied by a transmittal form provided for that purpose.

12 VAC 5-550-210. Promotion of registration.

Each registrar is to familiarize himself with the statutes, regulations, and instructions so that he may promote and stimulate complete and accurate registration. Lists of hospitals, physicians, medical examiners, funeral ~~directors~~ *service licensee*, and midwives should be maintained where necessary for reference purposes.

12 VAC 5-550-230. Late registration and delayed registration defined.

A. The registration of a nonrecorded birth after the statutory time prescribed for filing but within one year from the date of birth shall be a "late birth registration." As such, its filing shall be subject to the requirements of 12 VAC 5-550-250 but shall not be considered a "delayed registration." ~~B.~~ The registration of a nonrecorded birth after one year from the date of birth shall be a "delayed birth registration."

~~4.~~ *B.* For those births occurring more than one year but less than seven years prior to the date of filing, the birth registrations shall be prepared and filed on the certificate of live birth form in use at the time of birth and shall be plainly marked in the upper margin "delayed registration." Such certificates shall be subject to the requirements of 12 VAC 5-550-250 and not subject to 12 VAC 5-550-260.

~~2.~~ *C.* The registration of a nonrecorded birth seven or more years after the date of birth shall be a "delayed birth

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registration" and shall be registered by the State Registrar on special forms provided for such purposes and shall be subject to the requirements of 12 VAC 5-550-260.

12 VAC 5-550-240. Who may file a late or delayed birth certificate and conditions.

A. A person born in the Commonwealth of Virginia whose birth is not recorded, or his parent, or guardian, legal representative, or an older person having knowledge of the facts of birth, may file a certificate of birth after the time prescribed for filing subject to the procedures and requirements established by these regulations and instructions issued by the State Registrar.

B. No delayed Certificate of Birth shall be registered for a deceased person.

C. Application for delayed certificates that have not been completed within one year from the date of application may be dismissed at the discretion of the State Registrar. Upon dismissal, the State Registrar shall so advise the applicant and all documents submitted in support of such registration shall be returned to the applicant.

12 VAC 5-550-250. Procedures and requirements for late birth registration and delayed birth registration within seven years of date of birth.

A. Late birth registrations and delayed birth registrations filed within seven years of the date of birth shall be prepared and filed on the certificate of live birth form in use at the time of birth. To be acceptable for filing, the certificate must be signed by the physician or other person who attended the birth; or if the birth occurred in a hospital, the hospital administrator, or his designated representative, may sign the certificate; or if the physician or other person who attended the birth is not available, and the birth did not occur in a hospital, the certificate may be signed by one of the parents, provided that a notarized statement is attached to the certificate outlining the reason why the certificate cannot be signed by the attendant.

B. The State Registrar or the city or county registrar may require the presentation of additional evidence in support of the facts of birth or an explanation for the delay in filing in any case where there appears to him reason to question the adequacy of the registration. *Home birth records shall follow procedures in 12 VAC 5-550-100 C.*

12 VAC 5-550-260. Procedure and requirements for delayed birth registration seven or more years after date of birth.

A. Application for a delayed birth registration after seven years have elapsed since the date of birth shall be made to the State Registrar and shall be filed according to instructions issued by the State Registrar.

B. If a prior birth certificate is located for the registrant, a delayed birth certificate shall not be filed. The final acceptance of a delayed birth certificate for filing shall remain in a pending status until evidence is submitted in support thereof satisfactory to the State Registrar as outlined in subsection ~~D~~ E of this section, or until one year from the date of application, in which event the application shall lapse.

~~B.~~ C. The following facts concerning the person whose birth is to be registered must be established:

1. The full name of the person at the time of birth, except that the delayed certificate may reflect a name established by adoption or legitimation when such evidence is submitted;

2. The date and place of birth; and

3. The names of the parents, except that if the mother of the child was not married to the father of the child at the time of birth, or during the 10 months preceding such birth, the name of the father shall not be entered on the delayed certificate unless the child has been adopted or legitimated, or parentage has been determined by a court of competent jurisdiction pursuant to § 32.1-257 of the Code of Virginia, or both natural parents present a sworn acknowledgment of paternity.

~~C.~~ D. Delayed birth certificates shall be prepared on forms supplied by the State Registrar. Each such delayed certificate shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is available and is competent to sign and swear to the accuracy of the facts stated therein; if not, the application shall be signed and sworn to by one of the parents, guardian, legal representative, or by an older person having knowledge of the facts of birth.

~~D.~~ E. The birth facts entered on the delayed certificate shall be supported by at least three pieces of documentary evidence; except that:

~~a.~~ 1. If one of the documents was established before the registrant's seventh birthday, only two such documents shall be required.

~~b.~~ 2. If the person whose birth is being registered is 15 years of age or under, only two such documents shall be required.

~~2.~~ F. All documents used ~~in~~ shall be primary evidence, such as school admission records, physician's records, insurance policy applications, marriage records, children's birth records, baptismal records, federal census abstracts, immunization records, and the like, shall be at least five years old, except that an affidavit of personal knowledge need not be five years old or passports. Only one such affidavit of personal knowledge shall be used as a an additional supporting document.

~~3.~~ G. Facts of parentage need only be supported by one such document described ~~above~~ in subsection F of this section.

4. H. Documents shall be in the form of the original or certified or true copies thereof of the original.

5. I. All documents, except the affidavit of personal knowledge, shall be returned to the applicant after review.

~~E.~~ J. Whether delayed certificates and documentary evidence submitted conform with this chapter and are acceptable for filing shall be determined by the State Registrar. If, in his judgment, an applicant does not submit the documentation required in support of the facts of birth or if there appears reason to question the delayed registration, the delayed birth

certificate shall not be accepted and the applicant shall be advised of its deficiencies.

1. If a delayed birth certificate is acceptable for filing, the State Registrar, or his designated representative, shall abstract on the delayed birth certificate form a description of each document submitted in support of the delayed registration, including the kind and title of the document; the name and relationship of the affiant if the document is an affidavit of personal knowledge; the date the document was originally established; and

2. The State Registrar, or his designated representative, shall then enter the date of filing of the delayed registration, and by his signature thereto shall certify:

a. That no prior birth certificate is on file for the person whose birth is to be registered.

b. That the documentary evidence submitted to establish the facts of birth has been reviewed and is in conformity with the stated facts.

12 VAC 5-550-280. Adoptions.

New birth certificates after adoption, legitimation, acknowledgment of paternity, or court determination of paternity shall be established under the following conditions:

A. 1. A new certificate of birth may be prepared by the State Registrar for a child born in Virginia and subsequently adopted through the courts of Virginia, the several states of the United States, or in a foreign country. An adoption report or certified copy of an adoption decree must be in the possession of the State Registrar together with a request that a new certificate be prepared.

B. 2. A certificate of birth may be prepared by the State Registrar for a child born in a foreign country and subsequently adopted through a court in Virginia. An adoption report must be in the possession of the State Registrar together with a request that a Virginia registration of the birth be prepared. Such certificates shall not confer citizenship upon the child or the adoptive parents.

12 VAC 5-550-290. Legitimation.

If the ~~natural~~ biological parents of a child shall marry after the birth of a child, a new certificate of birth may be prepared by the State Registrar for a child born in Virginia provided that the name of another man is not shown as the father on the original certificate. ~~If another man is so listed, a new certificate may be prepared only if a determination of paternity shall be ordered by a court of competent jurisdiction.~~ An affidavit of paternity, executed subsequent to the birth of the child, by both ~~natural~~ biological parents and a certified copy of the parents' marriage record must be in the possession of the State Registrar together with a request that a new certificate be prepared. *If another man is so listed, a new certificate may be prepared only if a determination of paternity shall be ordered by a court of competent jurisdiction or pursuant to § 20-49.8 of the Code of Virginia. If the mother was married at the time of the child's birth or in the 10 months next preceding, the State Registrar will not accept the acknowledgment of paternity form. A new certificate may be prepared only if a determination of paternity shall be ordered by a court of*

competent jurisdiction or pursuant to § 20-49.8 of the Code of Virginia.

12 VAC 5-550-300. Acknowledgement of paternity.

A new certificate of birth may be prepared by the State Registrar for a child born out of wedlock in this Commonwealth upon receipt of a sworn acknowledgement of paternity, executed subsequent to the birth of the child, signed by both parents and a written request by both parents that the child's surname be changed or not be changed on the certificate to that of the father. *If the mother was married at time of the child's birth or in the 10 months next preceding or if another man is shown as the father of the child on the original certificate, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction or pursuant to § 20-49.8 of the Code of Virginia.*

12 VAC 5-550-310. Court determination of paternity.

A. ~~If no appeal has been taken from the final order and the time allowed to perfect an appeal has expired, a new certificate of birth may be prepared by the State Registrar for a child born in this Commonwealth upon receipt of a certified copy of a court determination of paternity, together with a request from the natural mother or person having legal custody of said child that such new certificate be prepared. If the surname of the child is not decreed by the court, the request for the new certificate shall specify the surname to be placed upon the certificate.~~

B. *A new certificate of birth may be prepared by the State Registrar for a child born in the Commonwealth upon receipt of the certified copies of a document signed by a man indicating his consent to submit to scientifically reliable genetic tests, including blood tests, to determine paternity and the genetic test results affirming at least a 98% probability of paternity from an ABBA-approved laboratory, together with a request from the biological mother, biological father or person having legal custody of the child that such new certificate be prepared. Changing the child's surname to the biological father's surname requires the signatures of both parents or (i) the father in the case of death or incapacity of the mother or (ii) the mother in the case of the death or incapacity of the father.*

12 VAC 5-550-320. Change of sex.

Except as provided in subdivision 3 of 12 VAC 5-550-450, upon presentation of acceptable evidence (preoperative diagnosis, postoperative diagnosis and description of procedure) and a notarized affidavit from the physician performing the surgery, a new certificate of birth may be prepared by the State Registrar for a person born in this Commonwealth whose ~~sexual designation~~ sex has been clarified or changed through medical or surgical procedure for cases including, but not limited to, hermaphroditism or pseudo-hermaphroditism by surgical gender reassignment procedure. A certified copy of the court order changing the name of the registrant as well as designating the sex of the registrant must be in the possession of the State Registrar together with a request that a new certificate be prepared.

Proposed Regulations

12 VAC 5-550-360. Responsibility of the attending physician.

When a patient ~~shall die~~ *dies*, the physician in charge of the patient's care for the illness or condition shall be responsible for executing and signing the medical certification of cause of death as follows:

1. ~~If The physician is present at or immediately after the death, he~~ shall execute and sign the medical certification of cause of death on the death certificate form prescribed by the State Registrar.
2. In an case where an autopsy is scheduled and the physician wishes to await its gross finding to confirm a tentative clinical finding, he shall give the funeral ~~director~~ *service licensee* notice that he attended the patient and when he expects to have the medical data necessary for the certification of cause of death. If the provisions of 12 VAC 5-550-350 cannot be adhered to, he shall indicate that the cause is pending and sign the certification. Immediately after the medical data necessary for determining the cause of death have been made known, the physician shall, over his signature, forward the cause of death to the registrar.
3. If the physician is unable to establish the cause of death or if a death is within the jurisdiction of the medical examiner, he shall immediately report the case to the local medical examiner and advise the funeral ~~director~~ *service licensee* of this fact. If the medical examiner does not assume jurisdiction, the physician shall sign the medical certification *noting special circumstances and exception*.
4. An associate physician who relieves the attending physician while he is on vacation or otherwise temporarily unavailable may certify to the cause of death in any case where he has access to the medical history of the case, provided that he views the deceased at or after death occurs and that death is from natural causes. In all other cases in which a physician is unavailable, the funeral ~~director~~ *service licensee* shall contact the medical examiner.
5. When the attending physician shall have given the person in charge of an institution authorization in writing, the person in charge of such institution, or his designated representative, may prepare the medical certification of cause of death in cases where all pertinent aspects of the medical history are a part of the official medical records and the death is due to natural causes. In such instances, the signature shall be that of a physician.

12 VAC 5-550-370. Responsibility of the medical examiner.

When a medical examiner assumes jurisdiction in a death or when *a medically unattended death occurs without medical attendance a known medical history or information*, the medical examiner shall be responsible for executing and signing the medical certification of cause of death as follows:

1. The medical examiner shall, at the time of releasing a body to a funeral ~~director~~ *service licensee* or person who first assumes custody of a dead body, or as soon as practicable thereafter, execute and sign the medical certification of cause of death on the death certificate form prescribed by the State Registrar.

2. In any case where an autopsy is scheduled and the medical examiner wishes to await its gross findings to confirm a tentative clinical finding, he shall give the funeral ~~director~~ *service licensee* notice as to when he expects to have the medical data necessary for the certification of cause of death. If the provisions of 12 VAC 5-550-350 cannot be adhered to, he shall indicate that the cause is pending and sign the certification. Immediately after the medical data necessary for determining the cause of death have been made known, the medical examiner shall, over his signature, forward the cause of death to the registrar.

3. In any case where a death has been referred to the medical examiner because a physician in attendance is deceased or physically incapacitated and there was no associate physician, the medical examiner shall prepare and sign the medical certification of cause of death.

12 VAC 5-550-380. Responsibility of the hospital or institution.

When a patient shall die in a hospital or institution, and the death is not under the jurisdiction of the medical examiner, the person in charge of such institution, or his designated representative, shall where feasible and where the cause of death is known, aid in the preparation of the death certificate as follows:

1. Place the full name of the deceased on the death certificate form and obtain from the attending physician the medical certification of cause of death.
2. If authorized in writing by the attending physician, the person in charge, or his designated representative, may prepare the medical certification of cause of death in cases where all pertinent aspects of the medical history are a part of the official hospital records and the death is due to natural causes. The signature shall be that of a physician.
3. Present the partially completed death certificate identified by the name and the complete medical certification to the funeral ~~director~~ *service licensee*.
4. In a case of long-term residence by a patient in a state institution, a death certificate including personal particulars of the deceased may be prepared for presentation to the funeral ~~director~~ *service licensee*.

12 VAC 5-550-390. Responsibility of the funeral ~~director~~ *service licensee*.

Each funeral ~~director~~ *service licensee* who has been authorized to take custody of a dead human body shall exercise the following responsibilities with respect to the preparation and filing of the death certificate:

1. When he arrives to take custody of the body, he shall first ascertain whether an attending physician or local medical examiner has established the cause of death as follows:
 - a. ~~If a physician was present at or after the death, he~~ *The funeral service licensee shall obtain the medical certification of cause of death from such the physician if the death is from natural causes. An associate physician or person in charge of an institution may prepare the medical certification as outlined in 12 VAC 5-550-360.*

b. If a physician attended the deceased but did not complete the medical certification of cause of death, the funeral ~~director~~ *service licensee* shall immediately contact such physician in person or by telephone to be certain that he was the attending physician and to ascertain whether the physician is to assume responsibility for the medical certification or to refer the case to the medical examiner.

c. When a medical examiner assumes jurisdiction in a death, ~~or when death occurs without medical attendance,~~ or when a physician in attendance is incapacitated, the funeral ~~director~~ *service licensee* shall obtain the signed medical certification of cause of death from the medical examiner as required by subdivision 3 of 12 VAC 5-550-370.

2. The personal history of the deceased and the facts of the death shall be obtained from the best source possible. This source may be variously: a member of the immediate family of the deceased who possesses the necessary information; a hospital records custodian whose records contain the necessary information; or the local medical examiner having jurisdiction over a case. The name of the informant, *his address and relationship to the decedent* shall be entered on the death certificate. The facts required as to the manner and place of disposal of the body or its removal from the Commonwealth shall be entered over the signature of the funeral ~~director~~ *service licensee*. He shall personally sign the certificate and print or type the name of his firm.

3. Except as outlined in 12 VAC 5-550-410, a satisfactory death certificate shall be filed with the city, county, or special registrar in the city or county where death occurred, or a dead body is found, prior to final disposal of the body or its removal from the Commonwealth, and within three days. In cases where a completed medical certification is not available when the funeral ~~director~~ *service licensee* takes possession of a body, he shall not move the body from the place of death until so authorized by the local medical examiner or until the attending physician has advised him that death is from natural causes and the physician is able to prepare the medical certification of cause of death. In every case, the removal of a dead human body from the city or county of death is unlawful unless notice is ~~give~~ *given* to the city, county, or special registrar by telephone or in person. Such notice shall consist of the name of the deceased, date and place of death, and the name of the attending physician or of the medical examiner, as the case may be, and, if the body is to be removed, the destination within the Commonwealth. Such notification shall be made during the next available business hours of the registrar following the time of death. After business hours, in independent cities and in designated counties, such notification shall be made immediately on assumption of custody of the deceased to the registrar's representative.

12 VAC 5-550-410. Emergency cases: Filing of death certificates elsewhere.

A. Under the conditions of § 32.1-266 of the Code of Virginia, the following situations are declared to be proper reasons for emergency extensions of time periods for filing a completed death certificate:

1. A completed or pending medical certification is unavailable.

2. Personal data concerning the deceased is temporarily unavailable.

3. The body must be moved immediately out of the Commonwealth.

B. If one or more of the above situations exists and the conditions of subdivision 3 of 12 VAC 5-550-390 have been complied with by the funeral ~~director~~ *service licensee* when the body is to be moved, any authorized registrar, or registrar's representative, may issue an out-of-state transit permit. Such permit shall be issued upon application by a funeral ~~director~~ *service licensee* and the presentation by the funeral ~~director~~ *service licensee*, over his signature only, of a death certificate form complete in as many known details as possible.

C. The incomplete death certificate form originally furnished to the registrar as outlined in subsection B of this section is to be placed by the funeral ~~director~~ *service licensee* with a completed death certificate as soon as the missing data become known or the medical certification is obtained, or within 10 days, whichever occurs first.

D. Under emergency provisions and the conditions of subdivision 1 c of 12 VAC 12-550-390, the death certificate may be filed with a registrar other than the registrar at the place of death. When a registrar of an area other than the place of death receives a completed death certificate, he shall not sign nor number the certificate, but shall make a notation in the left-hand margin indicating his name and whether or not an out-of-state permit has been issued. The registrar receiving the death certificate shall immediately forward the death certificate to the city or county registrar at the place of death.

12 VAC 5-550-430. Disinterment permits.

A. Unless so ordered by a court of competent jurisdiction, a body shall not be disinterred for removal or transportation until an application for disinterment has been submitted to the city or county registrar or to the State Registrar.

B. The city or county registrar at the place from which disinterment is to be made shall issue a disinterment permit in triplicate. One copy shall be retained by the funeral ~~director~~ *service licensee* to whom issued, one copy filed with the sexton or person in charge of the cemetery in which disinterment is to be made, and one copy to be used during transportation and filed with the sexton or person in charge of the cemetery of reinterment. The State Registrar may issue a letter of authorization in lieu of individual permits when numbers of bodies are to be moved in one operation from the same place of disinterment to the same place of reinterment.

C. A disinterment permit shall not be required if a body is to be disinterred and reinterred in the same cemetery; however, the sexton or other person in charge of the cemetery shall establish a record relative to the facts of disinterment and reinterment within the cemetery.

D. A body kept in a receiving vault shall not be regarded as a disinterred body until after expiration of 30 days.

Proposed Regulations

12 VAC 5-550-440. Applications for correction.

A. After 30 days from the date of filing, no change or alteration in any birth or death certificate on file with the State Registrar or on file in any city or county of this Commonwealth shall be made except upon application to the State Registrar.

1. To change or alter a birth certificate, such application shall be made by the reporting source, one of the parents, guardian, or legal representative of the child, or, if the person whose certificate is involved is 18 years of age or over, by the person himself.

2. To change or alter a death certificate, such application shall be made by the surviving spouse or the next of kin of the deceased, attending funeral ~~director~~ *service licensee*, or other reporting source, *such as hospital medical records*.

3. Changes or alterations of the medical certification of cause of death may be requested only by the attending physician or by the medical examiner.

B. Within 30 days from the date of filing, missing data or corrected information may be entered on a birth or death certificate by the State Registrar or by the city or county registrar when the original record is in his possession.

1. Applications for changes or alterations may be made by persons outlined in subdivision A 1 or A 2 of this section.

2. Missing or corrected data may be obtained at the initiative of the city or county registrar by personal call, telephone, or query form from the reporting source responsible for filing the birth or death certificate. Data so obtained by the registrar shall not be deemed an amendment.

C. Marriage and divorce or annulment records on file with the State Registrar may be amended only by notification from the clerk of court in which the original record is filed. Such notification to the State Registrar shall indicate what items have been amended on the original record and shall indicate that the State Registrar's copy should be amended accordingly. Evidence required for amending marriage and divorce or annulment records shall be determined by the court in which the original record is filed.

12 VAC 5-550-450. Evidence required for corrections or amendments.

Every application for a correction or amendment of a birth or death certificate shall be accompanied by appropriate documentary evidence as follows:

1. Except as provided in subdivisions 2 and 3 of this section, name changes, other than minor corrections in spelling involving the given names or surname of a registrant, or the given names or surnames of the parents or of a spouse as listed on a certificate, shall require that a certified or attested copy of a court order changing the name be obtained.

a. In cases where the mother's married surname is listed instead of her maiden name, a correction can be made administratively with a correction affidavit and copy of her birth record.

b. In cases where the given name shown on a birth certificate was not used or known to the registrant and this fact can be proven by the registrant, the birth certificate can be amended administratively with primary evidence showing the name at birth and a correction affidavit.

2. Within one year of birth, the given names listed on a birth certificate may be changed by the affidavit of:

a. Both parents, ~~or~~

b. The mother in the case of a child born out of wedlock, ~~or~~

c. The father in the case of the death or incapacity of the mother, ~~or~~

d. The mother in the case of the death or incapacity of the father, or

e. The guardian or agency having legal custody of the registrant.

3. In cases of hermaphroditism or pseudo-hermaphroditism, given names of a registrant may be changed on a birth certificate by affidavit of the parents or guardian as listed in subdivision 2 of this section, or by affidavit of the registrant if 18 years of age or older. Additionally, a statement from a physician must be submitted which certified the birth record of the registrant contains an incorrect designation of sex because of congenital hermaphroditism, pseudo-hermaphroditism, or ambiguous genitalia which has since been medically clarified.

4. Except as otherwise provided in the Code of Virginia or this chapter, after one year from the date of birth, any change of name shall be made only by court order, and any second change of name within one year shall be made only by court order.

5. Within seven years after birth, given names may be added to a birth certificate where such information has been left blank by use of an affidavit only prepared by the parent, guardian, or legal representative of the child.

6. If the date of birth on a birth certificate is to be changed more than one year, a certified copy of a court order changing the date of birth shall be submitted. *Evidence to be supplied to the court in support of such change should include a federal census transcript from the Bureau of the Census.*

~~7. In all other cases~~ *If the date of birth on a birth certificate is to be changed to one year or less from the date of birth, a federal census transcript from the Bureau of the Census shall be required as documentary evidence.*

8. If a federal census transcript cannot be obtained, an affidavit shall be obtained which sets forth: the identity of the incorrect record, the incorrect data as it is listed, the correct data as it should be listed, and the documentary evidence supporting the facts. In addition to the affidavit, a document or certified or true copy of such document, must be obtained which is over five years of age was written before the registrants' eighth birth date and will establish the identity of the certificate to be altered or corrected and will

support the true and correct facts. ~~The five years may be waived for recently filed certificates.~~ Any item of a vital record which has been previously corrected may only be changed again by court order.

8- 9. All documents, except the affidavit, shall be returned to the applicant after review.

12 VAC 5-550-470. Individual requests.

A. Upon request, the State Registrar or the city or county registrar shall disclose data or issue certified copies of birth or death records or information when satisfied that the applicant therefor has a direct and tangible interest in the content of the record and that the information contained therein is necessary for the determination or protection of personal or property rights.

4- B. A direct and tangible interest may be evidenced by requests from the registrant, members of his immediate family, his guardian, or their respective legal representatives in the case of birth records. Such direct and tangible interest may be evidenced by requests from surviving relatives or their legal representatives in the case of death records.

2- C. For the purposes of securing information or obtaining certified copies of birth ~~and death~~ records, the term "legal representative" shall include ~~an a registrant's attorney; a person with power of attorney for affairs of registrant; an attending physician; funeral director, insurance company; or an authorized a federal, state or local governmental agency acting in behalf of the registrant or his family.~~

D. For the purposes of obtaining information of certified copies of death certificates, the term "legal representative" shall include the registrant's funeral service licensee; attorney; person with power of attorney for the affairs of the registrant; insurance company insuring the registrant; a federal, state or local governmental agency acting in behalf of the registrant or his family; a court appointed guardian; or a court appointed administrator.

3- E. A direct and tangible interest shall not be evidenced by the ~~natural biological~~ parents of an adopted child; nor by commercial firms, agencies, nonprofit or religious organizations requesting listings of names or addresses.

12 VAC 5-550-510. Certified copies; how prepared.

A. Under the provision of § 32.1-272 of the Code of Virginia and Part XII (12 VAC 5-550-470 et seq.) of this chapter, certifications of vital records may be prepared and issued by the State Registrar and, where applicable, by the city or county registrar.

4- B. Certifications may be made by photostat or other reproduction process, typewriter, or electronic print except that medical and health data on the birth certificate shall not be so certified.

2- C. The statement to appear on each certification of a vital record is to read as follows:

"This is to certify that this is a true and correct reproduction or abstract of the official record filed with the Department of Health,, Virginia.

Date issued

..... Registrar"

The registrar will enter the appropriate city or county name in the spaces provided, date and sign the certification, and enter his official title.

3- D. The seal of the issuing office is to be impressed on the certification.

4- E. Short form certifications of birth records, ~~or birth registration cards, which~~ that make no reference to parentage may be issued by the State Registrar.

12 VAC 5-550-520. Fees.

A. The fee to be charged by the State Registrar or by the city or county registrar shall be ~~\$8.00~~ \$10 for each full certification or short form certification of a vital record, or for a search of the files or records when no copy is made.

B. When documents are amended or delayed birth registration is requested, the requester shall be charged an administrative fee of \$10.

NOTICE: The forms used in administering 12 VAC 5-550, Board of Health Regulations Governing Vital Records, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

- Certificate of Live Birth, VS1 (eff. 1/93).
- Certificate of Death, VS2 (eff. 1/89).
- Certificate of Death (Medical Examiner's Certificate), VS2A (eff. 1/89).
- Marriage Register, VS3 (eff. 1/90).
- Report of Divorce or Annulment, VS4 (eff. 1/90).
- Report of Spontaneous Fetal Death, VS5 (eff. 1/93).
- Report of Induced Termination of Pregnancy, VS5A (eff. 1/90).
- Application for Certification of a Vital Record, VS6 (eff. 7/02).
- Out-of-State Transit Permit, VS10 (eff. 7/85).
- Permit for Disinterment, Transit, and Reinterment, VS11 (eff. 7/85).
- Delayed Certificate of Birth, VS12 (eff. 4/85).
- Report of Adoption, VS21 (eff. 7/85).
- Acknowledgement of Paternity, VS22 (eff. 9/93).
- Affidavit for Correction of a Record, VS32 (eff. 1/87).
- Hospital Monthly Vital Statistics Report, VS33 (eff. 7/89).
- Funeral Director's Monthly Vital Statistics Report, VS33-A (eff. 3/90).
- Court Order Establishing Record of Birth, VS40 (eff. 10/88).

Proposed Regulations

VS6-7/02

Commonwealth Of Virginia
Application For Certification of a Vital Record

Virginia statutes require a fee of \$10.00 be charged for each certification of a vital record or for a search of the files when no certification is made. Please make check or money order payable to **State Health Department**. There is a \$30.00 service charge for returned checks. You must include a copy of your picture I.D. or 2 secondary forms.

Name of Requester: _____ Daytime Phone Number: (____) _____

Address: _____ City: _____ State: _____ Zip: _____

What is your relationship to the person named on the certificate? _____

If you are not the person named on the certificate, please state your direct and tangible interest in receiving this certificate:

I understand that making a false application for a Vital Record is a **FELONY** under state and federal law.

Signature of Applicant: _____

BIRTH Number of Copies: _____ Paper: _____	Name at Birth: _____ If name has changed since birth due to adoption, court order, or any reason other than marriage please list changed name here: _____ Date of Birth: _____ Race: _____ Sex: _____ Place of Birth: _____ Hospital of Birth: _____ <small>(City/County in Virginia)</small> Full Maiden Name of Mother: _____ Full Name of Father: _____
DEATH Number of Copies: _____	Name of Deceased: _____ Date of Death: _____ Age at Death: _____ Race: _____ Sex: _____ Place of Death: _____ Hospital Name: _____ <small>(City/County in Virginia)</small>
MARRIAGE Number of Copies: _____	Full Name of Husband: _____ Full Name of Wife: _____
DIVORCE Number of Copies: _____	Marriage - Date: _____ Place: _____ Divorce - Date: _____ Place: _____ <small>(City/County in Virginia)</small> If Marriage, place where license was issued: _____

Please indicate the address you wish the certificate(s) mailed to in the box below. -- Please type or print clearly.

Name
Address
City/State/Zip

Send Completed Application To:

Division of Vital Records
P. O. Box 1000
Richmond, VA 23218-1000
(804) 662-6200

VA.R. Doc. No. R99-207; Filed November 13, 2002, 11:35 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13 VAC 5-21. Virginia Certification Standards (amending 13 VAC 5-21-10, 13 VAC 5-21-20, 13 VAC 5-21-31, 13 VAC 5-21-41, 13 VAC 5-21-51, and 13 VAC 5-21-61).**

Title of Regulation: **13 VAC 5-80. Virginia Standards for Individual and Regional Code Academies (amending 13 VAC 5-80-40 through 13 VAC 5-80-140; repealing 13 VAC 5-80-20, 13 VAC 5-80-30, and 13 VAC 5-80-150).**

Statutory Authority: § 36-137 of the Code of Virginia.

Public Hearing Date: December 10, 2002 - 10 a.m.
Public comments may be submitted until January 31, 2003.
(See Calendar of Events section for additional information)

Basis: The statutory authority for the Board of Housing and Community Development (board) to promulgate and amend the Virginia Certification Standards (13 VAC 5-21) and the Virginia Standards for Individual and Regional Code Academies (13 VAC 5-80) is found in § 36-137(5) of the Code of Virginia, which directs and empowers the board to make such rules and regulations as may be necessary to carry out its responsibilities. Section 36-137(6) of the Code of Virginia provides the legal authority to issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations to any persons seeking to become qualified to perform inspections pursuant to the building and fire regulations adopted by the board.

Section 36-137 (7) of the Code of Virginia provides the legal authority for the department to accredit individual or regional training academies maintained by localities, that retain the building permit fee levy authorized under the Uniform Statewide Building Code (13 VAC 5-61).

Purpose: The proposed amendments promote the public safety by deleting the list of categories of board certificates and the list of approved testing agencies and examination and requiring the department to develop a "training and certification guidance document" that lists (a) the approved testing agencies and examination that meet nationally accepted standards for each type of certificate and (b) the categories of board certificates and by establishing circumstances and conditions under which a person may be issued a board provisional certificate.

The training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development is considered required to fulfill the mandate that the provisions of the Uniform Statewide Building Code shall be such as to protect the health, safety and welfare of the residents of the Commonwealth and the purposes of the Statewide Fire Prevention Code are to provide for statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the

improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling, and use of substances, materials and devices, including fireworks, explosives and blasting agents, wherever located.

Substance: The proposed amendments to 13 VAC 5-21 are as follows:

1. Add the following definitions: "certificate," "guidance document" and "training."
2. Delete the list of categories of BHCD certificates and the list of approved testing agencies and examinations.
3. Require the Department of Housing and Community Development (department) to develop a "training and certification guidance document" which lists (i) the approved testing agencies and examinations that meet nationally accepted standards for each type of certificate and (ii) the categories of Board certificates.
4. Establish circumstances and conditions under which a person may be issued a board provisional certificate.

The proposed amendments to 13 VAC 5-80, the Virginia Standards for Individual and Regional Code Academies, update the regulation by adding standard definitions, repealing unnecessary adoption provisions, deleting the maximum amount of levy funds that may be carried over, and repealing the VAC section with DHCD's address.

Issues: The primary advantage for the public of amending the Virginia Certification Standards will be that moving the list of categories of BHCD certificates and the list of approved testing agencies and examinations from the regulation to a guidance document and the establishment of the circumstances and conditions under which a person may be issued a board provisional certificate will make the regulation less burdensome and intrusive. The agency sees no disadvantages for the public or the Commonwealth.

There are no disadvantages to the public or the Commonwealth to promulgate the proposed amendments to the Virginia Standards for Individual and Regional Code Academies.

Fiscal Impact: The minimum included identity of anticipated fiscal impacts for the proposed amendments are as follows:

- (a) The projected cost increase to the state to implement and enforce the proposed regulation is zero.
 - (i) The fund source/fund detail is not applicable.
 - (ii) The budget activity with a cross-reference to program and subprogram is not applicable.
 - (iii) The delineation of one-time versus on-going expenditures is not applicable.
- (b) The projected cost of the regulation on localities may be zero.
- (c) A description of the individuals, businesses or other entities that are likely to be affected by the regulation is unknown.

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(d) The agency's best estimate of the number of such entities that will be affected is unknown.

Summary:

The proposed amendments to the Virginia Certification Standards move the list of categories of BHCD certificates and the list of approved testing agencies and examinations from the regulation to a guidance document and establish the circumstances and conditions under which a person may be issued a board provisional certificate.

The proposed amendments to the Virginia Standards for Individual and Regional Academies add standard definitions, repeal unnecessary adoption provisions and delete the maximum amount of levy funds that may be carried over to the next fiscal year for operation of the individual or regional training academies.

The Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation. The General Assembly mandates in § 36-137 (5) of the Code of Virginia that the Virginia Board of Housing and Community Development (BHCD) issue certificates of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations to any persons seeking to be qualified to perform inspections pursuant to Chapter 6 (§ 36-137 et seq.) of Title 36 of the Code of Virginia and any regulations adopted thereunder.

The proposed regulation (i) deletes the list of categories of BHCD certificates and the list of approved testing agencies and examinations and puts them in a training and certification guidance document to be developed and maintained by the Department of Housing and Community Development (DHCD), (ii) deletes the maximum amount of levy funds that may be carried over from the previous fiscal year by building code academies, (iii) establishes specific circumstances under which BHCD can issue provisional certificates, and (iv) requires that all certificate holders meet continuing education requirements as specified by the DHCD.

The proposed regulation also repeals unnecessary adoptions from and makes clarifications to the existing regulation.

Estimated Economic Impact. For private testing agencies and examination administrators and individuals seeking to be certified to enforce or perform inspections and reviews under the Uniform Statewide Building Code (USBC), the Virginia Amusement Device Regulations (VADR), and the Statewide

Fire Prevention Code (SFPC), the current regulation includes a list with the following information: (a) approved testing agencies and examinations and (b) categories of BHCD certificates. The proposed change deletes the list from the text of the current regulation and puts it into a guidance document to be developed and maintained by DHCD. This allows DHCD to update the list without going through the 18-month regulatory process.

(a) Moving the list of approved testing agencies and examinations to a guidance document is likely to have a positive economic impact, especially given the increase in the number of private testing agencies and examination administrators in the last few years. An accurate and up-to-date list will make it easier for individuals seeking to get certified and for private operators seeking to set up new testing agencies and administer examinations.

(b) Economic impact of moving the list of categories of DHCD certificates to a guidance document remains unclear. On one hand, updating the list of certificates in a timely manner might make it easier for someone seeking to get certified to do so. On the other hand, changes made in an arbitrary manner could increase the uncertainty and hence the cost associated with getting certified. The net economic impact will depend on the specific changes made to the list of DHCD certificate categories.

Under the current policy, local building departments levy 1% on fees charged for building permits and remit it to the DHCD to support training programs of the Virginia Building Code Academy. However, localities that maintain certified individual or regional training academies (Fairfax and Prince William counties) can retain the levy. Annual collection of the levy in excess of \$500,000 and any unspent balance greater than one-third of the levy collected that fiscal year is credited against levy to be collected the next fiscal year. The cap on the amount of levy retained by building code academies was repealed by Chapter 555 of the Acts of Assembly for 2002. The proposed regulation incorporates the change. In fiscal year 2001, the Virginia Building Code Academy collected \$577,000 through the levy. Thus, \$77,000 was credited against levy to be collected by the localities in fiscal year 2002. The amount collected and credited back by the individual and regional code academies is not known. Under the proposed regulation, the building code academies would be allowed to retain the full amount of the levy. According to DHCD, the extra funds are to be used to provide contractors, architects, and tradesmen additional training, especially as it relates to the new building and fire prevention code regulations being proposed by the BHCD. The economic impact of the change would depend on the impact the additional training will have in the application and enforcement of building regulations.

The proposed regulation establishes circumstances under which a BHCD provisional certificate can be issued. This change is likely to have a slight positive economic impact. The circumstances under which a provisional certificate can be issued as established by the proposed regulation are consistent with the current practice of the DHCD and are not expected to significantly change the way these certificates are issued. To the extent that the regulation clearly specifies the

circumstances for the issuance of these certificates, it is likely to reduce uncertainty and make the decision-making process more consistent and uniform.

The proposed regulation adds language that requires that all certificate holders attend continuing education training as specified by the DHCD. According to current policy, certificate holders under the USBC, VADR, and SFPC are already required to meet continuing education requirements as determined by the DHCD. Thus, the proposed change is stating what is already required under the building and fire prevention codes and is not likely to have any economic impact.

Businesses and Entities Affected. The proposed changes to the regulation affect private testing agencies and examination administrators and all individuals seeking to be certified to enforce or perform inspections and reviews under the USBC, VADR, and SFPC. The regulation also affects the Virginia Building Code Academy and the regional code academies operating in Fairfax and Prince William counties.

Localities Particularly Affected. The proposed changes to the regulation affect localities throughout the Commonwealth.

Projected Impact on Employment. The proposed regulation's impact on employment is likely to be very small. An accurate and up-to-date list of DHCD certificate categories and approved testing agencies and examinations could potentially make it easier for individuals to get certified. It could also make it easier for individuals to operate private testing agencies and administer examinations. However, arbitrary changes to the list of DHCD certificate categories could increase uncertainty and make it harder to get certified. Clearly specified circumstances for the issuance of provisional certificates will reduce uncertainty and hence costs associated with getting a provisional certificate.

Effects on the Use and Value of Private Property. The proposed regulation will not have any significant effect on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the Economic Impact Analysis (EIA) prepared by the Virginia Department of Planning and Budget regarding the proposed amendments to the Virginia Certification Standards (13 VAC 5-21) and the Virginia Standards for Individual and Regional Code Academies (13 VAC 5-80).

CHAPTER 21. VIRGINIA CERTIFICATION STANDARDS.

13 VAC 5-21-10. Definitions.

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

"Active certificate holder" means any certificate holder who has attended the required DHCD-designated periodic training courses and is classified by DHCD as active.

"Applicant" or *"candidate"* means any person seeking to become qualified to provide enforcement or perform

inspections or reviews under the applicable BHCD regulation by obtaining a certificate from the BHCD.

"BCAAC" means the Building Code Academy Advisory Committee appointed by the BHCD under § 36-137 of the Code of Virginia to advise the BHCD and the DHCD Director on policies, procedures, operations, and other matters pertinent to enhancing the delivery of training services provided by the Building Code Academy.

"BHCD" means the Virginia Board of Housing and Community Development.

"Certificate" means a document issued by BHCD as a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to the Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia) and the Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia), and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.

"Certificate holder" means any person certified by the BHCD under this chapter and classified by DHCD as active or inactive.

"Code Academy" means the Virginia Building Code Academy established under § 36-139 of the Code of Virginia, and educational institutions established in accordance with § 36-137 of the Code of Virginia, which are accredited by DHCD under 13 VAC 5-80-10 et seq. to conduct classes to prepare individuals pursuing occupations in the building, amusement device or fire inspection professions or to upgrade individuals in technical phases of building and amusement device or fire regulations and codes.

"Code enforcement agency" means the agency or agencies to which responsibility for enforcement of the USBC, VADR, or SFPC has been assigned.

"Code inspection agency" or *"code review agency"* means any department, division, company, individual or agency to which inspection or construction document review responsibility under the applicable USBC, VADR, or SFPC has been assigned or delegated and, in addition, shall include such entities whose reports of inspection or review will be the basis of approvals under the applicable USBC, VADR, or SFPC.

"DFP" means the Virginia Department of Fire Programs.

"DHCD" means the Virginia Department of Housing and Community Development.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

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"Inactive certificate holder" means any certificate holder who has not attended the required DHCD-designated periodic training courses and is classified by DHCD as inactive.

"SFPC" means the Virginia Statewide Fire Prevention Code (13 VAC 5-51-40 et seq.).

"Training" means the facilitation of an individual's learning that is focused on the performance of the job duties and tasks related to the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by BHCD.

"Training - code academy" means training conducted by a code academy and that is divided into the following types of modules: (i) core module means the general foundation training module for persons seeking to become qualified to perform inspections and other duties under the BHCD regulations, which includes emphasis on the legal authority and the regulatory foundation of enforcement and administration of Virginia's building and fire regulations; (ii) management module means the advanced training modules for persons seeking to become qualified to manage and supervise enforcement and inspections and other functions under the BHCD regulations; and (iii) technical module means the foundation and advanced training modules for the various specialty areas related to performing plans review, inspections and other job duties under the BHCD regulations, including but not limited to areas such as building, fire protection, plumbing, electrical, mechanical, amusement device and elevators.

"Training - DFP" means training conducted under the DFP, Regulations Establishing Certification Standards for Fire Inspectors (19 VAC 15-20).

"TRB" means the Virginia State Building Code Technical Review Board established under § 36-108 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13 VAC 5-61-40 et seq.).

~~"TRB" means the Virginia State Building Code Technical Review Board established under § 36-108 of the Code of Virginia.~~

"VADR" means the Virginia Amusement Device Regulations (13 VAC 5-31-40 et seq.).

B. Words and terms used in this chapter that are defined in the USBC, VADR, or SFPC shall have the meaning ascribed to them in those regulations unless the context clearly indicates otherwise.

13 VAC 5-21-20. Purpose.

~~The purpose of this chapter is to establish categories of and requirements for obtaining certificates of competence to be issued by the BHCD concerning the content, application and intent of specified subject areas of the USBC, VADR and SFPC to present or prospective personnel of local governments and to any other persons seeking to be qualified to perform inspections under Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia and any regulations adopted thereunder. standards to be used by persons desiring to be~~

~~issued a BHCD certificate and by DHCD in the evaluation and determination of a person's eligibility for the issuance of BHCD certificates.~~

13 VAC 5-21-31. Proof of qualifications for certificate and examination.

A. Applicants for a BHCD certificate ~~prior to certification shall provide proof of qualifications for certification as required to DHCD for verification, a written endorsement from the code official, code official's supervisor, or in the case of nongovernment employees, other such documentation as proof of compliance with the qualification section as listed in the USBC, SFPC or VADR as applicable for each type of certificate sought. Such proof of qualifications shall be provided to and verified by DHCD prior to BHCD certification.~~

B. ~~In addition to the training requirements established by this chapter,~~ Applicants shall provide proof of successful completion of approved examinations for each type of certificate sought. ~~The following is the DHCD shall develop a training and certification guidance document that shall list of the approved testing agencies and examinations that meet nationally accepted standards for each type of certificate. For information on approved testing agencies and examinations contact: DHCD, Division of Building and Fire Regulation, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7180.~~

~~1. All categories of BHCD certificates except amusement device inspector, fire prevention code official and fire prevention inspector:~~

~~The BOCA Certification Program/2000, First Edition, published by Building Officials and Code Administrators International, Inc., 4051 W. Flossmoor Rd., Country Club Hills, IL 60478-5795, toll free number 1-800-323-1103.~~

~~Exception, Elevator inspectors certified in accordance with the ASME QEI-1 Standard by organizations accredited by ASME International, Elevator Inspector Certification Organization Accreditation Program shall be deemed acceptable as an alternate. ASME International, Three Park Avenue, New York, NY 10016-5990, toll free number 1-800-843-2763.~~

~~2. Amusement device inspector:~~

~~Exporior, 3813 Gaskins Road, Richmond, VA 23233, toll free number 1-800-356-3381.~~

~~3. Fire prevention code official and fire prevention inspector:~~

~~Virginia Department of Fire Programs (DFP), James Monroe Building, 101 N. 14th St., 18th Floor, Richmond, VA 23219-3684, telephone (804) 371-0220.~~

C. Upon written request by the applicant ~~with the endorsement as required under subsection A of this section,~~ the BHCD DHCD may approve alternate testing agencies and examinations or may approve any combination of education and experience which would in other ways demonstrate adequate knowledge for the type of certificate sought. ~~Note: Future amendments to the list of approved testing agencies and examinations do not automatically become part of this chapter; however, the BHCD shall consider such amendments in deciding whether a requested alternate should be granted.~~

Under § 36.139 of the Code of Virginia, the DHCD may also approve other training, experience and educational offerings as equivalent to and in place of code academy training. The types of such combinations of education and experience may include military training, college classes, technical schools, or long-term work experiences. DHCD may convene meetings of the BCAAC to review and advise the DHCD concerning the appropriateness of applications for certification under this section.

13 VAC 5-21-41. Certification categories and training requirements.

A. DHCD shall develop a training and certification guidance document that shall list the categories of BHCD certificates; Code Academy training and subject area requirements are as provided for in the following table:

Categories of BHCD certificates	Code Academy training requirements	Subject area requirements
	Core and _____ modules	Content, application and intent of all subject areas of the _____
Building code official	Advanced	USBC
Fire prevention code official	Advanced and the 1031 school administered by the DFP	SFPC
Building maintenance code official	Advanced and property maintenance	USBC – existing structure maintenance
Building plans examiner	Building plan review	USBC – structure plans and specifications review, except plumbing, electrical and mechanical
Fire protection plans examiner	Building plan review	USBC – fire-resistant materials and construction, fire protection system and means of egress plans and specifications review
Building inspector	Building code	USBC – structure inspections, except plumbing, electrical and mechanical
Fire prevention inspector	The 1031 school administered by the DFP	SFPC – structure and property inspections
Fire protection inspector	"only core module"	USBC – fire-resistant materials and construction, fire protection system and means of egress
Building maintenance inspector	Property maintenance	USBC relating to existing structure maintenance inspections
Plumbing plans examiner	Plumbing	USBC – plumbing system plans and specifications review
Plumbing inspector	Plumbing	USBC – plumbing system inspections
Electrical plans examiner	Electrical	USBC – electrical system plans and specifications review
Electrical inspector	Electrical	USBC – electrical system inspections
Mechanical plans examiner	Mechanical	USBC – mechanical system plans and specifications review
Mechanical inspector	Mechanical	USBC – mechanical system inspections
Combination inspector	BHCD certification as a building, plumbing, electrical, and mechanical inspector	USBC – structure inspections, except Use Group R-3 or R-4
Building inspector 1 – &2-family dwellings	1 – & 2-family dwelling building	USBC – Use Group R-3 or R-4 structure inspections, except plumbing, electrical and mechanical
Plumbing inspector 1 – & 2-family dwellings	1 – & 2-family dwelling plumbing	USBC – Use Group R-3 or R-4 plumbing inspections

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Electrical inspector 1- &2-family dwellings	1- & 2-family dwelling electrical	USBC - Use Group R-3 or R-4 electrical inspections
Mechanical inspector 1- &2-family dwellings	1- & 2-family dwelling mechanical	USBC - Use Group R-3 or R-4 mechanical inspections
Combination inspector 1- &2-family dwellings	BHCD certification as a 1- &2-family dwelling building, plumbing, electrical, and mechanical inspector	USBC - Use Group R-3 or R-4 structure inspections
Elevator inspector	"only core module"	USBC - elevator inspections
Amusement device inspector	Basic amusement device	VADR

For information on categories of BHCD certificates contact: DHCD, Division of Building and Fire Regulation, 501 N. 2nd St., Richmond, VA 23219, (804) 371-7180.

Under § 36-139 et seq. of the Code of Virginia, the DHCD may approve other Code Academy equivalent educational training modules.

B. Prior to receiving certification, all applicants for BHCD certification shall attend and complete the code academy core module and shall also attend and complete the applicable management, technical or DFP training as outlined in the training and certification guidance document.

Exception: Applicants for BHCD provisional certification shall comply with 13 VAC 5-21-51 C.

13 VAC 5-21-51. Certification.

A. A certification certificate under this chapter shall be issued when the BHCD DHCD determines a candidate has complied with the applicable provisions of this chapter.

B. All certificate holders certified by the BHCD since June 1978 are still certified unless revoked and shall be classified as active or inactive. Any certificate holder classified as inactive shall be deemed not to meet the certification requirements of the applicable USBC, VADR, or SFPC. Such inactive certificate holder may attend complete DHCD-designated training and apply to become an active certificate holder.

C. Candidates seeking a BHCD certificate in accordance with this chapter Any person failing under any one or more of the following circumstances:

1. A noncertificate holder directed by the BHCD to obtain certification;
2. A candidate seeking certification based on demonstration of adequate knowledge and experience for the certificate being sought; or
3. The DHCD or DFP has not provided or offered the required training under 13 VAC 5-21-41 B or approved appropriate alternate training.

May be issued a provisional certificate under the following conditions:

- 4- a. The candidate has satisfactorily completed the Code Academy core module.

2. b. The candidate has complied with the proof of examination completion and application for certification requirements 13 VAC 5-21-31 A for proof of qualifications.

3- An appropriate code official, county, city or town manager or other code inspection agency official certifies the candidate is trained and competent to perform the candidate's assigned code enforcement duties. c. The candidate has complied with 13 VAC 5-21-41.

4. d. Such certification is nonrenewable and shall expire one year from the date of issuance.

Exception: Such provisional certification is renewable and shall not expire one year from the date of issuance when the DHCD or DFP has not provided or offered the required Code Academy training technical module. However, under 13 VAC 5-21-41 B, the DHCD may approve appropriate alternate training.

When a provisional certificate holder has complied with the provisions of 13 VAC 5-21-31 B for a regular BHCD certificate, DHCD shall issue such certificate.

D. A certification under this chapter may be denied when the BHCD determines a candidate has not complied with the applicable provisions of this chapter.

E. All certificate holders certified by the BHCD shall attend continuing education training as specified by DHCD in order to maintain status as an active certificate holder.

13 VAC 5-21-61. Sanctions; peer review; petition.

A. When the BHCD determines a certificate holder, a technical assistant or an inspector of a code inspection agency or code review agency has failed to (i) maintain a minimally acceptable level of competence under § 36-137(6) of the Code of Virginia or, (ii) comply with an order issued by the BHCD or TRB, or (iii) failed to obtain the applicable BHCD certification as may be required under the applicable USBC, VADR, or SFPC, the BHCD may impose any of the following sanctions on a such certificate holder, technical assistant or inspector.

1. A warning letter under this chapter may be issued when the BHCD determines a certificate holder, technical assistant or an inspector of a code inspection agency or code review agency committed any act prohibited by this chapter. The documentation that serves as the basis for such letter shall be made a part of the certification file on the certificate holder, technical assistant or inspector.

2. Attendance at special training under this chapter may be ordered when the BHCD determines a certificate holder is ~~inadequately knowledgeable or trained~~ lacks an adequate level of knowledge, skill or training to practice in the specific area of certification. A probation period may also be imposed by the BHCD upon completion of all such training.

3. A certificate issued under this chapter may be revoked or suspended by the BHCD.

B. An advisory review committee may be appointed by the BHCD to advise the department concerning the appropriateness of sanctions proposed against a certificate holder, *technical assistant or an inspector of a code inspection agency or code review agency* who has allegedly committed any act prohibited by this chapter. The advisory review committee shall serve and meet only when requested by the BHCD ~~and~~. *The advisory review committee shall comply with the following:*

1. The advisory review committee shall consist of five certificate holders.
2. The advisory review committee shall select one of its members to serve as chairman.
3. A member shall not take part in a review in which that member has any personal, professional or financial interest.
4. The Director of DHCD shall designate a qualified staff person to serve as secretary to the advisory review committee and shall provide necessary staff support. The secretary shall file a detailed record of all meetings and recommendations with the BHCD.
5. There shall be no compensation of members, except for reimbursement of travel expenses as provided for by law.
6. The advisory review committee shall meet within 10 working days upon notice from the chairman.

C. Following a certification denial, warning letter, special training order, or revocation or suspension of a certificate, the candidate ~~or~~, certificate holder, *technical assistant or inspector of a code inspection agency or code review agency* may petition the BHCD for issuance of certification, dismissal of such warning or order, or for reinstatement *of a certificate* upon good cause shown or as a result of substantial new evidence having been obtained that would alter the determination reached by the BHCD.

D. The BHCD shall cause an examination, investigation or review of the evidence and shall respond within 60 days of receipt of the petition to the candidate ~~or~~, certificate holder, *technical assistant or inspector of a code inspection agency or code review agency* regarding such petition.

CHAPTER 80.

VIRGINIA STANDARDS GOVERNING OPERATION OF FOR INDIVIDUAL AND REGIONAL CODE ACADEMIES/1990.

13 VAC 5-80-10. Definitions.

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

"BHCD" means the Virginia Board of Housing and Community Development.

"Certificate of Accreditation" means the certificate issued to an individual or regional code academy that accredits that code academy to conduct educational programs for persons seeking to become BHCD-certified for enforcement of Virginia's building- and fire-related regulations.

"Code Academy" means an educational institution established in accordance with § 36-137 of the Code of Virginia which that is accredited by DHCD to conduct classes to prepare an individual to pursue an occupation in the building inspection profession relating to enforcement of the USBC, VADR and SFPC, or to upgrade an individual in technical phases of building regulations and codes the USBC, VADR and SFPC.

"Department" "DHCD" means the Virginia Department of Housing and Community Development.

"Operator" means the person designated as the executive official in charge of the code academy.

"SFPC" means the Virginia Statewide Fire Prevention Code (13 VAC 5-51).

"Train the Trainer" means the DHCD training provided for code academy instructors.

"TRB" means the Virginia State Building Code Technical Review Board established under § 36-108 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13 VAC 5-62).

"VADR" means the Virginia Amusement Device Regulations (13 VAC 5-31).

13 VAC 5-80-20. Authority. (Repealed.)

~~The standards governing operation of individual and regional code academies are adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, § 36-139 of the Code of Virginia.~~

13 VAC 5-80-30. Adoption. (Repealed.)

~~These standards were adopted by order of the Board of Housing and Community Development on November 19, 1990. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development and is available for public inspection.~~

13 VAC 5-80-40. Appeals.

A. Any operator aggrieved by a decision of the department DHCD may file an appeal to the State Building Code Technical Review Board TRB. Such appeal shall be filed within 30 calendar days of the issuance of the department's DHCD's written decision. *A copy of the decision of DHCD to be appealed shall be submitted with the application for appeal. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of DHCD's decision.*

Proposed Regulations

B. Procedures of the TRB are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom.

13 VAC 5-80-50. Listing of certified academies.

The department DHCD shall maintain a list of code academies that hold valid Certificates of Accreditation, which shall be available for public review.

13 VAC 5-80-60. Application for accreditation.

A. Any Code Academy seeking a Certificate of Accreditation shall submit the information required by these standards, on forms provided by the department DHCD, 120 calendar days prior to the date for which approval is requested.

B. The operator shall reimburse the department DHCD for the cost of processing and monitoring the accreditation.

C. The following information shall be submitted as part of the application:

1. A budget documenting the financial resources available to equip, maintain, and operate the code academy;
2. The educational and teaching qualifications of the operator and instructors;
3. The individual courses of instruction which will be offered, and the purpose of such instructions;
4. A listing of any equipment available to aid instruction in each field;
5. The maximum anticipated enrollment to be accommodated with the equipment available in each specified field, and the ratio of students to instructors which shall not exceed 50 to 1 for lecture format courses, and 20 to 1 for interactive courses;
6. The locations where such instruction will take place;
7. Any additional information that the department DHCD may deem necessary to carry out the provisions of these standards this chapter.

D. Each application for a Certificate of Accreditation shall also include the following commitments:

1. Conduct the Code Academy in accordance with all standards and regulations promulgated by the department DHCD and BHCD;
2. Permit the department DHCD to inspect the Code Academy at any time, and to provide all information pertaining to the activities of the Code Academy or its financial condition as requested by the department DHCD;
3. The levy retained under § 36-137 of the Code of Virginia shall not be used for purposes other than directly relating to the operation of the Code Academy;
4. Carry forward no more than 25% of the previous fiscal year's levy;

5. In the event that the Code Academy should close, a list of enrolled students who have not completed their program of

study, and the amount of the course which they have completed, shall be submitted to the department DHCD;

6. 5. Maintain current, complete and accurate student records, including a record of all hours of work completed by each student.

13 VAC 5-80-70. Certificate display.

The Certificate of Accreditation shall be displayed on the premises of the Code Academy in an area which is readily accessible to the public.

13 VAC 5-80-80. Renewal of certificate.

A. Every Code Academy shall apply for renewal of its Certificate of Accreditation no later than April 15 of each year, on forms provided by the department DHCD. The application for renewal shall include a current training schedule.

B. Every Certificate of Accreditation shall expire upon failure to obtain renewal by June 30 of each year.

13 VAC 5-80-90. Personnel qualifications.

A. Any director of the Code Academy shall demonstrate a working knowledge of Building Code USBC, VADR and SFPC training-related technology and shall possess a minimum of two years of supervisory experience. Managerial experience and a college degree from an accredited college or university are preferred.

B. All instructors shall have knowledge and experience in the trade or profession in which the instructor teaches. Instructors shall have DHCD-approved experience as an instructor, or shall have successfully completed a "Train the Trainer" or DHCD-approved equivalent course.

C. The department DHCD shall be notified of any staff changes within the code academy subsequent to receiving accreditation. Staff changes forwarded to the department DHCD shall include qualifications of the instructors.

13 VAC 5-80-100. Instructional program.

The instructional program shall consist of those courses and subjects, related to the technical provisions of the national model codes and referenced standards, which the Code Academy has been accredited to offer, and be consistent with the instructional programs offered by the department DHCD. The department DHCD reserves the sole right to provide programs based on Article Chapter 1 of the Virginia Uniform Statewide Building Code USBC, VADR and SFPC. Attendance at any local or regional Code Academy shall not satisfy mandatory attendance at programs administered by the department DHCD on any changes to the Virginia Uniform Statewide Building Code USBC, VADR or SFPC.

13 VAC 5-80-110. Application for additional courses.

The operator shall present a supplementary application to the department DHCD for approval of additional courses of instruction.

13 VAC 5-80-120. Withdrawal of course approval and revocation, suspension, or refusal to renew a certificate of accreditation.

A. ~~The department DHCD~~ may withdraw course approval, or revoke, suspend, or refuse to renew, any *code academy's* Certificate of Accreditation for any of the following:

1. Violation of any provision of ~~these standards this chapter~~;
2. Furnishing false, misleading, or incomplete information to ~~the department DHCD~~, or failure to furnish information requested by ~~the department DHCD~~ within a reasonable time;
3. Presenting ~~any information to students which a student~~ *any information that* is false, misleading or fraudulent;
4. Failure to maintain the premises in a safe and sanitary condition as required by law, state regulation or local ordinance;
5. Failing to maintain adequate financial resources to satisfactorily conduct the courses of instruction offered, or to retain an adequate, qualified staff.

B. ~~The department DHCD~~ shall notify the operator by certified mail 30 calendar days prior to the effective date of any withdrawal of course approval, or revocation, suspension, or refusal to renew, a Certificate of Accreditation.

13 VAC 5-80-130. Return of certificate.

Any Certificate of Accreditation issued to ~~an~~ a *Code Academy* shall be returned to ~~the department DHCD~~ immediately, by registered mail, for the following:

1. Revocation; or
2. Voluntary closure of institution; or
3. Any other cause deemed sufficient by ~~the department DHCD~~.

13 VAC 5-80-140. Records.

~~The department DHCD~~ shall maintain records on all actions, findings and recommendations concerning the approval, revocation, suspension, or refusal to renew any Certificate of Accreditation. All records shall be available to the public, upon request.

13 VAC 5-80-150. ~~Transmitting documents and other materials. (Repealed.)~~

~~All applications, forms, appeals, letters or other papers shall be addressed to the Supervisor of Training Programs, Department of Housing and Community Development, 205 North Fourth Street, Richmond, VA 23219.~~

VA.R. Doc. Nos. R02-168 and R02-169; Filed November 13, 2002, 11:20 a.m.

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Title of Regulation: **13 VAC 5-31. Virginia Amusement Device Regulations (amending 13 VAC 5-31-10, 13 VAC 5-31-40, 13 VAC 5-31-50, 13 VAC 5-31-60, 13 VAC 5-31-90, 13 VAC 5-31-100, and 13 VAC 5-31-110).**

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public Hearing Date: December 10, 2002 - 10 a.m.

Public comments may be submitted until January 31, 2003. (See Calendar of Events section for additional information)

Basis: Section 36-98.3 of the Code of Virginia, gives the board the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices.

Purpose: The proposed amendments by the board are considered to be necessary to meet the General Assembly's requirement that the provisions of the Building Code, which includes amusement devices, protect the health, safety and welfare of the residents of the Commonwealth.

Substance: The proposed amendments change the current status of law as follows:

1. Clarify that the provisions of the Uniform Statewide Building Code, including but not limited to all administrative procedures, shall apply in the administration and enforcement of this chapter and to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia.
2. Update the incorporated by reference standards to the latest editions of the American National Standards Institute (ANSI) for the regulation of passenger tramways and the American Society for Testing and Materials (ASTM) for the regulation of amusement devices.
3. Now regulate "go-karts" by the adoption of the new referenced standards.
4. Limit the permit fee charged by the local building department to operate an amusement device to a "maximum of \$150 for one site" when the inspection for obtaining a certificate of inspection for that device is conducted by a private inspector.
5. Allow appeals to the State Building Code Technical Review Board following a final determination by the local board of building code appeals.

Issues: The primary advantage for the public of implementing the new regulation should be less burdensome and intrusive regulations. The agency sees no disadvantages for the public or the Commonwealth.

Fiscal Impact: The fiscal impacts for the proposed regulation are as follows:

- (1) The projected cost increase to the state to implement and enforce the proposed regulation is zero.
 - (a) The fund source/fund detail is not applicable.
 - (b) The budget activity with a cross-reference to program and subprogram is not applicable.
 - (c) The delineation of one-time versus on-going expenditures is not applicable.
- (2) The projected cost of the regulation on localities may be zero.

Proposed Regulations

(3) A description of the individuals, businesses or other entities that are likely to be affected by the regulation is unknown.

(4) The agency's best estimate of the number of such entities that will be affected is unknown.

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The General Assembly mandates in § 36-98.3 of the Code of Virginia that the Virginia Board of Housing and Community Development promulgate regulations pertaining to the construction, maintenance, operation, and inspection of amusement devices.

The regulation proposes to (i) limit the permit fee charged by the local building department to operate an amusement device to a maximum of \$150 per site when the inspection is done by private inspectors and (ii) regulate go-karts through the adoption of new referenced standards.

The proposed regulation also makes clarifications to the existing regulation, including clarifying that the provisions of the Uniform Statewide Building Code will apply to amusement devices to the extent that they are not superseded by this regulation and clarifying that appeals regarding amusement devices can be made to the State Building Code Technical Review Board following a final determination by the local board of building code appeals.

Estimated economic impact. Under current policy, fees charged by local building departments include the issuance or renewal of a permit and any associated inspections. If the owner of the amusement device chooses to have the inspection done by a private inspector, the fees charged for the issuance or renewal of a permit are 50% of what it would have been if the local building official had carried out the inspection. The proposed regulation seeks to impose a maximum \$150 that local building departments can charge for the issuance or renewal of a permits for amusement devices operating on any one site when the inspection is done by a private inspector. The net economic impact of the proposed change will depend on the average cost per site incurred by DHCD in issuing or renewing permits. If it is greater than \$150, owners and operators of amusement devices will benefit at the expense of DHCD. If it is less than or equal to \$150, the proposed change will provide cost savings to the owners and operators while imposing no additional cost on DHCD.

The proposed regulation updates standards for the regulation of amusement devices to the latest editions of the American Standards Institute and American Society for Testing and Materials. As a result of updating the regulation to national standards, inspections and permits are required of owners and operators of go-karts. The proposed change would impose additional costs of inspections and permits on the owners and operators of go-karts. Additional cost could also be incurred in retraining amusement device inspectors. The net economic impact would depend on whether the additional safety benefits from the proposed change are greater or less than the additional costs incurred. Since there is little or no data on injuries and deaths related to the operation of go-karts, no specific estimate of the net economic impact of this change is possible at this time.

Businesses and entities affected. The proposed changes to the regulation could potentially affect owners and operators of go-karts in Virginia. It could also affect the 344 amusement device inspectors certified to operate in Virginia.

Localities particularly affected. The proposed changes to the regulation affect localities throughout the Commonwealth.

Projected impact on employment. The proposed changes to the regulation will have no significant impact on employment in Virginia. As a result of updating standards, amusement device inspectors may now be required to go through additional training in order to get certified.

Effects on the use and value of private property. The \$150 cap on permit fees could potentially reduce the cost of operating amusement parks or other sites with multiple rides. The incorporation of new standards would impose an additional cost on go-kart owners and operators of having inspections and applying for permits. The potential impact on property values is not known because the increased compliance cost must be balanced against the benefit to the go-kart industry of having a reputation for safe operation.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis (EIA) prepared by the Virginia Department of Planning and Budget regarding the proposed amendments to the Virginia Amusement Device Regulations (13 VAC 5-31).

Summary:

The proposed amendments (i) clarify that the provisions of the Uniform Statewide Building Code shall apply to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia; (ii) update the incorporated by reference standards to the latest editions of the American National Standards Institute (ANSI) for the regulation of passenger tramways and the American Society for Testing and Materials (ASTM) for the regulation of amusement devices; (iii) regulate "go-karts" by the adoption of new referenced standards; (iv) limit the permit fee charged by the local building department to operate an amusement device; and (v) allow appeals to the State Building Code Technical Review Board following a final determination by the local board of building code appeals.

13 VAC 5-31-10. Purpose.

A. The purpose of this chapter is to establish standards for the regulation, design, construction, maintenance, operation, and inspection of amusement devices.

B. The provisions of the USBC, *including but not limited to all administrative procedures shall apply in the administration and enforcement of this chapter* and to amusement devices to the extent ~~they~~ *such provisions* are not superseded by the provisions of this chapter.

13 VAC 5-31-40. Incorporated standards.

A. The following standards are hereby incorporated by reference for use as part of this chapter:

1. American National Standards Institute (ANSI) Standard No. B77.1-90 for the regulation of passenger tramways; and
2. American Society for Testing and Materials (ASTM) Standard Nos. F698-94, ~~F747-95~~ F747-97, F770-93, F846-92, ~~F853-93~~ F853-98, F893-87, ~~F1159-94~~ F1159-97a, ~~F1193-95~~ F1193-97, F1305-94, F1950-99, F1957-99 and F2007-00 for the regulation of amusement devices.

The standards referenced above may be procured from:

ANSI	ASTM
11 W. 42nd Street	100 Barr Harbor Dr.
New York, NY 10036	West Conshohocken, PA
	49428-2956 19428-2959

B. The provisions of this chapter govern where they are in conflict with any provisions of the standards incorporated by reference in this chapter.

C. The following requirements supplement the provisions of the ASTM standards incorporated by reference in this chapter:

1. The operator of an amusement device shall be at least 16 years of age, except when the person is under the supervision of a parent or guardian and engaged in activities determined not to be hazardous by the Commissioner of the Virginia Department of Labor and Industry;
2. The amusement device shall be attended by an operator at all times during operation except that (i) one operator is permitted to operate two or more amusement devices provided they are within the sight of the operator and operated by a common control panel or station and (ii) one operator is permitted to operate two kiddie rides with separate controls provided the distance between controls is no more than 35 feet and the controls are equipped with a positive pressure switch; and
3. The operator of an amusement device shall not be (i) under the influence of any drugs which may affect the operator's judgment or ability to assure the safety of the public or (ii) under the influence of alcohol.

D. Where an amusement device was manufactured under previous editions of the standards incorporated by reference in this chapter, the previous editions shall apply to the extent that they are different from the current standards.

13 VAC 5-31-50. Certification of amusement device inspectors.

A. Any person, including local building department personnel, inspecting an amusement device relative to a certificate of inspection shall possess a valid certificate of competence as an amusement device inspector from the BHCD.

B. Local building department personnel enforcing this chapter *and private inspectors* shall attend periodic training courses as designated and ~~provided~~ *required* by DHCD.

13 VAC 5-31-60. Appeals.

Appeals from the local building department concerning the application of this chapter shall be made to the *local* board of *building code* appeals established by the USBC. Application for appeal shall be filed with the local building department within 14 *calendar* days after *receipt* of the decision of the local building department. The board of appeals shall hear the appeal within seven *calendar* days after the application for appeal is filed. *After final determination by the board, any person who was a party to the appeal may appeal to the Technical Review Board within 14 calendar days of receipt of the decision to be appealed. Such appeal shall be in accordance with the procedures established in the USBC, under the authority granted by § 36-98.3 of the Code of Virginia where the provisions of Chapter 6 of Title 36 of the Code of Virginia and the USBC apply to amusement devices.*

NOTE: Because of the short time frames normally associated with amusement device operations, DHCD staff will be available to assist in finding a timely resolution to disagreements between owners or operators and the local building department upon request by either party.

13 VAC 5-31-90. Accidents.

In the event of an accident involving serious injury or death the owner or operator shall:

1. Contact the responsible local building department as soon as practical, *but not later than the next work day*;
2. Cease operation until the responsible local building department approves resuming operation, except that approval from the responsible local building department for resuming operation is not required if the investigation required by subdivision 3 of this section provides reasonable evidence that the serious injury or death was not related to malfunction or improper operation;
3. Conduct an investigation to include (i) an examination of the accident scene; (ii) an interview of any witnesses or persons involved in the accident; and (iii) compiling a written report. The report shall contain a summary of the investigation and a description of the device involved, including the name of the manufacturer, the serial number and the date of manufacture, if available; and
4. Submit the investigation report to the responsible local building department within 24 hours after the time of the accident except that if its office is closed during the 24-hour period, the report shall be submitted within four hours after the office reopens.

Proposed Regulations

13 VAC 5-31-100. Local building department.

The local building department's official or representative shall be permitted to do the following relative to an amusement device or devices intended to be, or being, operated at a site within their jurisdiction:

1. Collect fees for a permit to operate, renewal of a permit to operate and inspections conducted by staff to issue a certificate of inspection. The total for fees associated with one permit to operate and any associated inspections or one renewal of a permit to operate and any associated inspections shall not exceed the following:
 - a. \$15 for each kiddie ride under the permit;
 - b. \$25 for each circular ride or flat-ride under the permit which can be inspected from less than 20 feet above ground; and
 - c. \$45 for each other type of amusement device under the permit.

Notwithstanding the above, the fee for each amusement device under the permit shall be reduced by 50% when the inspection for obtaining a certificate of inspection for that device is conducted by a private inspector, *and shall not exceed a maximum of \$150 for one site*;

2. In addition to the above, require permits and charge fees as appropriate under the USBC for amusement devices which are being initially constructed in whole or in part at a site within the jurisdiction for intended operation at that site. This authorization does not apply to an amusement device which is only being reassembled or undergoing a major modification at a site or being moved to a site for operation;
3. Approve modifications of this chapter upon determination that the public health, safety and welfare are assured;
4. Conduct an inspection at any time when the device would normally be open for operation, or at any other time if permission is granted by the owner or operator, for compliance with this chapter; and
5. Issue an order to temporarily cease the operation of an amusement device upon determination that it may be unsafe or otherwise endanger the public. The temporary order shall remain in effect until a new certificate of inspection is issued.

13 VAC 5-31-110. Enforcement.

The local building department's official or representative shall enforce the provisions of this chapter as provided herein and as interpreted by the State Building Code Technical Review Board (TRB).

The local building department's official or representative shall be responsible for the following relative to an amusement device or devices intended to be, or being, operated at a site within their jurisdiction:

1. Approving or rejecting any application made for a permit to operate, or renewal of a permit to operate, within five days after submittal and issuing or renewing the permit when appropriate. The permit shall be issued or renewed for the length of time the device or devices will be operating

at the site, except that if the length of time exceeds one year, the permit or renewal shall expire after one year. The permit to operate or renewed permit to operate shall state (i) the estimated length of time that the device or devices will be operated at the site; (ii) the name of, or otherwise identify, the device or devices covered by the permit; and (iii) the date when the permit expires;

2. When a certificate of inspection is sought by the owner or operator, conducting an inspection to assure compliance with this chapter unless the owner or operator is providing an approved private inspector. If the owner or operator has given reasonable notice that a certificate of inspection is sought and designated a specific day for the inspection, then the inspection shall be conducted on that day;

3. Accepting a written report of inspection from an approved private inspector;

4. When in receipt of a written report of inspection from an approved private inspector or after assuring compliance with this chapter through inspection, completing a certificate of inspection distributed by DHCD and causing the certificate to be posted or affixed on or in the vicinity of the device in a location visible to the public;

5. Accepting an existing certificate of inspection for a kiddie ride in which (i) the passenger height is limited to 54 inches or less; (ii) the capacity is 12 passengers or less; and (iii) the assembly time is two hours or less, provided the existing certificate of inspection for the ride was issued by a local building department in this Commonwealth less than one year prior to the date for which a certificate of inspection is sought, regardless of whether disassembly has occurred. Notwithstanding the above, if the kiddie ride is determined to be in violation of this chapter, the existing certificate of inspection shall not be valid; and

6. Issuing an order to cease operation upon discovery or notification that an accident involving the device has caused serious injury or death, except where the owner or operator has determined that the serious injury or death was not related to malfunction or improper operation of the device. Whether or not the order to cease operation has been issued, the official or representative shall conduct an inspection, or accept an inspection report from an approved private inspector, to assure the device complies with this chapter and is safe for operation.

VA.R. Doc. No. R02-171; Filed November 13, 2002, 11:19 a.m.

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Title of Regulation: 13 VAC 5-51. Virginia Statewide Fire Prevention Code (amending 13 VAC 5-51-11, 13 VAC 5-51-21, 13 VAC 5-51-31, 13 VAC 5-51-41, 13 VAC 5-51-51, 13 VAC 5-51-61, 13 VAC 5-51-81, 13 VAC 5-51-91, 13 VAC 5-51-101, 13 VAC 5-51-111, 13 VAC 5-51-121, 13 VAC 5-51-130, 13 VAC 5-51-131, 13 VAC 5-51-133, 13 VAC 5-51-135, 13 VAC 5-51-136, 13 VAC 5-51-140, and 13 VAC 5-51-150; adding 13 VAC 5-51-85, 13 VAC 5-51-129, and 13 VAC 5-51-132; repealing 13 VAC 5-51-71, 13 VAC 5-51-160, 13 VAC 5-51-170, 13 VAC 5-51-180, 13 VAC 5-51-181, 13 VAC 5-51-182, 13 VAC 5-51-190, and 13 VAC 5-51-200).

Statutory Authority: § 27-97 of the Code of Virginia.

Public Hearing Date: December 10, 2002 - 10 a.m.

Public comments may be submitted until January 31, 2003.

(See Calendar of Events section for additional information)

Agency Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

Basis: The statutory authority for the Board of Housing and Community Development to promulgate the regulations is found in the General Assembly's mandate to the board in § 27-97 of the Code of Virginia, which empowers the board to adopt and promulgate a Statewide Fire Prevention Code, which shall be cooperatively developed with the Fire Services Board.

Purpose: The amendments to this regulation are considered required to fulfill the mandate that the purposes of the Statewide Fire Prevention Code are to provide for statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling, and use of substances, materials and devices, including fireworks, explosives and blasting agents, wherever located.

Substance: The key provisions of the regulation that change the current status of law are the following:

1. To update the referenced 1996 Building Officials and Code Administrators International, Inc. (BOCA) construction model codes and standards to the 2000 editions of the International Code Council (ICC).
2. To add a provision that in accordance with sanctions prescribed by the Virginia Certification Standards (13 VAC 5-21) the fire official and assistants may be held responsible for failure to discharge any duty required by law or by the SFPC.
3. To add a requirement that the fire official must notify the DHCD within 60 days of the employment or contract of assistants for enforcement of the SFPC.
4. To change the time allowed for a person employed by or under contract to an enforcing agency for enforcing the SFPC shall be certified in the appropriate subject area in accordance with the Virginia Certification Standards (13 VAC 5-21) from three years to one and a half years.
5. To add a requirement that fire apparatus access roads may be provided and maintained in accordance with adopted local ordinances that establish fire apparatus access road requirements and such requirements shall be identified to the owner or his agent prior to the building official's approval of the building permit.
6. To amend the fees for permits issued by the State Fire Marshal's office for the storage, use, sale or manufacture of

explosives or blasting agents, and for the display of fireworks on state-owned property as follows:

- a. From \$50 per year per site to possess, store and dispose of explosives and blasting agents to \$100 per year per magazine to store explosives and blasting agents.
- b. From \$75 per year per city or county to use explosives and blasting agents to \$150 per year per city or county to use explosives and blasting agents.
- c. From no fee for the manufacture and sale of fireworks, explosives and blasting agents (i) to \$150 per year to sell explosives and blasting agents, (ii) to \$200 per year to manufacture explosives, blasting agents and fireworks, (iii) to \$200 per event for fireworks, pyrotechnics or proximate audience displays conducted indoor of any state-owned buildings and (iv) to \$100 per event for fireworks, pyrotechnics or proximate audience displays conducted out-of-doors on any state-owned property.

7. To add a fee of \$150 for obtaining or renewing a background clearance card from DHCD.

8. To delete a requirement that the applicant pay all additional fees charged by other agencies for fingerprinting and for obtaining a national criminal history record check through the Central Criminal Records Exchange to the Federal Bureau of Investigation.

9. To amend the fee for obtaining or renewing a blaster certificate from DHCD from \$30 to \$150.

Issues: The primary advantage for the public of implementing the proposed amendments is that updating referenced model codes and standards to the latest editions should be less burdensome and intrusive. The agency sees no disadvantages for the public or the Commonwealth.

Fiscal Impact: Anticipated fiscal impacts for the proposed regulation are as follows:

1. The projected cost increase to the state to implement and enforce the proposed regulation is zero.
 - a. The fund source/fund detail is not applicable.
 - b. The budget activity with a cross-reference to program and subprogram is not applicable.
 - c. The delineation of one-time versus ongoing expenditures is not applicable.
2. The projected cost of the regulation on localities may be zero.
3. A description of the individuals, businesses or other entities that are likely to be affected by the regulation is unknown.
4. The agency's best estimate of the number of such entities that will be affected is unknown.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process

Proposed Regulations

Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The General Assembly mandates in § 27-97 of the Code of Virginia that the Virginia Board of Housing and Community Development (BHCD) adopt and promulgate a Statewide Fire Prevention Code (SFPC), developed cooperatively with the Fire Services Board.

The proposed regulation (i) updates the referenced 1996 Building Officials and Code Administrators International, Inc (BOCA) fire prevention model codes and standards to the 2000 editions of the International Code Council (ICC), (ii) increases the fees for permits issued by the State Fire Marshal for the storage, use, sale, or manufacture of explosives and blasting agents and for the display of fireworks on state-owned property, (iii) adds a fee of \$150 for obtaining or renewing a background clearance card from the Department of Housing and Community Development (DHCD), (iv) increases the fee for obtaining or renewing a blaster certificate from DHCD from \$30 to \$150, (v) establishes a minimum corporate surety bond or public liability insurance policy of \$500,000 to be filed by the applicant with the local jurisdiction before a permit for the storage, use, sale, or manufacture of explosives and blasting agents is issued, (vi) shortens the time allowed for fire officials and persons employed by or under contract to an enforcing agency to get certified in the appropriate subject area, (vii) requires fire officials to notify the DHCD within 60 days of the employment of assistants to enforce the SFPC, (viii) requires that local officials identify any fire apparatus access road requirements prior to the issuance of a building permit, and (ix) requires fire hydrant systems to be located and installed according to written standards of the locality.

The proposed regulation also adds definitions, deletes unnecessary language, and makes clarifications to the existing regulation (including that fire officials and technical assistants will face sanctions as described in the Virginia Certification Standards when they fail to discharge their duties).

Estimated economic impact. (1) The proposed regulation updates the referenced 1996 BOCA fire prevention model codes and standards to the 2000 editions of the ICC. The economic impact of updating model codes and standards is not likely to be significant. Approximately 80-85% of the BOCA codes and standards were absorbed into the ICC and the new model codes and standards are not expected to significantly alter fire prevention practices in Virginia.

(2) The State Fire Marshal's office is responsible for issuing permits relating to the storage, use, sale, and manufacture of explosives, blasting agents, and fireworks in localities that do

not enforce the SFPC (the responsibility to issue permits lies with local fire officials when the locality has elected to enforce the SFPC). The proposed regulation amends the fees charged by the State Fire Marshal's office: (a) permit fees for the use of explosives and blasting agents are increased from \$75 to \$150 per year per city or county, (b) permit fees for the storage of explosives and blasting agents are increased from \$50 per year per site to \$100 per year per magazine (the change from issuing permits per site to issuing them per magazine is not likely to have much impact as very few sites currently contain more than one magazine), (c) a permit fee of \$150 per year is now required to sell explosives and blasting agents, (d) a permit fee of \$200 per year is required to manufacture explosives, blasting agents, and fireworks, (e) a permit fee is now required for fireworks, pyrotechnics, or proximate audience displays on state-owned property – \$100 per event for outdoor displays and \$200 per event for indoor displays.

The fees charged by the State Fire Marshal's office have not changed since the program was started in 1988. According to DHCD, the new fee schedule proposed is meant to defray the increase in costs in the intervening 14 years of reviewing applications, inspecting facilities, issuing permits, providing technical support, and investigating complaints. The increased scrutiny at the state and local level of the storage, use, sale, and manufacture of explosives, blasting agents, and fireworks since the terrorist attacks of September 11, 2001, has further increased these costs. The new fees and the increase in existing fees are based on DHCD's estimate of the minimum time and expense incurred in inspecting and issuing permits each year.

In fiscal year 2002, DHCD issued (a) 274 permits for the use of explosives and blasting agents, (b) 248 permits for the storage of explosives and blasting agents, (c) 0 permits to sell explosives and blasting agents, (d) 2-3 permits to manufacture explosives, blasting agents, and fireworks, and (e) 5-6 letters of approval for fireworks, pyrotechnics, or proximate audience displays on state-owned property. At the current number of permits, DHCD revenues would increase by approximately \$35,000. The net economic impact will depend on whether the improved safety and security is greater or less than the additional cost of getting these permits. Little or no data exists on injuries and deaths related to the issuance of permits for the storage, use, sale, and manufacture of explosives, blasting agents, and fireworks. In addition, it is not known to what extent these additional funds will improve safety in the Commonwealth. Consequently, no specific estimate of the net economic impact of this change is possible at this time.

(3) The General Assembly amended § 27-97 of the Code of Virginia by adding § 27-97.2 by Chapter 951 of the Acts of Assembly of 2000 stipulating that anyone other than a certified blaster seeking to get a permit for the handling, storage, use, sale, or manufacture of explosives and blasting agents be subject to a background investigation, to include a national criminal history record check. Since the policy was put in place 18-24 months ago, applicants are only required to pay fees charged by other state agencies and the Federal Bureau of Investigation for fingerprinting and obtaining a national criminal history record check when obtaining or renewing a background clearance card.

The proposed regulation now requires applicants to pay an additional \$150 to DHCD for the issuance or renewal of a background clearance card. The fee is based on DHCD's estimate of additional resources and staff time required to administer the collection of fingerprints and personal information required for the background clearance and to issue the cards. In fiscal year 2002, 56 background clearance cards were issued, each valid for three years. Assuming the same number of background clearance cards are issued in a year, the fee would result in \$8,400 in additional revenues to DHCD. The net economic impact will depend on whether the additional revenue will result in more effective and timely issuance and renewal of the background clearance cards and whether the improved efficiency is worth more or less than the additional cost of getting background clearance cards.

(4) The proposed regulation increases the fee charged for the issuance or renewal of a blaster certificate from \$30 to \$150 (certification is valid for three years). To be issued a blaster certificate by DHCD, applicants have to submit proof of the successful completion of required examinations and required work experience and have to go through a background check. The background check requirement was added by Chapter 951 of the Acts of Assembly for 2000. In the 2-4 weeks minimum time it takes to get the background clearance, DHCD has been issuing temporary blaster certification cards (valid for three months). Regular blaster certification cards are issued or the temporary cards are revoked depending on the results of the background check.

The \$30 blaster certification fee was established in 1988 and the increase in the fee reflects (i) DHCD's increased cost of administering the program in the intervening 14 years and (ii) the increased complexity of the permit issuance process and the additional resources and staff time required to collect fingerprints and personal information for the background check and for the issuance of temporary cards. The \$150 fee being proposed is similar to that being charged by neighboring states (West Virginia and Pennsylvania charge \$50 to issue a blaster certification card valid for one year).

In fiscal year 2002, 900 blaster certificates were issued and renewed by DHCD. The fee increase is not likely to have a significant impact on the number of individuals seeking to be certified as blasters as the additional cost is likely to be small fraction of the total construction costs. Assuming the same number of blaster certificates are issued and renewed in a year, the increase in fees would result in additional revenues of \$108,000 to DHCD. The net economic impact will depend on whether the additional revenue will result in more effective and timely issuance and renewal of blaster certificates and whether the improved efficiency is worth more or less than the additional cost of getting certified as a blaster.

(5) The proposed regulation establishes a minimum amount of \$500,000 for corporate surety bonds and public liability insurance policy to be filed with the local jurisdiction before a permit for the storage, use, sale, or manufacture of explosives and blasting agents is issued. The bond or certificate of insurance is required to cover any potential damage to persons or property arising out of activities authorized by the permit. Under current policy, the amount of the bond or certificate of insurance is determined by the localities. The

establishment of a minimum amount for the bond or certificate of insurance is not likely to have a significant economic impact. According to DHCD, the department has been recommending to localities for many years that the bond or certificate of insurance not be less than \$500,000 and hence the proposed change is not likely to significantly change current practice.

(6) The proposed regulation shortens the time within which fire officials hired to enforce the SFPC get certified from three years to one year after appointment. It also requires that technical assistants hired to enforce the SFPC get certified by BHCD one and a half years after appointment, rather than the three years currently required. Shortening the time required for fire officials and assistants to get certified is likely to have a small positive economic impact. According to DHCD, one year for fire officials and one and a half years for technical assistants is adequate time for individuals to take the required core and technical modules and get certified and requiring this shorter time limit will not significantly increase compliance costs. To the extent that the change reduces the number of under-qualified individuals enforcing the SFPC, the proposed change will have a net positive impact.

(7) The proposed regulation requires fire officials to notify the DHCD within 60 days of the employment of assistants to enforce the SFPC. This change is not likely to have a significant economic impact. While it adds a small additional cost on localities of reporting the information, it allows DHCD to better enforce the time limit within which assistants need to be certified, potentially reducing the number of under-qualified assistants.

(8) The proposed regulation requires local officials to identify any fire apparatus access road requirements to the owner prior to the issuance of a building permit. Fire access road requirements are determined by the local ordinances. The proposed change will have a positive economic impact. It will impose a very small additional cost on localities of identifying the fire access road requirements before construction begins. On the other hand, it will save builders the cost of undertaking expensive corrective measures to meet these local fire access road requirements once construction is completed or close to completion.

(9) The proposed regulation also requires that fire hydrant systems be located and installed according to written standards of the locality. The proposed change is likely to have a small positive economic impact. To the extent that it encourages localities to maintain written standards, the proposed change will reduce arbitrariness and uncertainty faced by builders in the location and installation of fire hydrants.

Businesses and entities affected. The proposed changes to the regulation will affect (i) fire officials and technical assistants hired to enforce the SFPC, (ii) individuals seeking permits related to the storage, use, sale, and manufacture of explosives, blasting agents, and fireworks in localities that do not enforce the SFPC, (iii) individuals seeking to be certified or renewed as blasters, and (iv) builders operating the Commonwealth.

Proposed Regulations

Localities particularly affected. The proposed regulation affects all localities throughout the Commonwealth.

Projected impact on employment. The impact of the proposed changes to this regulation on employment is not known. The new fee schedule for the issuance and renewal of permits and background clearance cards will make it more expensive for businesses involved in the storage, use, sale, or manufacture of explosives and blasting agents. However, the more effective and timely issuance of these permits could lower costs for these businesses. The increased cost of getting a blaster certification could affect the number of individuals seeking to be certified as blasters. The shortening of the time limit for fire officials and assistants to get certified could affect the number of individuals employed or under contract to an enforcing agency to enforce the SFPC.

Effects on the use and value of private property. The effect of the proposed changes to the regulation on the use and value of private property is not known. While the higher fees for permits and background clearance cards for the storage, use, sale, or manufacture of explosives and blasting agents will increase costs, the more effective and timely issuance of these permits could reduce the cost of doing business. For builders operating in the Commonwealth, the requirement that local officials identify fire access and fire hydrant requirements prior to the start of construction is likely to lower uncertainty and hence the costs associated with construction.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget regarding the proposed amendments to the Virginia Statewide Fire Prevention Code.

Summary:

The major substantive amendments to this regulation (i) update the referenced model codes and standards; (ii) add that the official must notify the Department of Housing and Community Development (department) of the employment of assistants; (iii) change from three years to one and a half years the time allowed for enforcement personnel to become certified; (iv) add that officials and assistants may be held responsible for failure to discharge any duty required by law; (v) add that fire apparatus access roads be identified to the owner prior to the issuance of the building permit; (vi) amend the permit fees of the State Fire Marshal's office for the storage, use, sale or manufacture of explosives or blasting agents, and for the display of fireworks on state-owned property; (vii) add a fee for obtaining or renewing a background clearance card from the department; and (viii) amend the fee for obtaining or renewing a blaster certificate from the department.

PART I. GENERAL REGULATIONS.

13 VAC 5-51-11. Chapter 1, Administration, Section F-101.0. Scope.

A. F-101.1. Title: These regulations shall be known as the Virginia Statewide Fire Prevention Code (SFPC), hereinafter referred to as "this code" or "SFPC." The term "chapter"

means a chapter in the SFPC. The SFPC was cooperatively developed by the Virginia Fire Services Board and the Virginia Board of Housing and Community Development.

B. F-101.2. Scope: The SFPC prescribes regulations *affecting or relating to maintenance of structures, processes and premises and safeguards* to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage and use of explosives or blasting agents, and provides for the administration and enforcement of such regulations. ~~The SFPC requires manufacturers of explosives to register and report information concerning their manufacturing facilities and methods of operation within this Commonwealth in accordance with the SFPC.~~ The SFPC also establishes regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of explosives. Inspections under the SFPC are a governmental responsibility.

C. F-101.3. Purpose: The purposes of the SFPC are to provide for statewide standards ~~for optional local enforcement~~ to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling, and use of substances, materials and devices, including explosives and blasting agents, wherever located.

D. F-101.4. Validity: To the extent that any provisions of the SFPC or the referenced codes or standards are not within the scope of this chapter, those provisions are considered to be invalid. When any provision of the SFPC is found to be in conflict with the USBC, OSHA, or statute, that provision of the SFPC shall become invalid.

E. F-101.5. Local regulations: Any local governing body may adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations ~~are not more restrictive than the USBC and~~ do not affect the manner of construction or materials to be used in the erection, alteration, repair, or use of a building or structure, *as provided in the USBC, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the SFPC.*

F. F-101.6. ~~Exemption~~ *Nonresidential farm structures:* Farm structures not used for residential purposes are exempt from the SFPC *except when the inspection and enforcement provisions of the code are exercised by a warrant issued under the authority of §§ 27-98.2 through 27-98.5 of the Code of Virginia.*

~~Exception: Inspections or reinspections of farm buildings, structures, property, or premises under search warrants issued pursuant to § 27-98.2 of the Code of Virginia are not exempt from the SFPC. When they are based upon a demonstration that, for the protection of life and property from the hazards of fire or explosion, the alleged unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, are probably occurring on such premises.~~

13 VAC 5-51-21. Section F-102.0. Applicability.

~~A. F-102.1.~~ General: The provisions of the SFPC shall apply to all matters affecting or relating to structures, processes and premises as set forth in Section F-101.0. The SFPC shall supersede any fire prevention regulations previously adopted by a local government or other political subdivision.

~~B. 102.1.1.~~ Changes: No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group of occupancies, unless such structure is made to comply with the requirements of this code and the USBC.

~~B. F- C. 102.2.~~ Application to pre-1973 buildings and structures: Buildings and structures constructed prior to the USBC (1973) shall comply with the maintenance requirements of the SFPC to the extent that equipment, systems, devices, and safeguards which were required, provided and approved when constructed shall be maintained. Such buildings and structures, if subject to the state fire and public building regulations (Virginia Public Building Safety Regulations, VR 394-01-05) in effect prior to March 31, 1986, shall also be maintained in accordance with those regulations.

~~C. F- D. 102.3.~~ Application to post-1973 buildings and structures: Buildings and structures constructed under any edition of the USBC shall comply with the maintenance requirements of the SFPC to the extent that equipment, systems, devices, and safeguards which were required, provided and approved when constructed shall be maintained.

~~E. 102.4.~~ Referenced codes and standards: The codes and standards referenced in the IFC shall be those listed in Chapter 45 and considered part of the requirements of the SFPC to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions of this code shall apply.

~~D. F-102.4.~~ F. 102.5. Subsequent alteration: Subsequent alteration, enlargement, repair, or conversion of the occupancy classification of structures shall be subject to the current USBC.

~~E. F-102.5.~~ G. 102.6. State structures: The SFPC shall be applicable to all state-owned structures in the manner and extent described in § 27-99 of the Code of Virginia.

~~F. F-102.6.~~ H. 102.7. Relationship to USBC: Construction inspections of structures, other than state-owned structures, and the review and approval of their construction documents for enforcement of the USBC shall be the sole responsibility of the local building department.

~~G. F-102.7.~~ I. 102.8. Existing structures: Upon the completion of structures and after the certificate of occupancy has been issued, responsibility for fire safety protection shall pass to the local fire code official or to the State Fire Marshal, who shall also have the authority, in cooperation with any local governing body, to enforce this code and who shall also determine that the fire safety features approved by the building official are properly maintained. The State Fire Marshal shall also have authority to enforce this code in those jurisdictions in which the local governments do not enforce this code.

~~H. F-102.8.~~ J. 102.9. Inspections for USBC requirements: The fire code official shall require that Existing structures subject to the requirements of the applicable retrofitting provisions relating to fire protection equipment and system requirements for certain existing motels, hotels, hospitals, daycare facilities, dormitories, nursing homes and multi-family dwelling units mandated in Part II, Article 3 of the USBC subsections 3402.3, 3402.4, 3402.5, 3402.6, 3402.6.1, 3402.7, 3402.10, 3402.12, 3402.13, 3402.14 and 3402.15 comply with the provisions of those subsections, that do not comply with such provisions, the fire official shall notify the building official, in writing, of those structures that are in alleged violation of such provisions.

13 VAC 5-51-31. Section F-103.0. Incorporation by reference.

~~A. F-103.1.~~ General: The following document is adopted and incorporated by reference to be an enforceable part of the SFPC:

The ~~BOCA National Fire Prevention Code/1996, Tenth Edition International Fire Code/2000~~, hereinafter referred to as "BNFPC IFC," published by Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795, toll free number ~~1-800-323-1103~~ the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401, phone 703-931-4533.

~~B. F-103.1.1.~~ Deletion: Delete BNFPC IFC Chapter 1.

~~C. F-103.2.~~ Amendments: All requirements of the referenced codes and standards that relate to fees, permits, unsafe notices, disputes, condemnation, inspections, scope of enforcement and all other procedural, and administrative matters are deleted and replaced by the provisions of Chapter 1 of the SFPC. The purpose of this provision is to eliminate overlap, conflict and duplication by providing a single standard for administration, procedural matters and enforcement of the SFPC.

~~D. F-103.2.1.~~ Other amendments: The SFPC contains provisions adopted by the Virginia Board of Housing and Community Development (BHCD), some of which delete, change or amend provisions of the BNFPC IFC and referenced standards. Where conflicts occur between such changed provisions and the unchanged provisions of the BNFPC IFC and referenced standards, the provisions changed by the BHCD shall govern.

Note: The BNFPC IFC and its referenced standards contain some areas of regulation outside of the scope of the SFPC, as established by the BHCD and under state law. Where conflicts have been readily noted, changes have been made to the BNFPC IFC and its referenced standards to bring it within the scope of authority; however, in some areas, judgment will have to be made as to whether the provisions of the BNFPC IFC and its referenced standards are fully applicable.

~~E. 103.3.~~ International Fire Code. Retroactive fire protection system requirements contained in the IFC shall not be enforced unless specified by the USBC, including but not limited to the following IFC sections: 903, 905 and 907.

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13 VAC 5-51-41. Section ~~F~~-104.0. Enforcement.

A. ~~F~~-104.1. Local enforcement: Any local government may enforce the SFPC following official action by such body. The official action shall (i) require compliance with the provisions of the SFPC in its entirety or with respect only to those provisions of the SFPC relating to open burning, fire lanes, fireworks, and hazardous materials and (ii) assign enforcement responsibility to the local agency or agencies of its choice. *Any local governing body may establish such procedures or requirements as may be necessary for the administration and enforcement of this code. If a local governing body elects to enforce only those provisions of the SFPC relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction.* The terms "enforcing agency" and "fire ~~code~~ official" are intended to apply to the agency or agencies to which responsibility for enforcement of the SFPC has been assigned. The terms "building ~~code~~ official" or "building department" are intended to apply only to the local building ~~code~~ official or local building department.

~~B. F-104.1.1. Procedures: Any local governing body shall be permitted to establish such procedures or requirements as may be necessary for the administration and enforcement of this code.~~

~~C. F~~ B. 104.2. State enforcement: The State Fire Marshal shall have the authority to enforce the SFPC as follows:

1. In cooperation with any local governing body;
2. In those jurisdictions in which the local governments do not enforce the SFPC *in its entirety or enforce the SFPC with respect only to those provisions of the SFPC relating to open burning, fire lanes, fireworks, and hazardous materials;* and
3. In all state-owned buildings and structures.

~~D. F~~ C. 104.3. State structures: Every agency, commission or institution of this Commonwealth, including all institutions of higher education, shall permit, at all reasonable hours, the fire ~~code~~ official reasonable access to existing structures or a structure under construction or renovation, for the purpose of performing an informational and advisory fire safety inspection. The fire ~~code~~ official is permitted to submit, subsequent to performing such inspection, his findings and recommendations, including a list of corrective actions necessary to ensure that such structure is reasonably safe from the hazards of fire, to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within 60 days of receipt of such findings and recommendations, the State Fire Marshal and the fire ~~code~~ official of the corrective measures taken to eliminate the hazards reported by the fire ~~code~~ official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § 27-98 of the Code of Virginia. The State Fire Marshal may enter into an agreement as is provided for in § 36-139.4 of the Code of Virginia with any local enforcement agency that enforces the SFPC to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door,

improper storage of flammable liquids, use of decorative materials, and overcrowding.

13 VAC 5-51-51. Section 105.0. Enforcing agency.

A. ~~F~~-105.1. ~~Code~~ Fire official: Each enforcing agency shall have an executive official in charge, hereinafter referred to as the "fire ~~code~~ official" or "~~code~~ official." *In accordance with sanctions prescribed by the Virginia Certification Standards (13 VAC 5-21), the fire official may be held responsible for failure to discharge any duty required by law or by the SFPC.*

B. ~~F~~-105.1.1. Appointment: The fire ~~code~~ official shall be appointed in a manner selected by the local government having jurisdiction. After *permanent* appointment, the fire ~~code~~ official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority.

C. ~~F~~-105.1.2. Notification of appointment: The appointing authority of the local governing body shall notify the DHCD *within 30 days of the appointment or release of a the permanent or acting fire ~~code~~ official within 30 days after such appointment.*

D. ~~F~~-105.1.3. Qualifications: The fire ~~code~~ official shall have at least five years of fire-related experience as a licensed professional engineer or architect, fire inspector, contractor or superintendent of fire protection-related construction, with at least three years in responsible charge of work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The fire ~~code~~ official shall have general knowledge of sound engineering practice with respect to the design and construction of structures, the basic principles of fire prevention and protection, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

E. ~~F~~-105.2. Certification: The *permanent or acting* fire ~~code~~ official shall obtain certification from the BHCD in accordance with the Virginia Certification Standards (13 VAC 5-21-40 ~~et seq.~~) *within three years one year after permanent or acting appointment.*

Exception: A fire ~~code~~ official appointed prior to April 1, 1994, continuously employed by the same local governing body as the fire ~~code~~ official shall comply with required DHCD training under the Virginia Certification Standards (13 VAC 5-21-40 ~~et seq.~~).

F. ~~F~~-105.2.1. Noncertified: After *permanent or acting* appointment, a non-BHCD certified fire ~~code~~ official shall complete a DHCD orientation seminar within 60 days. In addition, within 180 days, such ~~code~~ fire official shall attend the core program of the Virginia Building Code Academy or its equivalent in a DHCD accredited academy.

G. ~~F~~-105.3. Assistant: The local governing body or its designee may appoint one or more assistants who, in the absence of the fire ~~code~~ official, shall have the powers and perform the duties of the fire ~~code~~ official. *In accordance with sanctions prescribed by the Virginia Certification Standards*

(13 VAC 5-21) such assistants may be held responsible for failure to discharge any duty required by law or by the SFPC.

H. ~~F~~-105.3.1. Notification: The fire official shall notify the DHCD within 60 days of the employment or contract of all assistants for enforcement of the SFPC.

I. 105.3.2. Certification: ~~Any person~~ All assistants employed by or under contract to an enforcing agency for enforcing the SFPC shall be certified in the appropriate subject ~~areas~~ area in accordance with the Virginia Certification Standards (13 VAC 5-21-~~40 et seq.~~) within ~~three~~ one and one-half years after permanent or acting appointment. However, such assistants shall also attend and complete the applicable management, technical or DFP training as outlined in the training and certification guidance document referenced in the Virginia Certification Standards (13 VAC 5-21) within one and one-half years after initial appointment.

Exception: Any ~~person~~ assistant continuously employed by or continuously under contract to the same enforcing agency for enforcing the SFPC since before April 1, 1994, shall be exempt from the provisions of this subsection; however, such exempt ~~person~~ assistant shall comply with required DHCD training under Virginia Certification Standards (13 VAC 5-21-~~40 et seq.~~).

~~I. F~~ J. 105.4. Continuing education: ~~Code~~ Fire officials and assistants enforcing the SFPC shall attend periodic training courses as designated by the DHCD ~~and such other training as designated by the local governing body.~~

~~J. F~~ K. 105.5. Control of conflict of interest: The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter ~~40.4~~ 31 (§ ~~2.4-639.4~~ 2.2-3100 et seq.) of Title ~~2.4~~ 2.2 of the Code of Virginia.

13 VAC 5-51-61. Section ~~F~~-106.0. Duties and powers of the ~~code~~ fire official.

A. ~~F~~-106.1. General: The fire ~~code~~ official shall enforce the provisions of the SFPC as provided herein and as interpreted by the State Building Code Technical Review Board (TRB) in accordance with § 36-118 of the Code of Virginia.

B. ~~F~~-106.2. Delegation of duties and powers: The fire ~~code~~ official may delegate duties and powers subject to any limitations imposed by the local governing body. The fire ~~code~~ official shall be responsible that any powers and duties delegated are carried out in accordance with this code.

C. ~~F~~-106.3. Inspections: The fire ~~code~~ official ~~may make all of the required~~ is authorized to conduct such inspections ~~or may accept reports of inspections as are deemed necessary to determine the extent of compliance with the provisions of this code and to approve reports of inspection by approved agencies or individuals. All reports of such inspections shall be prepared and submitted in writing and for review and approval. Inspection reports shall be certified by an agency a responsible officer of such approved agency or by the responsible individual. The ~~code~~ fire official may~~ is authorized to engage, subject to any limitations imposed by the local governing body, such expert opinion as deemed necessary to

report upon unusual, detailed or complex technical issues ~~that arise subject to the approval of the governing body.~~

D. ~~F~~-106.3.1. Observations: When, during an inspection, the fire ~~code~~ official or an authorized representative observes an apparent or actual violation of another law, ordinance or code not within the official's authority to enforce, such official shall report the findings to the official having jurisdiction in order that such official may institute the necessary measures.

E. ~~F~~-106.4. Alternatives: The SFPC provisions are not intended to prevent the use of any safeguards used to protect life and property from the hazards of fire or explosion that are not specifically prescribed by the SFPC, provided that such alternative safeguards comply with the intent of the SFPC. The alternative safeguard offered shall be, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire-resistance, durability and safety.

F. ~~F~~-106.5. Modifications: The fire ~~code~~ official may grant modifications to any provision of the SFPC upon application by the owner or the owner's agent provided the spirit and intent of the SFPC are observed and public health, welfare, and safety are assured.

G. ~~F~~-106.5.1. Supporting data: The fire ~~code~~ official shall require that sufficient technical data be submitted to substantiate the proposed use of any alternative. If it is determined that the evidence presented is satisfactory proof of performance for the use intended, the fire ~~code~~ official shall approve the use of such alternative subject to the requirements of this code. The fire ~~code~~ official may require and consider a statement from a professional engineer, architect or other competent person as to the equivalency of the proposed modification.

H. ~~F~~-106.5.2. ~~Records~~ Decision: The application for modification and the final decision of the fire code official shall be in writing and shall be recorded in the permanent records of the local enforcing agency.

~~I. ~~F~~-106.5.3. Supporting data: The fire code official shall require that sufficient technical data be submitted to substantiate the proposed use of any alternative. If it is determined that the evidence presented is satisfactory proof of performance for the use intended, the fire code official shall approve the use of such alternative subject to the requirements of this code. Supporting data, when required by the fire code official to assist in the approval of all materials or assemblies not specifically provided for in this code, shall consist of duly authenticated research reports from approved sources.~~

~~J. F~~ I. 106.6. Notices and orders: The fire ~~code~~ official shall issue all necessary notices or orders to ensure compliance with the SFPC.

~~K. F~~ J. 106.7. Department records: The fire ~~code~~ official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records or disposed of in accordance with General Schedule Number Ten available from The Library of Virginia.

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13 VAC 5-51-71. Section F-107.0. Fees. (Repealed.)

A. F-107.1. Local: Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals under the SFPC.

B. F-107.2. State: Fees for permits issued by the State Fire Marshal's office shall be as follows:

1. \$50 per year per site to possess, store and dispose of explosives and blasting agents.
2. \$75 per year per city or county to use explosives and blasting agents.
3. No fee for the manufacture and sale of fireworks, explosives and blasting agents.

C. F-107.2.1. Additional fees: The applicant shall pay all additional fees charged by other agencies for fingerprinting and for obtaining a national criminal history record check through the Central Criminal Records Exchange to the Federal Bureau of Investigation.

D. F-107.3. Fee schedule: The local governing body may establish a fee schedule. The schedule shall incorporate unit rates, which may be based on square footage, cubic footage, estimated cost of inspection or other appropriate criteria.

E. F-107.4. Payment of fees: A permit shall not be issued until the designated fees have been paid.

Exception: The fire code official may authorize delayed payment of fees.

13 VAC 5-51-81. Section F-408.0. 107.0. Permits.

A. F-408.4. 107.1. Prior notification: The fire code official may require notification prior to (i) activities involving the handling, storage or use of substances, materials or devices regulated by the SFPC; (ii) conducting processes which produce conditions hazardous to life or property; or (iii) establishing a place of assembly.

B. F-408.2. 107.2. Permits required: Permits may be required by the fire code official as permitted under the SFPC in accordance with Table F-408.2 107.2, except that the fire code official shall require permits for the manufacturing, storage, handling, use, and sale of explosives. An application for a permit to manufacture, store, handle, use, or sell explosives shall only be made by an individual certified as a blaster in accordance with Section F-3003.5 3301.4, or by a person who has been issued a background clearance card in accordance with Section F-3004.2.3.4 3301.1.

Exception: Such permits shall not be required for the storage, handling, or use of explosives or blasting agents by the Virginia Department of State Police provided notification to the fire code official is made annually by the Chief Arson Investigator listing all storage locations.

C. Add Table F-408.2 107.2 as follows:

Table F-408.2
PERMIT REQUIREMENTS
(to be filled in by local jurisdiction)

Section	Description	Permit required	Permit fee	Inspection fee
F-402.3	Candles - assembly/educational occupancies			
F-403.4	Open burning			
F-404.2	Remove paint with torch			
F-601.4	Assembly/educational occupancies			
F-801.2	Airports, heliports & helistops			
F-901.2	Flammable liquids, bowling lanes			
F-1001.2	Crop ripening & color processes			
F-1101.2	Dry cleaning			
F-1201.2	Dust explosion hazard			
F-1301.2	Flammable finishes			
F-1401.2	Fumigation - insecticidal			
F-1501.2	HPM facilities			
F-1601.2	Lumber yard - woodworking plants			
F-1701.2	Matches - bulk storage			
F-1801.2	Oil/gas wells			
F-1901.2	Organic coatings			
F-2001.2	Tents/air-supported structures			
F-2102.1	Wrecking yard, junk yard, waste material handling			
F-2103.1	Waste handling			
F-2201.2	Welding or cutting			
F-2205.2	Storage of welding cylinders			
F-2207.1	Calcium carbide			
F-2208.1	Acetylene generators			
F-2208.7	Acetylene cylinder storage			
F-2301.2	Hazardous materials			
F-2401.2	Aerosol products			

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F-2501.2	Cellulose nitrate plastics			
F-2601.2	Combustible fibers			
F-2701.2	Compressed gases			
F-2801.2	Corrosives			
F-2901.2	Cryogenic liquids			
F-3001.2	Blasting/explosives			
F-3101.2	Fireworks			
F-3201.2	Vehicle repair shop			
F-3201.2	Flammable and combustible liquids – storage, handling, use, processing			
F-3201.2	Flammable and combustible liquids - tanks and equipment			
F-3301.2	Flammable solids			
F-3401.2	Highly toxic and toxic solids and liquids			
F-3501.2	Irritants, sensitizers and other health hazards			
F-3601.2	Liquefied petroleum gases			
F-3701.2	Organic peroxides			
F-3801.2	Liquid and solid oxidizers			
F-3901.2	Pesticides			
F-4001.2	Pyrophoric materials			
F-4101.2	Radioactive materials			
F-4201.2	Unstable (reactive) materials			
F-4301.2	Water-reactive materials			

Table 107.2.
OPERATIONAL PERMIT REQUIREMENTS (to be filled in by local jurisdiction).

Description	Permit Required (yes or no)	Permit fee	Inspection fee
<i>An operational permit may be required by the fire official:</i>			
<i>To manufacture, store or handle an aggregate quantity of Level 2 or Level 3 aerosol products in excess of 500 pounds (227 kg) net weight.</i>			
<i>To operate a special amusement building.</i>			
<i>To use a Group H or Group S occupancy for aircraft servicing or repair and aircraft fuel-servicing vehicles. Additional permits required by other sections of this code include, but are not limited to, hot work, hazardous materials and flammable or combustible finishes.</i>			
<i>To conduct a carnival or fair.</i>			
<i>To install stationary lead-acid battery systems having a liquid capacity of more than 50 gallons (189 L).</i>			
<i>To store, handle or use cellulose nitrate film in a Group A occupancy.</i>			
<i>To operate a grain elevator, flour starch mill, feed mill, or a plant pulverizing aluminum, coal, cocoa, magnesium, spices or sugar, or other operations producing combustible dusts as defined in Chapter 2.</i>			
<i>For the storage and handling of combustible fibers in quantities greater than 100 cubic feet (2.8 m³).</i> <i>Exception: An operational permit is not required for agricultural storage.</i>			
<i>For the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts listed below. Exception: Vehicles equipped for and using compressed gas as a fuel for propelling the vehicle.</i>			
<i>Permit Amounts for Compressed Gases</i>			
<i>Type of Gas</i>	<i>Amount (cubic feet at NTP)</i>		
<i>Corrosive</i>	<i>200</i>		
<i>Flammable (except cryogenic fluids and liquefied petroleum gases)</i>	<i>200</i>		
<i>Highly toxic</i>	<i>Any Amount</i>		
<i>Inert and simple asphyxiant</i>	<i>6,000</i>		
<i>Oxidizing (including oxygen)</i>	<i>504</i>		
<i>Toxic</i>	<i>Any Amount</i>		
<i>For SI: 1 cubic foot = 0.02832 m³.</i>			
<i>For:</i>			

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<p>1. The placement of retail fixtures and displays, concession equipment, displays of highly combustible goods and similar items in the mall.</p> <p>2. The display of liquid- or gas-fired equipment in the mall.</p> <p>3. The use of open-flame or flame-producing equipment in the mall.</p>																		
<p>To produce, store, transport on site, use, handle or dispense cryogenic fluids in excess of the amounts listed below.</p> <p>Exception: Operational permits are not required for vehicles equipped for and using cryogenic fluids as a fuel for propelling the vehicle or for refrigerating the lading.</p> <p style="text-align: center;">Permit Amounts for Cryogenic Fluids</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Type of Cryogenic Fluid</th> <th style="text-align: center;">Inside Building (gallons)</th> <th style="text-align: center;">Outside Building (gallons)</th> </tr> </thead> <tbody> <tr> <td>Flammable</td> <td style="text-align: center;">More than 1</td> <td style="text-align: center;">60</td> </tr> <tr> <td>Inert</td> <td style="text-align: center;">60</td> <td style="text-align: center;">500</td> </tr> <tr> <td>Oxidizing (includes oxygen)</td> <td style="text-align: center;">10</td> <td style="text-align: center;">50</td> </tr> <tr> <td>Physical or health hazard not indicated above</td> <td style="text-align: center;">Any Amount</td> <td style="text-align: center;">Any Amount</td> </tr> </tbody> </table> <p>For SI: 1 gallon = 3.785 L.</p>	Type of Cryogenic Fluid	Inside Building (gallons)	Outside Building (gallons)	Flammable	More than 1	60	Inert	60	500	Oxidizing (includes oxygen)	10	50	Physical or health hazard not indicated above	Any Amount	Any Amount			
Type of Cryogenic Fluid	Inside Building (gallons)	Outside Building (gallons)																
Flammable	More than 1	60																
Inert	60	500																
Oxidizing (includes oxygen)	10	50																
Physical or health hazard not indicated above	Any Amount	Any Amount																
<p>To conduct cutting or welding operations within the jurisdiction.</p>																		
<p>To engage in the business of dry cleaning or to change to a more hazardous cleaning solvent used in existing dry cleaning equipment.</p>																		
<p>To operate exhibits and trade shows.</p>																		
<p>For the manufacture, storage, handling, sale or use of any quantity of explosive, explosive material, fireworks, or pyrotechnic special effects within the scope of Chapter 33.</p>																		
<p>To use or operate fire hydrants or valves intended for fire suppression purposes that are installed on water systems and accessible to a fire apparatus access road that is open to or generally used by the public.</p> <p>Exception: An operational permit is not required for authorized employees of the water company that supplies the system or the fire department to use or operate fire hydrants or valves.</p>																		
<p>1. To use or operate a pipeline for the transportation within facilities of flammable or combustible liquids. This requirement shall not apply to the offsite transportation in pipelines regulated by the Department of Transportation (DOTn) (see § 3501.1.2) nor does it apply to piping systems (see § 3503.6).</p> <p>2. To store, handle or use Class I liquids in excess of 5 gallons (19 L) in a building or in excess of 10 gallons (37.9 L) outside of a building, except that a permit is not required for the following:</p> <p>2.1. The storage or use of Class I liquids in the fuel tank of a motor vehicle, aircraft, motorboat, mobile power plant or mobile heating plant, unless such storage, in the opinion of the fire official, would cause an unsafe condition.</p> <p>2.2. The storage or use of paints, oils, varnishes or similar flammable mixtures when such liquids are stored for maintenance, painting or similar purposes for a period of not more than 30 days.</p> <p>3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons (95 L) in a building or in excess of 60 gallons (227 L) outside a building, except for fuel oil used in connection with oil-burning equipment.</p> <p>4. To remove Class I or Class II liquids from an underground storage tank used for fueling motor vehicles by any means other than the approved, stationary on-site pumps normally used for dispensing purposes.</p> <p>5. To operate tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.</p> <p>6. To install, alter, remove, abandon, place temporarily out of service (for more than 90 days) or otherwise dispose of an underground, protected above-ground or above-ground flammable or combustible liquid tank.</p> <p>7. To change the type of contents stored in a flammable or combustible liquid tank to a material which poses a greater hazard than that for which the tank was designed and constructed.</p> <p>8. To manufacture, process, blend or refine flammable or combustible liquids.</p> <p>For floor finishing or surfacing operations exceeding 350 square feet (33 m²) using</p>																		
<p>For floor finishing or surfacing operations exceeding 350 square feet (33 m²) using</p>																		

<i>Class I or Class II liquids.</i>			
<i>To operate a fruit-, or crop-ripening facility or conduct a fruit-ripening process using ethylene gas.</i>			
<i>To operate a business of fumigation or thermal insecticidal fogging and to maintain a room, vault or chamber in which a toxic or flammable fumigant is used.</i>			
<i>To store, transport on site, dispense, use or handle hazardous materials in excess of the amounts listed below.</i>			
<i>Permit Amounts for Hazardous Materials</i>			
<i>Type of Material</i>	<i>Amount</i>		
<i>Combustible liquids</i>	<i>see flammable and combustible liquids</i>		
<i>Corrosive materials</i>			
<i>Gases</i>	<i>see covered mall buildings</i>		
<i>Liquids</i>	<i>55 gallons</i>		
<i>Solids</i>	<i>1000 pounds</i>		
<i>Explosive materials</i>	<i>see explosives</i>		
<i>Flammable materials</i>			
<i>Gases</i>	<i>see covered mall buildings</i>		
<i>Liquids</i>	<i>see flammable and combustible liquids</i>		
<i>Solids</i>	<i>100 pounds</i>		
<i>Highly toxic materials</i>			
<i>Gases</i>	<i>see covered mall buildings</i>		
<i>Liquids</i>	<i>Any Amount</i>		
<i>Solids</i>	<i>Any Amount</i>		
<i>Oxidizing materials</i>			
<i>Gases</i>	<i>see covered mall buildings</i>		
<i>Liquids</i>			
<i>Class 4</i>	<i>Any Amount</i>		
<i>Class 3</i>	<i>1 gallon</i>		
<i>Class 2</i>	<i>10 gallons</i>		
<i>Class 1</i>	<i>55 gallons</i>		
<i>Solids</i>			
<i>Class 4</i>	<i>Any Amount</i>		
<i>Class 3</i>	<i>10 pounds</i>		
<i>Class 2</i>	<i>100 pounds</i>		
<i>Class 1</i>	<i>500 pounds</i>		
<i>Organic peroxides</i>			
<i>Liquids</i>			
<i>Class I</i>	<i>Any Amount</i>		
<i>Class II</i>	<i>Any Amount</i>		
<i>Class III</i>	<i>1 gallon</i>		
<i>Class IV</i>	<i>2 gallons</i>		
<i>Class V</i>	<i>No Permit Required</i>		
<i>Solids</i>			
<i>Class I</i>	<i>Any Amount</i>		
<i>Class II</i>	<i>Any Amount</i>		
<i>Class III</i>	<i>10 pounds</i>		
<i>Class IV</i>	<i>20 pounds</i>		
<i>Class V</i>	<i>No Permit Required</i>		
<i>Pyrophoric materials</i>			
<i>Gases</i>	<i>See flammable and combustible liquids</i>		
<i>Liquids</i>	<i>Any Amount</i>		
<i>Solids</i>	<i>Any Amount</i>		
<i>Toxic materials</i>			
<i>Gases</i>	<i>See covered mall buildings</i>		
<i>Liquids</i>	<i>10 gallons</i>		
<i>Solids</i>	<i>100 pounds</i>		
<i>Unstable (reactive) materials</i>			
<i>Liquids</i>			
<i>Class 4</i>	<i>Any Amount</i>		
<i>Class 3</i>	<i>Any Amount</i>		
<i>Class 2</i>	<i>5 gallons</i>		

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Class 1 Solids	10 gallons			
Class 4	Any Amount			
Class 3	Any Amount			
Class 2	50 pounds			
Class 1	100 pounds			
<i>Water-reactive Materials</i>				
<i>Liquids</i>				
Class 3	Any Amount			
Class 2	5 gallons			
Class 1	55 gallons			
<i>Solids</i>				
Class 3	Any Amount			
Class 2	50 pounds			
Class 1	500 pounds			
For Sl: 1 gallon = 3.785 L, 1 pound = 0.454 kg.				
To store, handle or use hazardous production materials.				
To use a building or portion thereof as a high-piled storage area exceeding 500 square feet (46 m ²).				
For hot work including, but not limited to: 1. Public exhibitions and demonstrations where hot work is conducted. 2. Use of portable hot work equipment inside a structure. Exception: Work that is conducted under a construction permit. 3. Fixed-site hot work equipment such as welding booths. 4. Hot work conducted within a hazardous fire area. 5. Application of roof coverings with the use of an open-flame device. 6. When approved, the fire official shall issue a permit to carry out a Hot Work Program. This program allows approved personnel to regulate their facility's hot work operations. The approved personnel shall be trained in the fire safety aspects denoted in this chapter and shall be responsible for issuing permits requiring compliance with the requirements found in this chapter. These permits shall be issued only to their employees or hot work operations under their supervision.				
For operation of industrial ovens regulated by Chapter 21.				
For the storage or processing of lumber exceeding 100,000 board feet (8,333 ft ³) (236 m ³).				
To display, operate or demonstrate liquid- or gas-fueled vehicles or equipment in assembly buildings.				
For: 1. Storage and use of LP-gas. Exception: An operational permit is not required for individual containers with a 500-gallon (1893 L) water capacity or less serving occupancies in Group R-3. 2. Operation of cargo tankers that transport LP-gas.				
To melt, cast, heat treat or grind more than 10 pounds (4.54 kg) of magnesium.				
To store in any building or upon any premises in excess of 2,500 cubic feet (71 m ³) gross volume of combustible empty packing cases, boxes, barrels or similar containers, rubber tires, rubber, cork or similar combustible material.				
For the kindling or maintaining of an open fire or a fire on any public street, alley, road, or other public or private ground. Instructions and stipulations of the permit shall be adhered to. Exception: Recreational fires.				
To remove paint with a torch; use a torch or open-flame device in a hazardous fire area; or to use open flames or candles in connection with assembly areas, dining areas of restaurants or drinking establishments.				
For any organic-coating manufacturing operation producing more than 1 gallon (4 L) of an organic coating in one day.				
To operate a place of assembly.				
For the removal from service, use or operation of private fire hydrants. Exception: An operational permit is not required for private industry with trained maintenance personnel, private fire brigade or fire departments to maintain, test and use private hydrants.				
For use and handling of pyrotechnic special effects material.				

For storage or handling of more than 25 pounds (11 kg) of cellulose nitrate (pyroxylin) plastics and for the assembly or manufacture of articles involving pyroxylin plastics.			
To operate a mechanical refrigeration unit or system regulated by Chapter 6.			
For operation of repair garages and automotive, marine and fleet service stations.			
For the operation of a rooftop heliport.			
To conduct a spraying or dipping operation utilizing flammable or combustible liquids or the application of combustible powders regulated by Chapter 15.			
To establish, conduct or maintain storage of scrap tires and tire byproducts that exceeds 2,500 cubic feet (71 m ³) of total volume of scrap tires and for indoor storage of tires and tire byproducts.			
To operate an air-supported temporary membrane structure or a tent. Exceptions: 1. Tents used exclusively for recreational camping purposes. 2. Tents and air-supported structures that cover an area of 900 square feet (84 m ²) or less, including all connecting areas or spaces with a common means of egress or entrance and with an occupant load of 50 or less persons. 3. Fabric canopies and awnings open on all sides which comply with all of the following: 3.1. Individual canopies shall have a maximum size of 700 square feet (65 m ²). 3.2. The aggregate area of multiple canopies placed side by side without a fire break clearance of 12 feet (3658 mm) shall not exceed 700 square feet (65 m ²) total. 3.3. A minimum clearance of 12 feet (3658 mm) to structures and other tents shall be provided.			
For the operation and maintenance of a tire-rebuilding plant.			
For the operation of wrecking yards, junk yards and waste material-handling facilities.			
To store chips, hogged material, lumber or plywood in excess of 200 cubic feet (6 m ³).			

D. ~~F-408.3.~~ 107.3. Application for permit: Application for a permit shall be made on forms prescribed by the fire code official.

E. ~~F-408.4.~~ 107.4. Issuance of permits: Before a permit is issued, the fire code official shall make such inspections or tests as are necessary to assure that the use and activities for which application is made comply with the provisions of this code.

F. ~~F-408.5.~~ 107.5. Conditions of permit: A permit shall constitute permission to store or handle materials or to conduct processes in accordance with the SFPC, and shall not be construed as authority to omit or amend any of the provisions of this code. Permits shall remain in effect until revoked or for such period as specified on the permit. Permits are not transferable.

G. ~~F-408.6.~~ 107.6. State Fire Marshal: Permits will not be required by the State Fire Marshal except for the manufacturing, storage, handling, use, and sale of explosives in localities not enforcing the SFPC, and for the display of fireworks on state-owned property.

Exception: Such permits shall not be required for the storage, handling, or use of explosives or blasting agents by the Virginia Department of State Police provided notification to the State Fire Marshal is made annually by the Chief Arson Investigator listing all storage locations within areas where enforcement is provided by the State Fire Marshal's office.

H. ~~F-408.7.~~ 107.7. Annual: The enforcing agency may issue annual permits for the manufacturing, storage, handling, use, or sales of explosives to any state regulated public utility.

~~Exception: Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1 of the Code of Virginia.~~

I. ~~F-408.8.~~ 107.8. Approved plans: Plans approved by the fire code official are approved with the intent that they comply in all respects to this code. Any omissions or errors on the plans do not relieve the applicant of complying with all applicable requirements of this code.

J. ~~F-408.9.~~ 107.9. Posting: Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official.

K. ~~F-408.10.~~ 107.10. Suspension of permit: A permit shall become invalid if the authorized activity is not commenced within six months after issuance of the permit, or if the authorized activity is suspended or abandoned for a period of six months after the time of commencement.

L. ~~F-408.11.~~ 107.11. Revocation of permit: The fire code official may revoke a permit or approval issued under the SFPC if conditions of the permit have been violated, or if the approved application, data or plans contain misrepresentation as to material fact.

M. 107.12. Local permit fees: Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals under the SFPC.

N. 107.13. State permit fees: Fees for permits issued by the State Fire Marshal's office for the storage, use, sale or manufacture of explosives or blasting agents, and for the

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display of fireworks on state-owned property shall be as follows:

1. \$100 per year per magazine to store explosives and blasting agents.
2. \$150 per year per city or county to use explosives and blasting agents.
3. \$150 per year to sell explosives and blasting agents.
4. \$200 per year to manufacture explosives, blasting agents and fireworks.
5. \$200 per event for fireworks, pyrotechnics or proximate audience displays conducted indoor of any state-owned buildings.
6. \$100 per event for fireworks, pyrotechnics or proximate audience displays conducted out-of-doors on any state-owned property.

O. 107.14. Fee schedule: The local governing body may establish a fee schedule. The schedule shall incorporate unit rates, which may be based on square footage, cubic footage, estimated cost of inspection or other appropriate criteria.

P. 107.15. Payment of fees: A permit shall not be issued until the designated fees have been paid.

Exception: The fire official may authorize delayed payment of fees.

13 VAC 5-51-85. Section 108.0. Operational permits.

A. 108.1. General. Operational permits shall be in accordance with Section 108. The fire official may require notification prior to (i) activities involving the handling, storage or use of substances, materials or devices regulated by the SFPC; (ii) conducting processes which produce conditions hazardous to life or property; or (iii) establishing a place of assembly.

B. 108.1.1. Permits required. Operational permits may be required by the fire official in accordance with Table 107.2. The fire official shall require operational permits for the manufacturing, storage, handling, use and sale of explosives. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire official.

Exceptions:

1. Operational permits will not be required by the State Fire Marshal except for the manufacturing, storage, handling, use and sale of explosives in localities not enforcing the SFPC.
2. Operational permits will not be required for the manufacturing, storage, handling or use of explosives or blasting agents by the Virginia Department of State Police provided notification to the fire official is made annually by the Chief Arson Investigator listing all storage locations.

C. 108.1.2. Types of permits. There shall be two types of permits as follows:

1. Operational permit. An operational permit allows the applicant to conduct an operation or a business for which a permit is required by Section 108.6 for either:

- 1.1. A prescribed period.

- 1.2. Until renewed or revoked.

2. Construction permit. A construction permit is required, and shall be issued in accordance with the USBC and shall be issued by the building official. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by section 108.7.

D. 108.1.3. Operational permits for the same location. When more than one operational permit is required for the same location, the fire official is authorized to consolidate such permits into a single permit provided that each provision is listed in the permit.

E. 108.2. Application. Application for an operational permit required by this code shall be made to the fire official in such form and detail as prescribed by the fire official. Applications for permits shall be accompanied by such plans as prescribed by the fire official.

F. 108.2.1. Refusal to issue permit. If the application for an operational permit describes a use that does not conform to the requirements of this code and other pertinent laws and ordinances, the fire official shall not issue a permit, but shall return the application to the applicant with the refusal to issue such permit. Such refusal shall, when requested, be in writing and shall contain the reasons for refusal.

G. 108.2.2. Inspection authorized. Before a new operational permit is approved, the fire official is authorized to inspect the receptacles, vehicles, buildings, devices, premises, storage spaces or areas to be used to determine compliance with this code or any operational constraints required.

H. 108.2.3. Time limitation of application. An application for an operational permit for any proposed work or operation shall be deemed to have been abandoned six months after the date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that the fire official is authorized to grant one or more extensions of time for additional periods not exceeding 90 days each if there is reasonable cause.

I. 108.2.4. Action on application. The fire official shall examine or cause to be examined applications for operational permits and amendments thereto within a reasonable time after filing. If the application does not conform to the requirements of pertinent laws, the fire official shall reject such application in writing, stating the reasons therefor. If the fire official is satisfied that the proposed work or operation conforms to the requirements of this code and laws and ordinances applicable thereto, the fire official shall issue a permit therefore as soon as practicable.

J. 108.3. Conditions of a permit. An operational permit shall constitute permission to maintain, store or handle materials; or to conduct processes in accordance with the SFPC, and shall not be construed as authority to omit or amend any of the provisions of this code. The building official shall issue permits to install equipment utilized in connection with such activities; or to install or modify any fire protection system or equipment or any other construction, equipment installation or modification in accordance with the provisions of this code where a permit is required by section 108.7. Such permission

shall not be construed as authority to omit or amend any of the provisions of this code.

K. 108.3.1. Expiration. An operational permit shall remain in effect until reissued, renewed, or revoked for such a period of time as specified in the permit. Permits are not transferable and any change in occupancy, operation, tenancy or ownership shall require that a new permit be issued.

L. 108.3.2. Extensions. A permittee holding an unexpired permit shall have the right to apply for an extension of the time within which the permittee will commence work under that permit when work is unable to be commenced within the time required by this section for good and satisfactory reasons. The fire official is authorized to grant, in writing, one or more extensions of the time period of a permit for periods of not more than 90 days each. Such extensions shall be requested by the permit holder in writing and justifiable cause demonstrated.

M. 108.3.3. Annual. The enforcing agency may issue annual operational permits for the manufacturing, storage, handling, use, or sales of explosives to any state regulated public utility.

N. 108.3.4. Suspension of permit. An operational permit shall become invalid if the authorized activity is not commenced within six months after issuance of the permit, or if the authorized activity is suspended or abandoned for a period of six months after the time of commencement.

O. 108.3.5. Posting. Issued operational permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire official.

P. 108.3.6. Compliance with code. The issuance or granting of an operational permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Operational permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid. The issuance of a permit based on construction documents and other data shall not prevent the fire official from requiring the correction of errors in the construction documents and other data. Any addition to or alteration of approved construction documents shall be approved in advance by the fire official, as evidenced by the issuance of a new or amended permit.

Q. 108.3.7. Information on the permit. The fire official shall issue all operational permits required by this code on an approved form furnished for that purpose. The operational permit shall contain a general description of the operation or occupancy and its location and any other information required by the fire official. Issued permits shall bear the signature of the fire official.

R. 108.5. Revocation. The fire official is authorized to revoke an operational permit issued under the provisions of this code when it is found by inspection or otherwise that there has been a false statement or misrepresentation as to the material facts in the application or documents on which the permit or approval was based including, but not limited to, any one of the following:

1. The permit is used for a location or establishment other than that for which it was issued.

2. The permit is used for a condition or activity other than that listed in the permit.

3. Conditions and limitations set forth in the permit have been violated.

4. Inclusion of any false statements or misrepresentations as to a material fact in the application for permit or plans submitted or a condition of the permit.

5. The permit is used by a different person or firm than the person or firm for which it was issued.

6. The permittee failed, refused or neglected to comply with orders or notices duly served in accordance with the provisions of this code within the time provided therein.

7. The permit was issued in error or in violation of an ordinance, regulation or this code.

S. 108.7. Required construction permits. The building official is authorized to issue construction permits in accordance with the USBC for work as set forth in §§ 108.7.1 through 108.7.12.

T. 108.7.1. Automatic fire-extinguishing systems. A construction permit is required for installation of or modification to an automatic fire-extinguishing system. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

U. 108.7.2. Compressed gases. When the compressed gases in use or storage exceed the amounts listed in Table 108.6.9, a construction permit is required to install, repair damage to, abandon, remove, place temporarily out of service, or close or substantially modify a compressed gas system.

Exceptions:

1. Routine maintenance.

2. For emergency repair work performed on an emergency basis, application for permit shall be made within two working days of commencement of work.

The permit applicant shall apply for approval to close storage, use or handling facilities at least 30 days prior to the termination of the storage, use or handling of compressed or liquefied gases. Such application shall include any change or alteration of the facility closure plan filed pursuant to § 2701.5.3 of the Code of Virginia. The 30-day period is not applicable when approved based on special circumstances requiring such waiver.

V. 108.7.3. Fire alarm and detection systems and related equipment. A construction permit is required for installation of or modification to fire alarm and detection systems and related equipment. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

W. 108.7.4. Fire pumps and related equipment. A construction permit is required for installation of or modification to fire pumps and related fuel tanks, jockey pumps, controllers, and generators. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

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X. 108.7.5. *Flammable and combustible liquids.* A construction permit is required:

1. To repair or modify a pipeline for the transportation of flammable or combustible liquids.
2. To install, construct or alter tank vehicles, equipment, tanks, plants, terminals, wells, fuel-dispensing stations, refineries, distilleries and similar facilities where flammable and combustible liquids are produced, processed, transported, stored, dispensed or used.
3. To install, alter, remove, abandon, place temporarily out of service or otherwise dispose of a flammable or combustible liquid tank.

Y. 108.7.6. *Hazardous materials.* A construction permit is required to install, repair damage to, abandon, remove, place temporarily out of service, or close or substantially modify a storage facility or other area regulated by Chapter 27 when the hazardous materials in use or storage exceed the amounts listed in Table 108.6.21.

Exceptions:

1. Routine maintenance.
2. For emergency repair work performed on an emergency basis, application for permit shall be made within two working days of commencement of work.

Z. 108.7.7. *Industrial ovens.* A construction permit is required for installation of industrial ovens covered by Chapter 21.

Exceptions:

1. Routine maintenance.
2. For repair work performed on an emergency basis, application for permit shall be made within two working days of commencement of work.

AA. 108.7.8. *LP-gas.* A construction permit is required for installation of or modification to an LP-gas system.

BB. 108.7.9. *Private fire hydrants.* A construction permit is required for the installation or modification of private fire hydrants.

CC. 108.7.10. *Spraying or dipping.* A construction permit is required to install or modify a spray room, dip tank or booth.

DD. 108.7.11. *Standpipe systems.* A construction permit is required for the installation, modification, or removal from service of a standpipe system. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

EE. 108.7.12. *Temporary membrane structures, tents and canopies.* A construction permit is required to erect an air-supported temporary membrane structure or a tent having an area in excess of 900 square feet (84 m²), or a canopy in excess of 700 square feet (65 m²).

Exceptions:

1. Tents used exclusively for recreational camping purposes.

2. Tents and air-supported structures that cover an area of 900 square feet (84 m²) or less, including all connecting areas or spaces with a common means of egress or entrance and with an occupant load of 50 or less persons.

3. Funeral tents and curtains or extensions attached thereto, when used for funeral services.

4. Fabric canopies and awnings open on all sides that comply with all of the following:

4.1. Individual canopies shall have a maximum size of 700 square feet (65 m²).

4.2. The aggregate area of multiple canopies placed side by side without a fire break clearance of 12 feet shall not exceed 700 square feet (65 m²) total.

4.3. A minimum clearance of 12 feet (3658 mm) to structures and other tents shall be maintained.

13 VAC 5-51-91. Section F-109-0. 109. Inspection.

A. F-109.1. Inspection: The fire code official may inspect all structures and premises for the purposes of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with firefighting operations, endanger life, or any violations of the provisions or intent of the SFPC.

Exception: Single family dwellings and dwelling units in two family and multiple family dwellings and farm structures shall be exempt from routine inspections. This exemption shall not preclude the code fire official from inspecting under § 27-98.2 of the Code of Virginia for hazardous conditions relating to explosives, flammable and combustible conditions, and hazardous materials.

B. F-109.1.1. Right to entry: The code fire official may enter any structure or premises at any reasonable time to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code fire official may pursue recourse as provided by law.

Note: Specific authorization and procedures for inspections and issuing warrants are set out in §§ 27-98.1 through 27-98.5 of the Code of Virginia and shall be taken into consideration.

C. F-109.1.2. Credentials: The fire code official and assistants shall carry proper credentials of office when inspecting in the performance of their duties under the SFPC.

D. F-109.2. Coordinated inspections: The fire code official shall coordinate inspections and administrative orders with any other state and local agencies having related inspection authority, and shall coordinate those inspections required by the USBC for new construction when involving provisions of the amended ~~BNFPC~~ IFC, so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The USBC requires the building code official to coordinate such inspections with the fire code official.

E. F-109.3. Other inspections: The State Fire Marshal shall make annual inspections for hazards incident to fire in all (i) residential care facilities operated by any state agency; (ii) adult care residences licensed or subject to licensure under

Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 of the Code of Virginia which are not inspected by a local fire marshal; (iii) student residence facilities owned or operated by the public institutions of higher education in the Commonwealth; and (iv) public schools in the Commonwealth which are not inspected by a local fire marshal. In the event that any such facility or residence is found nonconforming to the SFPC, the State Fire Marshal may petition any court of competent jurisdiction for the issuance of an injunction.

13 VAC 5-51-101. Section F-110.0. Unsafe conditions.

A. F-110.1. General: The fire ~~code~~ official shall order the following dangerous or hazardous conditions or materials to be removed or remedied in accordance with the SFPC:

1. Dangerous conditions which are liable to cause or contribute to the spread of fire in or on said premises, building or structure, or to endanger the occupants thereof.
2. Conditions which would interfere with the efficiency and use of any fire protection equipment.
3. Obstructions to or on fire escapes, stairs, passageways, doors or windows, which are liable to interfere with the egress of occupants or the operation of the fire department in case of fire.
4. Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts.
5. Accumulations of grease on kitchen cooking equipment, or oil, grease or dirt upon, under or around any mechanical equipment.
6. Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible materials, or excessive storage of any combustible material.
7. Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment or appliances.
8. Hazardous conditions arising from defective or improperly used or installed equipment for handling or using combustible, explosive or otherwise hazardous materials.
9. Dangerous or unlawful amounts of combustible, explosive or otherwise hazardous materials.
10. All equipment, materials, processes or operations which are in violation of the provisions and intent of this code.

B. F-110.2. Maintenance: The owner shall be responsible for the safe and proper maintenance of any structure, premises or lot. In all structures, the fire protection equipment, means of egress, alarms, devices and safeguards required by the USBC shall be maintained in a safe and proper operating condition *as required by the SFPC and applicable referenced standards*.

C. F-110.3. Occupant responsibility: If a building occupant creates conditions in violation of this code, by virtue of storage, handling and use of substances, materials, devices and appliances, such occupant shall be held responsible for the abatement of said hazardous conditions.

D. F-110.4. Unsafe structures: All structures that are or shall hereafter become unsafe or deficient in adequate exit facilities or which constitute a fire hazard, or are otherwise dangerous to human life or the public welfare, or by reason of illegal or improper use, occupancy or maintenance or which have sustained structural damage by reason of fire, explosion, or natural disaster shall be deemed unsafe structures. A vacant structure, or portion of a structure, unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this code. Unsafe structures shall be reported to the building ~~code~~ official or building maintenance ~~code~~ official who shall take appropriate action under the provisions of the USBC to secure abatement.

E. F-110.5. Evacuation: When, in the fire ~~code~~ official's opinion, there is actual and potential danger to the occupants or those in the proximity of any structure or premises because of unsafe structural conditions, or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapors, or the presence of toxic fumes, gases or materials, the fire ~~code~~ official may order the immediate evacuation of the structure or premises. All notified occupants shall immediately leave the structure or premises and no person shall enter until authorized by the fire ~~code~~ official.

F. F-110.6. Unlawful continuance: Any person who refuses to leave, interferes with the evacuation of other occupants or continues any operation after having been given an evacuation order shall be in violation of this code.

Exception: Any person performing work directed by the fire ~~code~~ official to be performed to remove an alleged violation or unsafe condition.

13 VAC 5-51-111. Section F-111.0. Violations.

A. F-111.1. Notice: When the fire ~~code~~ official discovers an alleged violation of a provision of the SFPC or other codes or ordinances under the fire ~~code~~ official's jurisdiction, the ~~code~~ official shall prepare a written notice citing the section allegedly violated, describing the condition deemed unsafe and specifying time limitations for the required abatements to be made to render the structure or premises safe and secure.

B. F-111.2. Service: The written notice of violation of this code shall be served upon the owner, a duly authorized agent or upon the occupant or other person responsible for the conditions under violation. Such notice shall be served either by delivering a copy of same to such persons by mail to the last known post office address, by delivering in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or, in the case such person is not found upon the premises, by affixing a copy thereof in a conspicuous place at the entrance door or avenue of access. Such procedure shall be deemed the equivalent of personal notice.

C. F-111.3. Failure to correct violations: If the notice of violation is not complied with within the time specified, the fire ~~code~~ official shall request the legal counsel of the local governing body to institute the appropriate legal proceedings to restrain, correct or abate such alleged violation.

D. F-111.4. Penalty: Penalties upon conviction of violating the SFPC shall be as set out in § 27-100 of the Code of Virginia.

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E. ~~F~~-111.5. Summons: When *authorized and* certified in accordance with § 27-34.2 of the Code of Virginia, the fire ~~code~~ official may, subject to any limitations imposed by the local governing body, issue a summons in lieu of a notice of violation. Fire ~~code~~ officials not certified in accordance with § 27-34.2 of the Code of Virginia may request the law-enforcement agency of the local governing body to make arrests for any alleged violations of the SFPC or orders affecting the immediate public safety.

13 VAC 5-51-121. Section ~~F~~-112.0. Appeals.

A. ~~F~~-112.1. Application for appeal: Appeals concerning the application of the SFPC by the fire ~~code~~ official shall first lie to the local board of fire prevention code appeals (BFPCA) and then to the TRB. Appeals from the application of this code by the State Fire Marshal shall be made directly to the TRB as provided in Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. The appeal shall be submitted within 14 calendar days of the application of the SFPC.

B. ~~F~~-112.1.1. Local Board of Fire Prevention Code Appeals (BFPCA): Each local governing body which enforces the SFPC shall have a BFPCA to hear appeals as authorized herein or it shall enter into an agreement with the governing body of another county or municipality, with some other agency, or with a state agency approved by the DHCD to act on appeals. An appeal case decided by some other approved agency shall constitute an appeal in accordance with this section and shall be final unless appealed to the State Building Code Technical Review Board (TRB).

C. ~~F~~-112.2. Membership: The BFPCA shall consist of at least five members appointed by the local governing body and having terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the local governing body. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

D. ~~F~~-112.2.1. Chairman: The BFPCA shall annually select one of its regular members to serve as chairman. In case of the absence of the chairman at a hearing, the members present shall select an acting chairman.

E. ~~F~~-112.2.2. Secretary: The local governing body shall appoint a secretary to the BFPCA to maintain a detailed record of all proceedings.

F. ~~F~~-112.3. Qualifications of members: BFPCA members shall be selected by the local governing body on the basis of their ability to render fair and competent decisions regarding application of the SFPC and shall, to the extent possible, represent different occupational or professional fields relating to building construction or fire prevention. At least one member should be an experienced builder and one member a licensed professional engineer or architect. Employees or officials of the local governing body shall not serve as members of the BFPCA.

G. ~~F~~-112.4. Disqualification of member: A member shall not hear an appeal in which that member has conflict of interest in accordance with the State and Local Government Conflict of Interests Act, Chapter ~~40-4~~ 31 (§ ~~2-4-639~~ 2.2-3100 et seq.) of Title ~~2-4~~ 2.2 of the Code of Virginia.

H. ~~F~~-112.5. Application for appeal: The owner of a structure, the owner's agent or any other person involved in the design, construction or maintenance of the structure may appeal a decision of the ~~code~~ fire official concerning the application of the SFPC or the ~~code~~ fire official's refusal to grant modification under subsection F-106.5 to the provisions of the SFPC. ~~The applicant shall submit a written request for appeal to the BFPCA within 90 calendar days from the receipt of the decision to be appealed.~~ The application shall contain the name and address of the owner of the structure and the person appealing if not the owner. A copy of the written decision of the ~~code~~ fire official shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the BFPCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the ~~code~~ fire official's decision.

I. ~~F~~-112.6. Notice of meeting: The BFPCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

J. ~~F~~-112.7. Hearing procedures: All hearings before the BFPCA shall be open to the public. The appellant, the appellant's representative, the local governing body's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.

K. ~~F~~-112.7.1. Postponement: When a quorum of the BFPCA is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing. The BFPCA shall reschedule the appeal within 30 calendar days of the postponement.

L. ~~F~~-112.8. Decision: The BFPCA shall have the power to uphold, reverse or modify the decision of the ~~code~~ fire official by a concurring vote of a majority of those present. Decisions of the BFPCA shall be final if no appeal is made therefrom and the appellant and the ~~code~~ fire official shall act accordingly.

M. ~~F~~-112.8.1. Resolution: The BFPCA 's decision shall be by resolution signed by the chairman and retained as part of the record by the BFPCA. The following wording shall be part of the resolution: "Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board (TRB) by submitting an application to the TRB within 21 calendar days. Application forms are available from the Office of the TRB, 501 North

Second Street, Richmond, Virginia 23219, (804) 371-7150." Copies of the resolution shall be furnished to all parties.

N. ~~F-112.9.~~ Appeal to the TRB: After final determination by the BFPCA, any person who was a party to the local appeal may appeal to the TRB. Appeals from the decision of the ~~code~~ fire official for state-owned structures shall be made directly to the TRB. Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the BFPCA's resolution or code official's decision.

O. ~~F-112.9.1.~~ Information to be submitted: Copies of the code official's decision and the resolution of the BFPCA shall be submitted with the application for appeal. Upon request by the office of the TRB, the BFPCA shall submit a copy of all pertinent information from the record of the BFPCA. In the case of state-owned buildings, the involved state agency shall submit a copy of the ~~code~~ fire official's decision and other relevant information.

P. ~~F-112.9.2.~~ Decision of TRB: Procedures of the TRB are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the appellant and the code official shall act accordingly.

PART II.
TECHNICAL AMENDMENTS.

13 VAC 5-51-129. Application of Part II.

The changes in this part shall be made to the model codes and standards as indicated in this chapter for use as part of the SFPC.

13 VAC 5-51-130. ~~BNFPG IFC~~ Section ~~F-202.0.~~ General definitions.

A. Add the following definitions:

Background clearance card: See Section ~~F-3002.0~~ 3301.0.

Blaster, restricted: See Section ~~F-3002.0~~ 3301.0.

Blaster, unrestricted: See Section ~~F-3002.0~~ 3301.0.

DHCD: The Virginia Department of Housing and Community Development.

Local government, local governing body or locality: The governing body of any county, city, or town, other political subdivision and state agency in this Commonwealth charged with the enforcement of the SFPC under state law.

State Fire Marshal: The State Fire Marshal as provided for by § 36-139.2 of the Code of Virginia.

State Regulated Care Facility (SRCF): A building or part thereof occupied by persons in the care of others where program regulatory oversight is provided by the Virginia Department of Social Services; Virginia Department Mental Health, Mental Retardation and Substance Abuse Services; Virginia Department of Education or Virginia Department of Juvenile Justice (~~Use~~ Groups I-4, A-3, R-2, R-3 and, R-4 and R-5 only).

Technical Assistant: Any person employed by, or under contract to, a local enforcing agency for enforcing the SFPC, including but not limited to inspectors and plans reviewers.

TRB: The Virginia State Building Code Technical Review Board.

USBC: The Virginia Uniform Statewide Building Code (13 VAC 5-61-10 et seq.)

B. Change the following definition to read:

Code official, *fire official* or fire code official: The officer or other designated authority charged with administration and enforcement of this code, or a duly authorized representative. For the purpose of this code, the term "code official," "*fire official*" or "fire code official" shall have the same meaning as used in § 27-98.1 of the Code of Virginia.

13 VAC 5-51-131. ~~BNFPG IFC~~ Chapter 3. Precautions against fire.

Add ~~Change~~ section ~~F-316.0~~ 315.3 to read:

Section ~~F-316.0~~ Material Storage.

~~F-316.1. Approval required: Approval shall be required for storage located in any structure or on any premises of more than 2,500 cubic feet (70 m³) gross volume of combustible empty packing cases, boxes, barrels or similar containers or rubber tires, baled cotton, rubber, cork or other similarly combustible materials.~~

~~F-316.2. Inside storage: Storage located in structures shall be orderly and not located within two feet (610 mm) of the ceiling and shall not obstruct the means of egress from the structure.~~

~~F-316.3. Outside storage: The outside storage of combustible or flammable materials shall not exceed 20 feet (6096 mm) in height and shall be compact and orderly. Such storage shall be located so as not to constitute a hazard and shall not be less than 15 feet (4572 mm) from any lot line and any other building on the site.~~

315.3. Outside storage. Outside storage of combustible materials shall not be located within 10 feet (3048 mm) of a property line or other building on the site.

Exceptions:

1. The separation distance is allowed to be reduced to 3 feet (914 mm) for storage not exceeding 6 feet (1829 mm) in height.

2. The separation distance is allowed to be reduced when the fire official determines that no hazard to the adjoining property exists.

13 VAC 5-51-132. IFC Chapter 4. Emergency planning and preparedness.

A. Add subsection 401.1.1 to read:

401.1.1. State Regulated Care Facilities: when a state license is required by the Virginia Department of Social Services; Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services; Virginia Department of Education; or Virginia Department of

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Juvenile Justice to operate, SRCF shall comply with this section and the provisions of section 404.0.

B. Add subsection 404.2.7.1 to read:

404.2.7.1. *Fire exit drills: Fire exit drills shall be conducted annually by building staff personnel or the owner of the building in accordance with the fire safety plan and shall not affect other current occupants.*

C. Add subsection 408.5.4.1 to read:

408.5.4.1. *State Regulated Care Facilities: Fire exit drills for SRCF shall be conducted not less than 12 times per year.*

13 VAC 5-51-133. BNFPC IFC Chapter 5. Fire protection systems.

~~A. Add exception to subsection F-506.1 to read: Delete section 501.4.~~

~~Exception: When the code official determines through investigation or testing or reports by a nationally recognized testing agency that specific, required water sprinkler or water-spray extinguishing equipment has been identified as failing to perform or operate through not less than 30 randomly selected sprinkler heads at four or more building sites anywhere in the nation, the code official shall order all such equipment to be rendered safe.~~

~~B. Add subsection F-519.6 exceptions to section 503.1 to read:~~

~~F-519.6. Inspection, testing and maintenance: All portable fire extinguishers shall be periodically inspected, tested and maintained in accordance with NFPA 10 listed in Chapter 44.~~

~~Exception:~~

~~1. Fire apparatus access roads shall be permitted to be provided and maintained in accordance with adopted local ordinances that establish fire apparatus access road requirements and such requirements shall be identified to the owner or his agent prior to the building official's approval of the building permit.~~

~~2. On construction and demolition sites fire apparatus access roads shall be permitted to be provided and maintained in accordance with section 1410.1.~~

~~C. Change section 508.5.1 to read:~~

~~508.5.1. Where required. Fire hydrant systems shall be located and installed as directed by the fire department. Fire hydrant systems shall conform to the written standards of the jurisdiction and the fire department.~~

13 VAC 5-51-135. BNFPC Section F-704.0. General IFC Chapter 9 Fire Protection Systems.

~~Add subsection F-701.1.1 to read:~~

~~F-701.1.1. State Regulated Care Facilities: SRCF, when a state license is required by the Virginia Department of Social Services; Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services; Virginia Department of Education; or Virginia Department of Juvenile Justice to operate, shall comply with this section and the provisions of section F-704.0.~~

A. Change the following definition to read:

Automatic fire-extinguishing system. An approved system of devices and equipment which automatically detects a fire and discharges an approved fire-extinguishing agent onto or in the area of a fire. Such system shall include an automatic sprinkler system, unless otherwise expressly stated.

B. Delete section 901.4.3.

C. Change subsection 901.6 to read:

901.6. *Inspection, testing and maintenance. To the extent that equipment, systems, devices, and safeguards, such as fire detection, alarm and extinguishing systems, which were required, provided and approved by the building official when constructed, shall be maintained in an operative condition at all times. And where such equipment, systems, devices, and safeguards are found not to be in an operative condition, the fire official shall order all such equipment to be rendered safe in accordance with the USBC.*

Exception: When the fire official determines through investigation or testing or reports by a nationally recognized testing agency that specific, required water sprinkler or water-spray extinguishing equipment has been identified as failing to perform or operate through not less than 30 randomly selected sprinkler heads at four or more building sites anywhere in the nation, the fire official shall order all such equipment to be rendered safe.

D. Delete section 903.1.2.

E. Change exception in section 906.1 to read:

Exception: In Group A, B, E, M and R-2 occupancies equipped throughout with quick-response sprinklers, fire extinguishers shall be required only in special-hazard areas.

13 VAC 5-51-136. BNFPC Section F-704.0. Use Group I-4 Residential care IFC Chapter 14 Fire Safety During Construction and Demolition.

~~Add subsection F-704.3.1 to read:~~

~~F-704.3.1. State Regulated Care Facilities: Fire exit drills for SRCF shall be conducted not less than 12 times per year.~~

A. Change section 1412.4 to read:

1412.4. *Water supply. Approved water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible material arrives on site.*

B. Change section 1410.1 to read:

1410.1. *Required access. Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet (30 480 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Temporary vehicle access shall be maintained until permanent fire apparatus access roads are available.*

13 VAC 5-51-140. BNFPC Section F-707.0 High-Rise Buildings IFC Chapter 22 Service Stations and Repair Garages.

Add subsection F-707.4 to read:

~~F-707.4. Fire exit drills: Fire exit drills shall be conducted annually by building staff personnel or the owner of the building in accordance with the fire safety plan and shall not affect other current occupants.~~

Change Section 2206.2.1.1 to read:

2206.2.1.1. Inventory control and leak detection for underground tanks. Accurate inventory records shall be maintained on underground fuel storage tanks for indication of possible leakage from tanks and piping. The records shall be kept at the premises or made available for inspection by the fire official within 24 hours of a written or verbal request and shall include records for each tank. Where there is more than one system consisting of tanks serving separate pumps or dispensers for a product, the inventory record shall be maintained separately for each tank system.

Owners and operators of underground fuel storage tanks shall provide release detection for tanks and piping that routinely contain flammable and combustible liquids in accordance with one of the following methods:

- 1. Monthly inventory control to detect a release of at least 1.0% of flow-through plus 130 gallons.*
- 2. Manual tank gauging for tanks with 2,000 gallon capacity or less when measurements are taken at the beginning and ending of a 36- to 58-hour period during which no liquid is added to or removed from the tank.*
- 3. Tank tightness testing capable of detecting a 0.1 gallon per hour leak rate.*
- 4. Automatic tank gauging that tests for loss of liquid.*
- 5. Vapor monitoring for vapors within the soil of the tank field.*
- 6. Groundwater monitoring when the groundwater is never more than 20 feet from the ground surface.*
- 7. Interstitial monitoring between the underground tank and a secondary barrier immediately around or beneath the tank.*
- 8. Other approved methods that have been demonstrated to be as effective in detecting a leak as the methods listed above.*

A consistent or accidental loss of product shall be immediately reported to the fire official.

13 VAC 5-51-150. BNFPC IFC Chapter 30. 33 Explosives, Ammunition and Blasting Agents Fireworks.

A. Change subsection F-3001.4 exception 4 in subsection 3301.1 to read:

~~F-3001.1. Scope: The equipment, processes and operations involving the manufacture, possession, storage, sale, maintenance, and use of explosive materials shall comply with the requirements of this code, NFPA 495 and DOTn 49 CFR~~

~~listed in Chapter 44 of this code, except that the year edition of NFPA 495 referenced shall be 1996.~~

~~4. The possession, storage, and use of not more than 15 pounds (6.81 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and 1,000 small arms primers for hand loading of small arms ammunition for personal consumption.~~

B. Change exceptions Add exception 10 to subsection F-3001.4 section 3301.1 to read:

~~Exception: This chapter shall not apply to the following:~~

- ~~1. The use of explosives by federal or state military agencies or federal, state or municipal agencies while engaged in normal or emergency performance of duties.~~
- ~~2. The manufacture and distribution of explosive materials to or storage of explosive materials by military agencies of the United States.~~
- ~~3. The use of explosive materials in medicines and medicinal agencies in the forms prescribed by the U.S. Pharmacopeia or the National Formulary.~~
- ~~4. Pyrotechnics such as flares, fuses and railway torpedoes.~~
- ~~5. Common fireworks in accordance with Chapter 31.~~
- ~~6. The possession and use of not more than 15 pounds (7 kg) of smokeless powder and 1,000 small arms primers for hand loading of small arms ammunition for personal use.~~
- ~~7. The storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1 of the Code of Virginia.~~
- ~~10. The storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1 of the Code of Virginia.~~

C. Change Add exception 5 to subsection F-3001.2 3301.1.3 to read:

~~F-3001.2. Approval required: Approval shall be required for the following conditions or operations:~~

- ~~1. The manufacture, possession, storage, sale or other disposition of explosive materials.~~
- ~~2. The use of explosive materials.~~
- ~~3. The operation of a terminal for handling explosive materials.~~
- ~~4. The delivery to or receipt of explosive materials from a carrier at a terminal between the hours of sunset and sunrise.~~
- ~~5. The sale or use of materials or equipment when such materials or equipment is used or to be used by any person for signaling or other emergency use in the operation of any boat, railroad train or other vehicle for the transportation of persons or property.~~

D. Add exception to subsection F-3001.3 Change entire section 3301.2 to read:

~~Exception: A bond is not required for blasting on real estate parcels of five or more acres conforming to the definition of "real estate devoted to agricultural use" or "real estate~~

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devoted to horticultural use" in § 58.1-3230 of the Code of Virginia and conducted by the owner of such real estate.

3301.2. Permit required. Permits shall be required as set forth in section 107.2 and regulated in accordance with this section. The manufacture, storage, sale and use of explosives shall not take place without first applying for and obtaining a permit.

3301.2.1. Residential uses. No person shall keep or store, nor shall any permit be issued to keep or store, any explosives at any place of habitation, or within 100 feet (30,480 mm) thereof.

Exception: Storage of smokeless propellant, black powder, and small arms primers for personal use and not for resale in accordance with section 3306.

3301.2.2. Sale and retail display. No person shall construct a retail display nor offer for sale explosives, explosive materials, or fireworks upon highways, sidewalks, public property, or in assembly or educational occupancies.

3301.2.3. Permit restrictions. The fire official is authorized to limit the quantity of explosives, explosive materials, or fireworks permitted at a given location. No person, possessing a permit for storage of explosives at any place, shall keep or store an amount greater than authorized in such permit. Only the kind of explosive specified in such a permit shall be kept or stored.

3301.2.3.1. Permit applicants. The fire official shall not issue a permit to manufacture, store, handle, use or sell explosives or blasting agents to any individual applicant who is not certified by the DHCD as a blaster in accordance with sections 3301.4.1, or who is not in the possession of a background clearance card or to designated persons representing an applicant that is not an individual and who is not in possession of a background clearance card issued in accordance with section 3301.2.3.1.1. The DHCD shall process all applications for a background clearance card for compliance with § 27-97.2 of the Code of Virginia and will be the sole provider of background clearance cards.

3301.2.3.1.1. Background clearance card: A background clearance card may be issued upon completion of the following requirements:

1. Any firm or company manufacturing, storing, using or selling explosives in the Commonwealth shall provide the name of a designated person or persons who will be a representative of the company and be responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits from the fire official.

2. Using a form provided by the DHCD, all individual applicants and all designated persons representing an applicant that is not an individual, shall submit to a background investigation, to include a national criminal history record check, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster.

3. Each such applicant shall submit fingerprints and provide personal descriptive information to the DHCD to

be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant.

3301.2.3.1.2. Issuance of a background clearance card: The issuance of a background clearance card shall be denied if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority.

3301.2.3.1.3. Fee for certification: The fee for obtaining or renewing a background clearance card from DHCD shall be \$150.

3301.2.3.1.3.1. Additional fees: The applicant shall pay all additional fees charged by other agencies for fingerprinting and for obtaining a national criminal history record check through the Central Criminal Records Exchange to the Federal Bureau of Investigation.

3301.2.3.1.4. Revocation of a background clearance card: After issuance of a background clearance card, subsequent conviction of a felony will be grounds for immediate revocation of a background clearance card, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof. The card shall be returned to the DHCD immediately. An individual may reapply for his background clearance card if his civil rights have been restored by the Governor or other appropriate authority.

3301.2.4. Financial responsibility. Before a permit is issued, as required by section 3301.2, the applicant shall file with the jurisdiction a corporate surety bond in the principal sum of \$500,000 or a public liability insurance policy for the same amount, for the purpose of the payment of all damages to persons or property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The legal department of the jurisdiction may specify a greater amount when conditions at the location of use indicate a greater amount is required. Government entities shall be exempt from this bond requirement.

3301.2.4.1. Blasting. Before approval to do blasting is issued, the applicant for approval shall file a bond or submit a certificate of insurance in such form, amount, and coverage as determined by the legal department of the jurisdiction to be adequate in each case to indemnify the jurisdiction against any and all damages arising from permitted blasting but in no case shall the value of the coverage be less than \$500,000.

Exception: Filing a bond or submitting a certificate of liability insurance is not required for blasting on real estate parcels of five or more acres conforming to the definition of "real estate devoted to agricultural use" or "real estate devoted to horticultural use" in § 58.1-3230 of the Code of Virginia and conducted by the owner of such real estate.

~~3301.2.4.2. Fireworks display. The permit holder shall furnish a bond or certificate of insurance in an amount deemed adequate by the legal department of the jurisdiction for the payment of all potential damages to a person or persons or to property by reason of the permitted display, and arising from any acts of the permit holder, the agent, employees or subcontractors.~~

~~E. Add Sections F-3001.2.3, F-3001.2.3.1, F-3001.2.3.2, and F-3001.2.3.3 Change entire section 3301.4 to read:~~

~~Section F-3001.2.3. Background investigations: The fire official shall not issue a permit to manufacture, store, handle, use or sell explosives or blasting agents to any individual applicant who is not certified by the department as a blaster or who is not in the possession of a background clearance card, or to designated persons representing an applicant that is not an individual and who is not in possession of a background clearance card. The department shall process all applicants for a blaster certification and designated persons for compliance with § 27-97.2 of the Code of Virginia and will be the sole provider of background clearance cards and blaster certifications.~~

~~Section F-3001.2.3.1. Background clearance card: A background clearance card may be issued upon completion of the following requirements:~~

~~1. Any firm or company manufacturing, storing, using or selling explosives in the Commonwealth shall provide the name of a designated person or persons who will be a representative of the company and be responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits from the fire official.~~

~~2. Using a form provided by the department, all individual applicants and all designated persons representing an applicant that is not an individual shall submit to a background investigation, to include a national criminal history record check, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster.~~

~~3. Each such applicant shall submit fingerprints and provide personal descriptive information to the department to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant.~~

~~Section F-3001.2.3.2. Issuance of a background clearance card: The issuance of a background clearance card shall be denied if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority.~~

~~Section F-3001.2.3.3. Revocation of a background clearance card or blaster certification: After issuance of a background clearance card or blaster certification, subsequent conviction of a felony will be grounds for immediate revocation of a background clearance card or blaster certification, whether such conviction occurred under the laws of the~~

~~Commonwealth or any other state, the District of Columbia, the United States or any territory thereof. The card or certification shall be returned to the department immediately. An individual may reapply for his background clearance card or blaster certification if his civil rights have been restored by the Governor or other appropriate authority.~~

~~3301.4. Qualifications. Persons in charge of magazines, blasting, fireworks display, or pyrotechnic special effect operations shall not be under the influence of alcohol or drugs which impair sensory or motor skills, shall be at least 21 years of age and possess knowledge of all safety precautions related to the storage, handling or use of explosives, explosive materials or fireworks.~~

~~3301.4.1. Certification of blasters. Certificates as a restricted or unrestricted blaster will be issued upon proof of successful completion of an examination approved by the DHCD and a background investigation for compliance with § 27-97.2 of the Code of Virginia. The applicant for certification shall submit proof to the DHCD of the following experience:~~

~~1. For certification as a restricted blaster, at least one year under direct supervision by a certified unrestricted blaster, certified restricted blaster or other person(s) approved by the DHCD.~~

~~2. For certification as an unrestricted blaster, at least one year under direct supervision by a certified unrestricted blaster or other person or persons approved by the DHCD.~~

~~The DHCD shall process all certification applicants for compliance with § 27-97.2 of the Code of Virginia and will be the sole provider of blaster certifications.~~

~~Exception: The owner of real estate parcels of five or more acres conforming to the definition of "real estate devoted to agricultural use" or "real estate devoted to horticultural use" in § 58.1-3230 of the Code of Virginia when blasting on such real estate.~~

~~3301.4.2. Certification issuance. The issuance of a certification as a blaster shall be denied if the applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority.~~

~~3301.4.3. Fee for certification. The fee for obtaining or renewing a blaster certificate from DHCD shall be \$150.~~

~~3301.4.3.1. Additional fees: The applicant shall pay all additional fees charged by other agencies for fingerprinting and for obtaining a national criminal history record check through the Central Criminal Records Exchange to the Federal Bureau of Investigation.~~

~~3301.4.4. Revocation of a blaster certification. After issuance of a blaster certification, subsequent conviction of a felony will be grounds for immediate revocation of a blaster certification, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory~~

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thereof. The certification shall be returned to DHCD immediately. An individual may subsequently reapply for his blaster certification if his civil rights have been restored by the Governor or other appropriate authority.

3301.4.5. *Expiration and renewal of a blaster certification.* A certificate for an unrestricted or restricted blaster shall be valid for three years from the date of issuance. A background clearance card shall be valid for three years from the date of issuance. Renewal of the unrestricted blaster certificate will be issued upon proof of at least 16 hours of continued training or education in the use of explosives within three consecutive years and a background investigation for compliance with § 27-97.2 of the Code of Virginia. Renewal of the restricted blaster certificate will be issued upon proof of at least eight hours of continued training or education in the use of explosives within three consecutive years and a background investigation for compliance with § 27-97.2 of the Code of Virginia. The continued training or education required for renewal of a blaster certificate shall be obtained during the three years immediately prior to the certificate's published expiration date. Failure to renew a blaster certificate in accordance with this section shall cause an individual to obtain another blaster certificate upon compliance with section 3301.4.1 to continue engaging in the unsupervised use of explosives.

F. Add to BNFPC Change section F-3002.0. Definitions, the following definition 3301.7 to read:

~~Background clearance card: An identification card issued to an individual who is not a certified blaster and is representing himself or acting as a representative of a company, corporation, firm or other entity, solely for the purpose of submitting an application to the fire code official for a permit to manufacture, use, handle, store, or sell explosive materials.~~

3301.7. *Seizure.* The fire official is authorized to remove or cause to be removed or disposed of in an approved manner, at the expense of the owner, fireworks offered or exposed for sale, stored, possessed or used in violation of this chapter.

G. Add the following definitions to section 3302.1 to read:

Background clearance card. An identification card issued to an individual who is not a certified blaster and is representing himself or acting as a representative of a company, corporation, firm or other entity, solely for the purpose of submitting an application to the fire official for a permit to manufacture, use, handle, store, or sell explosive materials.

Blaster, restricted. Any person engaging in the use of explosives or blasting agents utilizing five pounds (2.25 kg) or less per blasting operation and using instantaneous detonators.

Blaster, unrestricted. Any person engaging in the use of explosives or blasting agents without limit to the amount of explosives or blasting agents or type of detonator.

Permissible fireworks. Any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

H. Change the following definitions in section 3302.1 to read:

Fireworks. Any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known, as fireworks and that explodes, rises into the air or travels laterally, or fires projectiles into the air. Fireworks may be further delineated and referred to as:

Fireworks, 1.4G. (Formerly known as Class C, Common Fireworks.) Small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks that comply with the construction, chemical composition, and labeling regulations of the DOTn for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission as set forth in CPSC 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this code.

Fireworks, 1.3G. (Formerly Class B, Special Fireworks.) Large fireworks devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration, or detonation. Such 1.3G fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces that exceed the limits for classification as 1.4G fireworks. Such 1.3G fireworks are also described as Fireworks, UN0335 by the DOTn.

I. Change section 3305.1 to read:

3305.1. *General.* The manufacture, assembly and testing of explosives, ammunition, blasting agents and fireworks shall comply with the requirements of this section, Title 59.1, Chapter 11 of the Code of Virginia, and NFPA 495 or NFPA 1124.

Exceptions:

1. The hand loading of small arms ammunition prepared for personal use and not offered for resale.
2. The mixing and loading of blasting agents at blasting sites in accordance with NFPA 495.
3. The use of binary explosives or phosphoric materials in blasting or pyrotechnic special effects applications in accordance with NFPA 495 or NFPA 1126.

J. Add section 3305.1.1 to read:

3305.1.1. *Permits.* Permits for the manufacture, assembly and testing of explosives, ammunition, blasting agents and fireworks shall be required as set forth in section 107.2 and regulated in accordance with this section. A permit to manufacture any explosive material in any quantity shall be prohibited unless such manufacture is authorized by a federal license and conducted in accordance with recognized safety practices.

K. Change section 3307.1 to read:

3307.1. *General. Blasting operations shall be conducted only by persons certified by the DHCD as a restricted or unrestricted blaster or shall be supervised on-site by a person properly certified by the DHCD as restricted or unrestricted blaster.*

L. Add section 3307.16 to read:

3307.16. *Blast records. A record of each blast shall be kept and retained for at least five years and shall be available for inspection by the code official. The record shall contain the following minimum data:*

1. *Name of contractor;*
2. *Location and time of blast;*
3. *Name of certified blaster in charge;*
4. *Type of material blasted;*
5. *Number of holes bored and spacing;*
6. *Diameter and depth of holes;*
7. *Type and amount of explosives;*
8. *Amount of explosive per delay of 8 milliseconds or greater;*
9. *Method of firing and type of circuit;*
10. *Direction and distance in feet to nearest dwelling, public building, school, church, commercial or institutional building;*
11. *Weather conditions;*
12. *Whether or not mats or other precautions were used;*
13. *Type of detonator and delay period;*
14. *Type and height of stemming; and*
15. *Seismograph record when utilized.*

Exception: Subdivisions 8 and 13 of this section are not applicable to restricted blasters.

M. Add exception to section 3308.2 to read:

Exception: Permits are not required for the supervised use or display of permissible fireworks on private property with the consent of the owner of such property.

N. Add exception to section 3308.11 to read:

Exception: Permissible fireworks prohibited by a local ordinance to be stored, displayed for wholesale or retail sale, or use.

13 VAC 5-51-160. ~~BNFPC Section F-3002.0 Definitions. (Repealed.)~~

Add the following definitions:

~~Blaster, restricted: Any person engaging in the use of explosives or blasting agents utilizing five pounds (2.25 kg) or less per blasting operation and using instantaneous detonators.~~

~~Blaster, unrestricted: Any person engaging in the use of explosives or blasting agents without limit to the amount of explosives or blasting agents or type of detonator.~~

13 VAC 5-51-170. ~~BNFPC Section F-3003.0. General Requirements, BNFPC Section F-3005.0. Transportation of Explosives, and BNFPC Section F-3009.0. Blasting. (Repealed.)~~

A. Add subsection F-3003.5 to read:

~~F-3003.5. Certification of blasters: Persons engaging in the use of explosives or blasting agents shall be certified as a restricted or unrestricted blaster by the DHCD or shall be supervised on-site by a person properly certified by the DHCD as a restricted or unrestricted blaster. Certificates will be issued upon proof of successful completion of an examination approved by the DHCD and a background investigation for compliance with § 27-97.2 of the Code of Virginia. The applicant for certification shall be at least 21 years of age and shall submit proof to the DHCD of the following experience:~~

1. ~~For certification as a restricted blaster, at least one year under direct supervision by a certified unrestricted blaster, certified restricted blaster or other person approved by the DHCD.~~
2. ~~For certification as an unrestricted blaster, at least one year under direct supervision by a certified unrestricted blaster or other person approved by the DHCD. Exception: The owner of real estate parcels of five or more acres conforming to the definition of "real estate devoted to agricultural use" or "real estate devoted to horticultural use" in § 58.1-3230 of the Code of Virginia when blasting on such real estate.~~

B. Add subsection F-3003.5.1 to read:

~~F-3003.5.1. Fee for certification: The fee for obtaining a certificate or renewal of a certificate for unrestricted or restricted blaster from DHCD shall be \$30.~~

C. Add subsection F-3003.5.1 to read:

~~F-3003.5.1.1. Additional fees: The applicant shall pay all additional fees charged by other agencies for fingerprinting and for obtaining a national criminal history record check through the Central Criminal Records Exchange to the Federal Bureau of Investigation.~~

D. Add subsection F-3003.5.2 to read:

~~F-3003.5.2. Renewal of blaster certificate or background clearance card: A certificate for an unrestricted or restricted blaster shall be valid for three years from the date of issuance. A background clearance card shall be valid for three years from the date of issuance. Renewal of the unrestricted blaster certificate will be issued upon proof of at least 16 hours of continued training or education in the use of explosives within three consecutive years and a background investigation for compliance with § 27-97.2 of the Code of Virginia. Renewal of the restricted blaster certificate will be issued upon proof of at least eight hours of continued training or education in the use of explosives within three consecutive years and a background investigation for compliance with § 27-97.2 of the Code of Virginia. Renewal of a background clearance card will~~

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be issued upon the completion of a background investigation for compliance with § 27-97.2 of the Code of Virginia.

E. Add subsection F-3003.6 to read:

~~F-3003.6. Reports of stolen explosives: Any person holding a permit for the manufacture, storage, handling, use, or sale of explosives issued in accordance with this code shall report to the office of the chief arson investigator for the Commonwealth and the code official as well as the chief local law enforcement official any theft or other unauthorized taking or disappearance of any explosives or blasting devices from their inventory. An initial verbal report shall be made within three days of the discovery of the taking or disappearance. A subsequent written report shall be filed within such time, and in such form, as is specified by the chief arson investigator.~~

F. Add subsection F-3003.7 to read:

~~F-3003.7. Report of injuries or property damage: Any person holding a permit for the use of explosives issued in accordance with this code shall report any injuries to any person or damage to property arising from the use of explosives under the permit to the code official where there is local enforcement of this code and to the State Fire Marshal.~~

G. Change Section F-3005.0. Transportation of Explosives to read:

~~F-3005.1. Regulations. Under § 10.1-1450 of the Code of Virginia, the Virginia Waste Management Board shall promulgate regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported.~~

~~F-3005.2. Enforcement. Under § 10.1-1451 of the Code of Virginia and the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 et seq.), the Department of State Police and all other law enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials shall enforce the provisions of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, and any rule or regulation promulgated herein. These law enforcement officers certified to enforce the provisions of this Article 7, and any regulation promulgated under such article, shall annually receive in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials.~~

~~Exception: A fire code official may require an attended or unattended parked vehicle that contains explosives to be moved to an approved location.~~

H. Add subsection F-3009.12 to read:

~~F-3009.12. Blast records: A record of each blast shall be kept and retained for at least three years and shall be available for inspection by the code official. The record shall contain the following minimum data:~~

~~1. Name of contractor;~~

~~2. Location and time of blast;~~

~~3. Name of certified blaster in charge;~~

~~4. Type of material blasted;~~

~~5. Number of holes bored and spacing;~~

~~6. Diameter and depth of holes;~~

~~7. Type and amount of explosives;~~

~~8. Amount of explosive per delay of 8 milliseconds or greater;~~

~~9. Method of firing and type of circuit;~~

~~10. Direction and distance in feet to nearest dwelling, public building, school, church, commercial or institutional building;~~

~~11. Weather conditions;~~

~~12. Whether or not mats or other precautions were used;~~

~~13. Type of detonator and delay period;~~

~~14. Type and height of stemming; and~~

~~15. Seismograph record where indicated.~~

~~Exception: Subdivisions 8 and 13 of this section are not applicable to restricted blasters.~~

~~**13 VAC 5-51-180. BNFPC Section F-3101.0 General. (Repealed.)**~~

~~Change subsection F-3101.1 to read:~~

~~F-3101.1. Scope: The manufacture, display, sale and discharge of fireworks shall comply with the provisions of this chapter and § 59.1-148 of the Code of Virginia.~~

~~**13 VAC 5-51-181. BNFPC Section F-3102.0. Definitions. (Repealed.)**~~

~~Change subsection F-3102.1 to read:~~

~~F-3102.1. General: The following words and terms shall, for the purpose of this chapter and as stated elsewhere in this code, have the meanings shown herein.~~

~~Fireworks: Fireworks include any combustible or explosive composition, and any substance and combination of substances and articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation. Fireworks shall include any firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, that contains any explosive or inflammable compound or substance, is intended or commonly known as fireworks and which explodes, rises into the air or travels laterally, or fires projectiles into the air, other than sparks.~~

~~The term "fireworks" shall not include items such as sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels, commonly known as whirligigs or spinning jennies, when used, ignited or exploded on private property with the consent of the owner of such property.~~

13 VAC 5-51-182. BNFPC Section F-3103.0. Sale and discharge. (Repealed.)

A. Change subsection F-3103.1 to read:

The rules and regulations for fireworks shall be in accordance with NFPA 1123 and 1124 listed in Chapter 44. The rules and regulations for pyrotechnics shall be in accordance with NFPA 1126 listed in Chapter 44.

B. Change subsection F-3103.2 to read:

~~F-3103.2. Violations: A person shall not manufacture, store, offer or expose for sale, sell at retail or discharge any fireworks, except for the approved supervised display of fireworks and legal fireworks on private property with the consent of the owner of such property.~~

13 VAC 5-51-190. BNFPC Section F-3207.0. Aboveground storage tanks. (Repealed.)

Change subsection F-3207.5 to read:

~~F-3207.5. Automotive service stations: Aboveground tanks utilized for the storage of motor fuels at automotive service stations shall be installed in accordance with this section and the requirements for fire resistant tanks or tanks in vaults specified in NFPA 30A listed in Chapter 44.~~

13 VAC 5-51-200. BNFPC Chapter 44. Referenced standards. (Repealed.)

Add the following referenced standard to NFPA to read:

Standard reference number	Title	Referenced in code section number
1126-96	Use of Pyrotechnics before a Proximate Audience	F-3103.1

DOCUMENTS INCORPORATED BY REFERENCE

~~The BOCA National 2000 International Fire Prevention Code/1996, 10th Edition, Building Officials and Code Administrators International Code Council, Inc.~~

VA.R. Doc. No. R02-172; Filed November 13, 2002, 11:21 a.m.

REGISTRAR'S NOTICE: Due to its length, the following proposed regulatory action filed by the Department of Housing and Community Development 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 Department of Housing and Community Development (see contact information below) and is accessible on the Virginia Register of Regulations website at <http://register.state.va.us/vol19/welcome.htm>.

Title of Regulation: 13 VAC 5-61. Virginia Uniform Statewide Building Code (Repealing).

Title of Regulation: 13 VAC 5-62. Virginia Uniform Statewide Building Code (adding 13 VAC 5-62-10 through 13 VAC 5-62-480).

Statutory Authority: § 36-98 of the Code of Virginia.

Public Hearing Date: December 10, 2002 - 10 a.m.

Public comments may be submitted until January 31, 2003. (See Calendar of Events section for additional information)

Agency Contact: George Rickman, Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219, telephone (804) 371-7150, FAX (804) 371-7092, or e-mail grickman@dhcd.state.va.us.

Basis: Section 36-98 of the Code of Virginia directs and empowers the board to adopt and promulgate a Uniform Statewide Building Code (USBC) and provides that such building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

Purpose: Updating the Uniform Statewide Building Code ensures that the health, safety and welfare of the residents of the Commonwealth are protected.

Substance: The replacement of 13 VAC 5-61 with 13 VAC 5-62 makes the following changes in the current regulation:

1. Updates the referenced 1996 Building Officials and Code Administrators International, Inc. (BOCA) construction model codes and standards to the 2000 editions of the International Code Council (ICC).
2. Adds a provision from statute (§ 36-98.3 of the Code of Virginia) that to the extent the provisions of Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia and the USBC are not superseded by the provisions of § 36-98.3 of the Code of Virginia and the Virginia Amusement Device Regulation (VADR) (13 VAC 5-31), the provisions of Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia and the USBC shall apply to amusement devices.
3. Adds a provision that in accordance with sanctions prescribed by the Virginia Certification Standards (13 VAC 5-21) the building official/building maintenance official and technical assistants may be held responsible for failure to discharge any duty required by law or by the USBC.
4. Adds a requirement that the building official/building maintenance official notify the Department of Housing and Community Development within 60 days of the employment or contract of technical assistants for enforcement of the USBC.
5. Changes the time allowed for a person employed by, or under contract to, a local building department for enforcement of the USBC to become certified in the appropriate subject area in accordance with the Virginia Certification Standards (13 VAC 5-21) from three years to one and a half years.
6. Adds a requirement that the building official notify the fire official or fire chief when an elective partial or full fire protection system or other safety equipment, not required by the USBC, is to be installed.

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7. Adds a requirement that localities to adopt local ordinances that establish fire apparatus access road requirements and that such requirements be identified to the owner prior to the issuance of a building permit.

8. Adds a requirement that when there is a change in the fuel source involving the installation of new equipment, the flue liner of the chimney is certified to the building official as safe to operate with the new fuel and equipment.

9. Adds defining terms (related to the location, design or construction of the proposed structure) to what are "all pertinent laws and ordinances", regarding the issuance of building permits. Similar defining terms were added to the issuance of a certificate of occupancy.

10. Amends the provisions setting the time limits for certain reviews and issuance of an approved building permit as follows:

That following the building official being satisfied that the proposed work conforms to the requirements of the USBC and all pertinent laws and ordinances (related to the location, design or construction of the proposed structure), the building permit shall be issued as no later than 15 working days after the application has been filed for a new detached one and two family dwelling. Construction documents for new, detached one and two family dwellings, which have been revised in response to rejection comments, shall be reviewed within seven working days after submittal. Submittals for all other revisions for new, detached one and two family dwellings shall be reviewed within 15 working days.

11. Adds a provision, which allows the permit holder to request that reports of inspection reference the section that serves as the basis for the defects.

12. Adds a provision, which allows footings for lightweight small one-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, under certain conditions, to be supported on structural elements placed on level firm soil.

13. Adds a provision, that allows "blast furnace slag" to be used as fill material only when accompanied by a certification from a reregistered design professional and approved by the building official.

14. Amends the 2000 International Building Code to maintain the existing status quo in Virginia regarding emergency escape and rescue window or exterior door openings for sleeping rooms in basements.

15. Deletes requirements for "Arc-Fault Circuit Interrupter" from the provisions of the new referenced standards.

16. Adds a provision that allows airport facilities to use delayed egress locks which are approved and listed.

17. Adds a provision that allows means of egress doors in penal facilities to be locked when equipped with certain egress control devices.

18. Clarifies with a provision that equipment, systems, devices, and safeguards that were required, provided and approved when constructed be maintained, and that no

provisions shall require alterations to structures or equipment unless an unsafe or unhealthy condition exists.

19. Adds a requirement that maintenance inspection and testing of plumbing backflow prevention assemblies be conducted at least annually.

20. Adds a requirement that every owner and operator of an apartment building who rents, leases or lets one or more dwelling units, rooming units or guestrooms on terms, either expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than 80°F (27°C) in all habitable rooms.

Issues: The primary advantage for the public of implementing the new regulation will be the updating of referenced model codes and standards up to the latest editions, which should be less burdensome and intrusive. The agency sees no disadvantage for the public or the Commonwealth.

Fiscal Impact: The fiscal impacts for the proposed regulation are as follows:

(1) The projected cost increase to the state to implement and enforce the proposed regulation is zero.

(a) The fund source/fund detail is not applicable.

(b) The budget activity with a cross-reference to program and subprogram is not applicable.

(c) The delineation of one-time versus on-going expenditures is not applicable.

(2) The projected cost of the regulation on localities may be zero.

(3) A description of the individuals, businesses or other entities that are likely to be affected by the regulation is unknown.

(4) The agency's best estimate of the number of such entities that will be affected is unknown.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation. The General Assembly mandates in § 36-98 of the Code of Virginia that the Virginia Board of Housing and Community Development adopt and promulgate a Uniform Statewide Building Code, which supersedes the building codes and regulations of counties,

municipalities, and other political subdivisions and state agencies.

The proposed regulation (i) updates the referenced 1996 Building Officials and Code Administrators International, Inc (BOCA) construction model codes and standards to the 2000 editions of the International Code Council (ICC), (ii) requires that when there is a change in fuel source when installing new equipment, the flue liner of the chimney be certified to the building official as safe to operate with the new fuel and equipment, (iii) allows certain types of prefabricated buildings to be used as accessory structures on residential properties (such as storage sheds) to be placed on the ground without a foundation, (iv) allows materials other than natural materials to be used as fill only when certified by a Registered Design Professional, (v) requires maintenance and testing of plumbing backflow prevention devices to be conducted annually, (vi) establishes minimum cooling requirements for owners or operators of apartment buildings that provide cooling, (vii) requires that no more than five out of eight mentally or developmentally disabled persons living in a group home licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Department of Social Services require physical assistance from the staff in order to respond to an emergency, (viii) lowers the maximum riser height of a step for residential construction from 8 ¼" to 7 ¾", (ix) changes the conditions under which buildings are no longer required to have automatic sprinkler systems, (x) allows airports to have delayed egress locks, (xi) allows doors that are means of egress in penal facilities and that are equipped with certain egress control devices to be locked under certain conditions, (xii) shortens the time allowed for technical assistants hired to enforce the Uniform Statewide Building Code (USBC) to get certified in the appropriate subject area, (xiii) requires building officials notify the Department of Housing and Community Development (DHCD) within 60 days of the employment of assistants to enforce the USBC, (xiv) requires local officials identify any fire apparatus access road requirements prior to the issuance of a building permit, (xv) establishes time limits for certain reviews and the issuance of approved building permits as they relate to new, detached one-and-two-family dwellings, (xvi) allows permit holders to request that reports of inspection reference the section of the building code that serves as the basis of the defect, and (xvii) allows localities to recoup the costs of emergency repairs from the owner of the property.

The proposed regulation also adds definitions, makes clarifications, including (i) that building officials notify the fire official or fire chief when any elective safety equipment, not required by the USBC, is installed, (ii) that building officials and technical assistants hired to enforce the USBC will face sanctions as described in the Virginia Certification Standards when they fail to discharge their duties, (iii) that the TRB can hear appeals regarding amusement devices, (iv) that if existing structures and equipment were installed in accordance with state building regulations in force when the building was constructed, no alterations to structures or equipment will be required unless unsafe or unhealthy conditions exist.

Estimated Economic Impact.

1. The proposed regulation updates the referenced 1996 BOCA construction model codes and standards to the 2000 editions of the ICC. In 1994, the three major building safety organizations (which determine building codes for 97% of U.S. cities, counties, and states), including BOCA, created ICC to develop a single set of comprehensive, coordinated model construction codes that could be used throughout the United States – the International Building Code (IBC). In determining the model codes and standards for the new IBC, 80-85% of the BOCA codes and standards were adopted by the ICC. Thus, the new model codes and standards are not expected to significantly alter construction activities in Virginia and the economic impact of updating the model codes and standards is not likely to be significant. The IBC has been adopted by 21 states including Maryland, Kentucky, and North Carolina and for military construction by the Department of Defense. Virginia has a number of design and construction firms that operate in the surrounding states. To the extent that the adoption of the new IBC increases consistency, certainty, and uniformity of building practices across states, it will have a net positive economic impact, lowering costs for firms that currently operate in other states, providing an incentive to other firms to extend their operations to other states, and encouraging more firms to locate themselves in Virginia.

2. The proposed regulation requires that when there is a change in fuel source when installing new equipment, the flue liner of the chimney be certified to the building official as safe to operate with the new fuel and equipment. Changing the fuel source of furnaces, water heaters, and boilers could lead to corrosion and damage to chimneys that could result in chimney fires and poisoning through gases such as carbon monoxide being vented into the house. It would cost approximately \$75-\$100 (excluding the cost of any repairs that might be required) to have the chimney inspected and certified. The net economic impact would depend on whether the additional safety benefits outweigh the cost of certification. Since there is little data on injuries and deaths related to the malfunction of chimneys when the fuel source is changed, no specific estimate of the net economic impact of this change is possible at this time. That said, just a few cases of avoided death and injury would probably swamp the additional compliance cost.

3. The proposed regulation allows certain types of prefabricated buildings to be used as accessory structures (such as storage sheds, playhouses, etc.) to be placed on residential property without a foundation. It will allow homeowners to place certain types of storage sheds and other similar structures on the property without having to excavate and pour a foundation. The regulation is likely to have little to no economic impact. Due to the difficulty involved in enforcing current policy, DHCD has not been enforcing the foundation requirement for accessory structures on residential properties. Moreover, for most homeowners, insurance costs reflecting any additional safety concerns, would determine whether these structures are constructed with or without a foundation.

4. The proposed regulation allows materials other than natural materials to be used as fill only when certified by a Registered Design Professional. This change applies to materials such as blast furnace slag that are used as fill in foundations and in the construction of roads. Non-organic fill materials such as

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blast furnace slag are susceptible to swelling when exposed to moisture, making roads and buildings unsafe and requiring expensive post-construction repairs. In order to ensure that the material does not expand with moisture, the proposed regulation now requires these types of materials be compacted to ensure it provides adequate uniform support and the compaction be certified by a design professional. The additional testing and certification would cost builders and owners between \$700 and \$800. The proposed change to the regulation seems unnecessary. In the case of damage or injury resulting from the improper use of fill material, private liability law appears adequate to handle the problem. Affected parties could litigate against the contractors and builders concerned to recoup damages. The potential increase in liability insurance costs would then determine whether contractors and builders choose to have fill material inspected and certified by a design professional.

5. The proposed regulation requires annual maintenance and testing of reduced pressure principle backflow prevention devices in existing buildings. Backflow prevention devices stop the flow of contaminants from water outlets into the potable water supply. The backflow devices affected by the proposed change are predominantly found in commercial buildings and residential buildings with pools and sprinklers. According to DHCD, they are not aware of instances when the failure of these devices has led to the contamination of the water supply. However, the malfunction of these devices could lead to the waste of water. It would cost between \$50 and \$70 per hour to get the backflow devices inspected (and it could take from one hour for homes to up to 3-4 hours to inspect large facilities such as hospitals). Given the lack of any evidence that the failure of backflow devices has led to the contamination of the water supply, the proposed change seems unnecessary. Building owners and operators could choose to have these devices inspected depending on the cost of wasted water incurred by them when these devices fail and the cost of having the devices inspected.

6. The proposed regulation establishes minimum cooling requirements for owners or operators of apartment buildings that provide cooling. It stipulates that if a landlord has signed a lease agreement agreeing to provide cooling, then the level of cooling has to meet certain minimum standards. The proposed change is not likely to have a significant economic impact. Localities can choose whether or not to adopt these standards as the proposed change falls under local option building maintenance regulations. If the localities choose not to adopt the minimum cooling standards, they will be no worse off than under current policy.

7. The proposed regulation requires that no more than five out of eight mentally or developmentally disabled persons living in a group home licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Department of Social Services require physical assistance from the staff in an emergency. The proposed change is not likely to have a significant economic impact. According to DHCD, the change reflects the current practice of local officials, the state fire marshal, and the Department of Social Services in the licensing and operation of group homes in the Commonwealth.

8. The proposed regulation lowers the maximum riser height of a step in homes from 8 ¼" to 7 ¾" (the maximum height of a step in commercial buildings has been 7" for many years). The proposed change updates the International Residential Code to nationally recognized standards. With the maximum height of each step now ½" lower than before, an extra step would be required in most homes. According to the Virginia Association of Home Builders, the additional space required for the extra step would predominantly affect smaller houses that are 24'-26' wide (that do not necessarily have room to accommodate the additional space requirement without a significant change in design plans). The proposed change could potentially require such houses to have an additional depth of 2' (or between 48 and 52 square feet of additional construction) in order to accommodate the extra step. At \$80 per square foot, it would cost homeowners an additional \$3,840-\$4,160 or up to an additional 3.5% on a \$120,000 (1,500 square foot) home. The net economic impact would depend on whether the safety considerations of lowering the maximum height of a step are greater or less than the additional cost of making the change. Since there is little or no data on injuries and deaths prevented when steps are 8 ¼" high compared to when they are 7 ¾", the proposed change would be imposing a significant economic cost on home owners, while providing no clear additional benefit.

9. Under current policy, buildings with a maximum of 12 dwellings and buildings that are not more than *three* stories high are not required to provide an automatic sprinkler system. The proposed regulation changes the requirement to buildings with a maximum of 16 dwellings and buildings that are not more than *two* stories high. The proposed change updates standards to nationally recognized levels. The change is not likely to have a significant net economic impact. It would apply only to new residential construction in Virginia. While some buildings (such as those three stories high) may now require automatic sprinklers, others (such as those with than 16 dwellings or less) will not (the additional cost of installing an automatic sprinkler system is approximately \$2 per square foot). Moreover, for most new residential construction, insurance costs are likely to determine whether an automatic sprinkler system is installed or not and updating standards to nationally recognized levels would probably not significantly alter current practice.

10. The proposed regulation allows airports, under certain conditions, to install approved delayed egress locks on exits. The change was proposed specifically with regard to the recent increase in the perceived security threat at airports (especially Reagan and Dulles). For airports currently using security personnel to monitor exits, the net economic impact of allowing delayed egress doors would depend on the cost of installation compared to the cost of keeping security personnel posted at each exit. For airports not currently monitoring exits, the net economic impact would depend on the additional security provided by these doors and the cost incurred in installing them. Moreover, the increased security provided by delayed egress doors has to be weighed against the extent to which these doors could compromise the safety and the ability of people inside the airport to exit in emergencies.

11. The proposed regulation allows exit doors in penal facilities with certain egress control devices to be locked in

case of an emergency. The change was proposed by the Department of Corrections to prevent inmates from escaping when there is a loss of power or during other emergencies. The net economic impact of the proposed change would depend on the cost of installing egress control devices on exit doors, the potential improvement in security at penal facilities, and the compromise to inmate safety as a result of allowing the doors to be locked.

12. The proposed regulation shortens the time within which technical assistants hired to enforce the USBC get certified from three years to one and a half years after appointment. Shortening the time required for technical assistants to get certified is likely to have a small positive economic impact. According to DHCD, one and a half years for technical assistants is adequate time for individuals to take the required core and technical modules and get certified and requiring this shorter time limit will not significantly increase compliance costs. To the extent that the change reduces the number of under-qualified individuals enforcing the USBC, the proposed change will have a net positive impact.

13. The proposed regulation requires building officials notify the DHCD within 60 days of the employment of assistants to enforce the USBC. This change is not likely to have a significant economic impact. While it adds a small additional cost on localities of reporting the information, it allows DHCD to better enforce the time limit within which assistants need to be certified, potentially reducing the number of under-qualified assistants.

14. The proposed regulation requires local officials to identify any fire apparatus access road requirements prior to the issuance of a building permit. Fire access road requirements are determined by the local ordinances. The proposed change will have a positive economic impact. It will impose a small additional cost on localities of identifying the fire access road requirements before construction begins. On the other hand, it will save builders the cost of undertaking expensive corrective measures to meet these local fire access road requirements once construction is completed or close to completion.

15. The proposed regulation establishes time limits for certain reviews and the issuance of approved building permits as they relate to new, detached one-and-two-family dwellings: (i) an approved building permit has to be issued within 15 working days of the filing of an application, (ii) revisions made in response to rejection comments have to be reviewed within seven working days, and (iii) all other revisions have to be reviewed within 15 working days. The net economic impact would depend on the whether permits would be issued in a more timely and efficient manner, without compromising safety.

16. The proposed regulation allows permit holders to request that reports of inspection reference the section of the building code that serves as the basis of the defect. The proposed change is likely to have a small positive economic impact. It would reduce the number of arbitrary decisions and better allow permit holders to make necessary changes and revisions, at a small additional cost to localities.

17. The proposed regulation allows localities to recoup the costs of emergency repairs from the owner of the property.

The proposed change is likely to have net positive impact. It will save the localities the cost incurred in performing emergency repairs. It would also create an incentive for owners not to allow dangerous conditions to persist, potentially lowering the eventual cost of repairs.

Businesses and Entities Affected. The proposed regulation affects contractors, builders, design professionals, building owners and landlords, homeowners, local building officials, and technical assistants hired to enforce the USBC. The proposed regulation would also affect the operation of airports and penal facilities in Virginia.

Localities Particularly Affected. The proposed regulation affects localities throughout the Commonwealth.

Projected Impact on Employment. The impact of the proposed regulation on employment is unclear. Changes to the regulation such as requiring inspections of chimney flue liners and backflow prevention devices could increase the number of inspectors being certified to do such inspections. The change in egress door requirements in airports and penal facilities could potentially decrease employment in facilities where exits are currently being manned by security personnel. The shortening of the time limit for technical assistants to get certified could reduce the number of individuals employed or under contract to an enforcing agency to enforce the USBC. The establishment of time limits for the issuance and review of permits for new, detached one-and-two-family homes could increase the number of people hired by local building departments for the issuance and review of such permits. The ½" reduction in the maximum height of steps in residential buildings could raise costs and lower demand for housing, potentially reducing the number of people employed in the construction industry.

Effects on the Use and Value of Private Property. The proposed is likely to have a positive economic impact on the use and value of private property in Virginia. Adoption of the new IBC increases the consistency, certainty, and uniformity of building practices across states and could decrease costs for Virginia-based contractors, builders, and design professionals of doing business in other states. It could also encourage businesses to be set up and located in Virginia. The adoption of the new code could impose a small one-time cost on businesses of becoming familiar with the new codes and standards. The ½" reduction in the maximum height of steps in residential buildings could raise the cost of new and existing homes in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the Economic Impact Analysis (EIA) prepared by the Virginia Department of Planning and Budget regarding the proposed amendments to the Virginia Uniform Statewide Building Code (repealing 13 VAC 61 and adopting 13 VAC 62-10).

Summary:

The proposed amendments to this regulation (i) update the referenced model codes and standards; (ii) add that the USBC applies to amusement devices; (iii) add that officials and assistants may be held responsible for failure to discharge any duty required bylaw; (iv) add that the official

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must notify the Department of Housing and Community Development of the employment of assistants; (v) change from three years to one and a half years the time allowed for a person to become certified; (vi) add that fire apparatus access road requirements be identified to the owner prior to the issuance of a building permit; (vii) add that when the fuel source is changed, the chimney be certified safe; (viii) amend the time limits for certain reviews and issuance of building permits; and (ix) add annual testing of certain plumbing devices.

VA.R. Doc. No. R02-170; Filed November 20, 2002, 11:19 a.m.

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Title of Regulation: 13 VAC 5-91. Virginia Industrialized Building Safety Regulations (amending 13 VAC 5-91-10, 13 VAC 5-91-40, 13 VAC 5-91-50, 13 VAC 5-91-60, 13 VAC 5-91-100, 13 VAC 5-91-110, 13 VAC 5-91-120, 13 VAC 5-91-140, 13 VAC 5-91-160, 13 VAC 5-91-180, 13 VAC 5-91-200, 13 VAC 5-91-210, 13 VAC 5-91-250, 13 VAC 5-91-260 and 13 VAC 5-91-270; adding 13 VAC 5-91-245; repealing 13 VAC 5-91-230).

Statutory Authority: § 36-73 of the Code of Virginia.

Public Hearing Date: December 10, 2002 - 10 a.m.

Public comments may be submitted until January 31, 2003.
(See Calendar of Events section for additional information)

Agency Contact: George W. Rickman, Jr., Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7150, FAX (804) 371-7092 or e-mail grickman@dhcd.state.va.us.

Basis: Section 36-73 of the Code of Virginia directs the board to promulgate rules and regulations prescribing standards to be complied with in industrialized buildings.

Purpose: The need and rationale for the regulation is for the Board of Housing and Community Development to fulfill the mandate of the General Assembly as set out in § 36-73 of the Code of Virginia that requires the prescribing of standards to be complied with in industrialized building for protection against the hazards thereof to safety of life, health and property. The Board of Housing and Community Development proposes the two following substantive changes in order to continue to fulfill this mandate:

1. To bring the editions of referenced model codes and standards up to the same editions as those proposed for the USBC.
2. To increase the fee for an industrialized building registration seal from \$50 to \$75 per seal.

Substance: The proposed amendments change the current status of law by updating the editions of referenced model codes and standards to the same editions as those proposed for the USBC and by increasing the fee from \$50 to \$75 per seal for an industrialized building registration seal.

Issues: The primary advantage for the public of implementing the new regulation will be the update of referenced model

codes and standards up to the latest editions, which should be less burdensome and intrusive. The agency sees no disadvantages for the public or the Commonwealth for the fee increase from \$50 to \$75 per seal for an industrialized building registration seal.

Fiscal Impact: The fiscal impacts for the proposed regulation are as follows:

- (a) The projected cost increase to the state to implement and enforce the proposed regulation is zero.
 - (i) The fund source/fund detail is not applicable.
 - (ii) The budget activity with a cross-reference to program and subprogram is not applicable.
 - (iii) The delineation of one-time versus on-going expenditures is not applicable.
- (b) The projected cost of the regulation on localities may be zero.
- (c) A description of the individuals, businesses or other entities that are likely to be affected by the regulation is unknown.
- (d) The agency's best estimate of the number of such entities that will be affected is unknown.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The General Assembly mandates in §36-73 of the Code of Virginia that the Virginia Board of Housing and Community Development promulgate rules and regulations prescribing standards for industrialized buildings.

The proposed regulation (i) replaces the Manufactured Housing and Industrialized Building Office with the State Building Code Administrative Office (SBCAO), (ii) updates construction model codes and standards for industrialized buildings to the same codes and standards being proposed for the Uniform Statewide Building Code (USBC), (iii) increases the registration seal fee for industrialized buildings from \$50 to \$75, (iv) imposes a 30-day time limit on compliance assurance agencies (individuals or organizations determined by the Department of Housing and Community Development to be qualified to investigate, test, and evaluate industrialized buildings) to notify the SBCAO of the signing of any new contract or terminating of an existing contract with a manufacturer, (v) changes the information required to appear

on the manufacturer's data plate and the compliance agency certification label, and (vi) adds a requirement that compliance assurance agencies (or manufacturers under the supervision of the compliance assurance agency) maintain permanent records of all Virginia registration seals obtained by them.

The proposed regulation also adds definitions and makes clarifications to the existing regulation.

Estimated economic impact. The potential economic impact of replacing the Manufactured Housing and Industrialized Building Office with the SBCAO is negligible as it is essentially a renaming of the office of the DHCD which has been designated to carry out the enforcement of the Virginia Industrialized Building Safety Regulations.

The proposed regulation updates the construction model codes and standards to those being proposed for the USBC. The codes and standards referenced in the USBC are being changed from the 1996 Building Officials and Code Administrators International, Inc (BOCA) to the 2000 editions of the International Code Council (ICC). However, the new ICC codes borrow heavily from the existing BOCA codes (there is an 80-85% match between the new and the existing code) and are not likely to have a significant impact on the construction of industrialized buildings in the Commonwealth.

Under current policy, all registered industrialized buildings have to be marked with an approved registration seal issued by the Department of Housing and Community Development. The manufacturer can currently purchase these seals for \$50. The proposed regulation raises the registration seal fee to \$75. The \$25 increase in the registration seal fee is not likely to have a significant effect on the production and sale of industrialized buildings in Virginia as it would mean an increase in cost to the manufacturer of 0.5% or less (cost of an industrialized building ranges from \$5,000 to \$10,000 per module). The registration seal fees were last raised in 1994 and the \$25 increase reflects the rising costs (such as salary and benefit costs and travel expenses) incurred by SBCAO in monitoring and administering the program in the intervening eight years. Between 1997 and 2001, an average 4,056 seals were issued per year, giving rise to revenues totaling \$202,800. At the same number of seals, the higher fee will generate revenues of \$304,200. The revenues generated will go to cover salaries and expenses of the SBCAO. Even with the increase, the proposed fee is significantly lower than that charged by surrounding states. In addition to the registration fees, states such as Maryland, North Carolina, and South Carolina require manufacturers to pay hundreds of dollars in application fees and other states such as Tennessee charge manufacturers a substantial annual license fee.

The regulation imposes a 30-day time limit on compliance assurance agencies to notify the SBCAO of the signing of any new contract or the terminating of an existing contract with a manufacturer. Current policy does not impose a maximum time limit on the reporting requirement. The potential economic impact of this change is not likely to be significant. The 30-day limit could result in better enforcement of the regulation by providing DHCD with more up-to-date and accurate information. Moreover, the change is not likely to impose any significant additional cost on compliance assurance agencies. According to DHCD, most compliance

assurance agencies have been notifying the department of these changes within 30 days and the proposed regulation will not significantly alter current practice.

The proposed regulation increases the information required on the data plate put by manufacturers and reduces the information required on the certification label put by compliance assurance agencies on industrialized buildings. The economic impact of the proposed change is likely to be very small. While manufacturers would face an additional cost of a small number of labor hours involved in collecting the information, it would provide interested parties (such as building safety and fire prevention officials) the convenience of having all the relevant information readily available at one location. Because of the increased information on data plates, compliance assurance agencies no longer have to put as much information on their certification label. This would result in a small cost saving to compliance assurance agencies.

The proposed regulation requires that compliance assurance agencies (or manufacturers under the supervision of the compliance assurance agency) maintain permanent records of the disposition of all Virginia registration seals obtained by them. This could impose an additional cost on compliance assurance agencies and/or manufacturers to maintain and store the information. Currently, the serial number of the registration seal is available on the manufacturer's data plate. The additional record-keeping requirement would be useful in the event of damage to or loss of the data plate. In order to evaluate the net economic impact of the change, we would need to know the extent of the additional cost on manufacturers and/or compliance assurance agencies of storing and maintaining the records and the number of times the damage to or loss of a data plate has interfered with DHCD's enforcement of this regulation.

Businesses and entities affected. The proposed changes to the regulation will affect manufacturers of industrialized buildings. According to DHCD, last year 128 manufacturers of industrialized buildings requested DHCD seals. Of those 128 manufacturers, 11 are based in Virginia. The changes will also affect 12 compliance assurance agencies approved by DHCD to provide evaluation, monitoring, and inspection services.

Localities particularly affected. The proposed changes to the regulation affect localities throughout the Commonwealth.

Projected impact on employment. The proposed changes to the regulation are not likely to have a significant impact on employment. The increase in the registration fee is not likely to have a major effect on the production of industrialized buildings in Virginia, as the increase would be a very small fraction of the total cost of construction. To the extent that they don't already have the manpower and capability, the additional record-keeping requirement result in a small increase in employment by manufacturers of industrialized buildings and compliance assurance agencies.

Effects on the use and value of private property. The proposed changes in the regulation are not likely to have a significant effect on the use and value of private property. The increase in the registration fee, a small fraction of the total cost of construction, is not likely to have a major effect on the production and use of industrialized buildings in Virginia. The

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expanded information requirement for manufacturer's data plate could raise costs for manufacturers by a small amount and the decrease in information required on the certification label could result in a small cost saving for compliance assurance agencies. The additional record-keeping requirement could potentially increase the cost of doing business on the part of manufacturers and compliance assurance agencies.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget regarding the proposed amendments to the Virginia Industrialized Building Safety Regulations (13 VAC 5-91).

Summary:

The amendments (i) update the construction model codes and standards to the same editions of the International Code Council (ICC) and National Fire Protection Association (NFPA) codes and standards as are being proposed for the Uniform Statewide Building Code (USBC) and (ii) increase the registration seal fee for an industrialized building from \$50 to \$75 per seal.

13 VAC 5-91-10. Definitions.

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

"*Administrator*" means the Director of DHCD or his designee.

"*Approved*" as applied to a material, device, method of construction, registered building, or as otherwise used in this chapter means approved by the administrator.

"*BHCD*" means the Virginia Board of Housing and Community Development.

"*BOCA*" means the Building Officials and Code Administrators International, Inc.

"*Building official*" means the officer or other designated authority charged with the administration and enforcement of USBC, or duly authorized representative.

"*CABO*" means the Council of America Building Officials.

"*Compliance assurance agency*" means an architect or professional engineer registered in Virginia, or an organization, determined by the department to be specially qualified by reason of facilities, personnel, experience, and demonstrated reliability, to investigate, test and evaluate industrialized buildings; to list such buildings complying with standards at least equal to those promulgated by the board; to provide adequate follow-up services at the point of manufacture to ensure that production units are in full compliance; and to provide a label as evidence of compliance on each ~~manufactured section or module~~ registered industrialized building.

"*DHCD*" means the Virginia Department of Housing and Community Development.

"*ICC*" means the International Code Council, Inc.

"*Industrialized building*" means a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in § 36-85.3 of the Code of Virginia and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act (42 USC § 5401 et seq.) shall not be considered industrialized buildings for the purpose of this law.

~~"*Local code official*" means the officer or other designated authority charged with the administration and enforcement of USBC, or duly authorized representative.~~

~~"*Manufactured Housing and Industrialized Building Office*" means the office of DHCD which has been designated to carry out the state plan for enforcement of the Virginia Industrialized Building Safety Regulations.~~

"*Model*" means a specific design, as designated by the producer, of an industrialized building. Production buildings of any model may include variations and options that do not affect compliance with the standards governing structural, plumbing, mechanical, or electrical systems or any other items governed by this chapter.

"*NFPA*" means the National Fire Protection Association.

"*Registered*" means an industrialized building which displays a registration seal issued by DHCD in accordance with this chapter.

"*Regulation*" or "regulations" means 13 VAC 5-91-40 et seq.

"*State Building Code Administrative Office*" or "*SBCAO*" means the office of DHCD that has been designated to carry out the enforcement of the Virginia Industrialized Building Safety Regulations.

"*The law*" or "*this law*" means the Virginia Industrialized Building Safety Law as embraced in Chapter 4 (§ 36-70 et seq.) of Title 36 of the Code of Virginia.

"*TRB*" means the State Building Code Technical Review Board as established by § 36-108 of the Code of Virginia.

"*USBC*" means the Virginia Uniform Statewide Building Code, 13 VAC 5-61-40 et seq.

13 VAC 5-91-40. Inspection and enforcement.

A. ~~The Manufactured Housing and Industrialized Building Office~~ SBCAO is designated as the administrator's representative for the enforcement of this chapter. It shall have authority to make such inspections and to take such other actions as are required to enforce the regulations.

NOTE: ~~The Manufactured Housing and Industrialized Building Office~~ SBCAO shall act as the code official for registered industrialized buildings.

B. *The SBCAO will maintain a list of approved compliance assurance agencies. Each manufacturer producing registered industrialized buildings will contract with one or more compliance assurance agencies for required evaluation, monitoring and inspection services. The contract will delineate*

the services to be provided by the compliance assurance agency. The compliance assurance agency will notify the SBCAO within 30 days of signing a new contract or terminating an existing contract with any manufacturer.

13 VAC 5-91-50. Factory and field inspections.

A. The ~~administrator's representative~~ SBCAO shall, during reasonable hours, make such inspections of factories producing industrialized buildings as may be necessary to determine whether the compliance assurance agency having jurisdiction is performing its evaluation and compliance assurance functions in a satisfactory manner.

B. The ~~administrator's representative~~ SBCAO may, during reasonable hours, make inspections to determine whether industrialized buildings, not at the time occupied as dwellings, are in compliance with this chapter. Such inspections may include but are not limited to industrialized buildings on dealer lots or industrialized buildings that are otherwise offered for sale to the public. Industrialized buildings that are occupied as dwellings may be inspected at the request of the owners or occupants.

13 VAC 5-91-60. Violations.

A. Where the administrator finds any violation of the provisions of this chapter, a notice of violation shall be issued. This notice of violation shall order the party responsible to bring the unit into compliance within a reasonable time. ~~B. If the nature of the violation is such that it may be remedied under this chapter, The administrator may refer the matter to request assistance from the local-code building official for enforcement of this section.~~

13 VAC 5-91-100. Responsibility of local-code building officials.

Every ~~local-code building~~ official is authorized to and shall enforce the provisions of this chapter within the limits of his jurisdiction. ~~He~~ The building official shall not permit the use of any industrialized building that does not comply with this chapter.

13 VAC 5-91-110. Registered industrialized buildings.

Industrialized buildings that are registered shall be accepted in all localities as meeting the requirements of this law. Notwithstanding this provision, ~~local-code building~~ officials are authorized to carry out the following functions that apply to registered industrialized buildings provided such functions do not involve disassembly of the registered building or change of design, or result in the imposition of more stringent conditions than those required by the compliance assurance agency or by this chapter.

1. ~~Local-code Building~~ officials shall verify that the registered industrialized building has not been damaged in transit to a degree that would render it unsafe. Where indicated, this may include tests for tightness of plumbing systems and gas piping and tests for ~~shorts at the meter connection~~ ~~damaged or loose wires or both~~ in the electrical system.

2. ~~Local-code Building~~ officials shall verify that supplemental components required by the label or by this chapter are properly provided.

3. ~~Local-code Building~~ officials shall verify that the instructions of the label for installation and erection are observed.

4. ~~Local-code Building~~ officials shall verify that any special conditions or limitations of use that are stipulated by the label in accordance with this chapter are observed.

5. ~~Local-code Building~~ officials may require submission and approval of plans and specifications for *items not included or specified in the manufacturer's installation instructions* such as the supporting structures, foundations including anchorage, and all other components necessary to form the completed building. They may require such architectural and engineering services as may be specifically authorized by this chapter to assure that the supporting structures, foundations including anchorage, and other components necessary to form the completed building are designed in accordance with this chapter.

6. ~~Local-code Building~~ officials shall enforce applicable requirements of this chapter and the USBC for alterations and additions to the units or to the buildings. As an aid, they may require submission of plans and specifications of the model of the unit. Such plans and specifications may be furnished on approved microfilm.

7. ~~Local-code Building~~ officials shall enforce the requirements of the USBC applicable to utility connections, site preparation, building permits, certificates of use and occupancy, and all other applicable requirements of the USBC, except those governing the design and construction of the registered building.

8. ~~Local-code Building~~ officials shall verify that the building displays the required state registration seal and the proper label of the compliance assurance agency.

13 VAC 5-91-120. Unregistered industrialized buildings.

A. The ~~local-code building~~ official shall determine whether any unregistered industrialized building complies with this chapter and shall require any noncomplying unregistered building to be brought into compliance with this chapter. The ~~local-code building~~ official shall enforce all applicable requirements of this chapter including those relating to the sale, rental and disposition of noncomplying buildings. The ~~local-code building~~ official may require submission of full plans and specifications for each building. Concealed parts of the building may be exposed to the extent necessary to permit inspection to determine compliance with the applicable requirements. *The building official may also accept reports of inspections and tests from individuals or agencies deemed acceptable to the code official.*

B. Unregistered industrialized buildings offered for sale by dealers in this Commonwealth shall be marked by a warning sign to prospective purchasers that the building is not registered in accordance with this chapter and must be inspected and approved by the local code official having jurisdiction. The sign shall be of a size and form approved by

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the administrator and shall be conspicuously posted on the exterior of the unit near the main entrance door.

13 VAC 5-91-140. Report to the Manufactured Housing and Industrialized Building Office SBCAO.

If the building is moved from the jurisdiction before the violations have been corrected, the ~~local code building~~ official shall make a prompt report of the circumstances to the ~~Manufactured Housing and Industrialized Building Office SBCAO~~. The report shall include the following:

1. A list of the uncorrected violations;
2. All information contained on the label pertinent to the identification of the building, the manufacturer and the compliance assurance agency;
3. The number of the Virginia registration seal;
4. The new destination of the building, if known; *and*
5. The party responsible for moving the building; *and*.
6. ~~Whether the building was placarded for violation.~~

13 VAC 5-91-160. Hazards prohibited Use of model codes and standards specified.

A. Industrialized buildings produced after (insert the effective date of this chapter) shall be reasonably safe for the users and shall provide reasonable protection to the public against hazards to life, health and property. Compliance with all applicable requirements of the following codes and standards, subject to the specified time limitations, shall be acceptable evidence of compliance with this provision:

The following codes and standards may be used until (insert date):

1. BOCA National Building Code
 - a. ~~1993 Edition until June 1, 1997~~
 - b. 1996 Edition ~~no time limit~~
2. ~~BOCA National Plumbing Code 1993 Edition until June 1, 1997~~
3. 2. ICC International Plumbing Code 1995 Edition with 1996 Supplement ~~no time limit~~
4. ~~BOCA National Mechanical Code 1993 Edition until June 1, 1997~~
5. 3. ICC International Mechanical Code 1996 Edition - no time limit
6. 4. National Electrical Code - NFPA NO. 70
 - a. ~~1993 Edition until June 1, 1997~~
 - b. 1996 Edition ~~no time limit~~
7. 5. CABO One- and Two-Family Dwelling Code
 - a. ~~1992 Edition and 1993 Amendments until June 1, 1997~~

~~b. 1995 Edition no time limit~~

~~The CABO One and Two Family Dwelling Code may be used as an optional alternative standard for one and two family dwellings to the standards specified in subdivisions 1 through 6 of this section.~~

B. The following documents are adopted and incorporated by reference to be an enforceable part of these regulations:

1. ICC International Building Code - 2000 Edition
2. ICC International Plumbing Code - 2000 Edition
3. ICC International Mechanical Code - 2000 Edition
4. NFPA 70 National Electrical Code - 1999 Edition
5. ICC International Residential Code - 2000 Edition

NOTE: The codes and standards (BOCA, CABO, ICC and NFPA) referenced above may be procured from:

Building Officials and Codes Administrators International, Inc.

4051 West Flossmoor Road

Country Club Hills, Illinois 60478-5795

13 VAC 5-91-180. Compliance assurance agencies.

Application may be made to the ~~administrator SBCAO~~ for acceptance as a compliance assurance agency as defined in 13 VAC 5-91-10. Application shall be made under oath and shall be accompanied by information and evidence that is adequate for the ~~administrator SBCAO~~ to determine whether the applicant is specially qualified by reason of facilities, personnel, experience and demonstrated reliability to investigate, test and evaluate industrialized buildings for compliance with this chapter, and to provide adequate ~~follow up~~ *follow-up* and compliance assurance services at the point of manufacture.

NOTE: A suggested format for the application for acceptance as a compliance assurance agency may be obtained from the ~~Manufactured Housing and Industrialized Building Office.~~

13 VAC 5-91-200. Information required by the administrator.

The following information and criteria will be considered by the administrator in designating compliance assurance agencies:

1. Names of officers and location of offices;
2. Specification and description of services proposed to be furnished under this chapter;
3. Description of qualifications of personnel and their responsibilities. Personnel involved in system analysis, design and plans review, compliance assurance inspections, and their supervisors shall meet the requirements of the American Society for Testing and Material (ASTM) Standards E-541-84, Criteria for Agencies Engaged in System Analysis and Compliance Assurance for Manufactured Buildings;
4. Summary of experience within the organization;
5. General description of procedures and facilities to be used in proposed services, including evaluation of the

model, factory ~~followup~~ *follow-up*, quality assurance, labeling of production buildings, and specific information to be furnished on or with labels;

6. Procedures to deal with any defective buildings resulting from oversight;
7. Acceptance of these services by independent accrediting organizations and by other jurisdictions; and
8. Proof of independence and absence of conflict of interest.

Note: The ASTM Standard E-541-84 may be procured from:

American Society for Testing and Materials
100 Barr Harbor Drive
West Conshohocken, PA 49428-2956 19428-2959

13 VAC 5-91-210. ~~Minimum information required Compliance assurance agency certification label.~~

Every registered industrialized building shall be marked with a label, seal, or similar evidence of compliance supplied by the compliance assurance agency that includes the following information ~~directly or by reference~~:

1. Name and address of compliance assurance agency; *and*
- ~~2. List of codes and standards for which the building has been evaluated, inspected and found in compliance by the compliance assurance agency and the type of construction classification, the use group classification and occupancy under those codes and standards;~~
- ~~3. Serial number of label;~~
- ~~4. Special instructions for handling, installation and erection, or list of such instructions that are furnished separately with the building; and~~
- ~~5. Special conditions or limitations of use of the building under the standards for which the building has been evaluated, or list of such conditions and limitations that are furnished separately with the building.~~
2. Certification label number.

13 VAC 5-91-230. ~~Manufacturer's data plate and other markings. (Repealed.)~~

~~The following information shall be placed on one or more permanent manufacturer's data plates in the vicinity of the electrical distribution panel or in some other location that is readily accessible for inspection. The compliance assurance agency shall approve the form, completeness and location of the data plate to include the information listed below:~~

- ~~1. Manufacturer's name and address;~~
- ~~2. Serial number of the label of the compliance assurance agency;~~
- ~~3. Serial number of the building;~~
- ~~4. Name of manufacturer and model designation of major factory installed appliances;~~
- ~~5. Where applicable, identification of permissible type of gas for appliances, designation of electrical ratings for single~~

~~and multiple cord entrance, and directions for water and drain connections;~~

- ~~6. Serial number of the registration seal;~~
- ~~7. Seismic design zone number; and~~
- ~~8. Design loads: live load, dead load, snow load, and wind load.~~

13 VAC 5-91-245. ~~Manufacturer's data plate.~~

A. The following information shall be placed on a permanent manufacturer's data plate in the vicinity of the electrical distribution panel or in some other location that is readily accessible for inspection. The compliance assurance agency shall approve the form, completeness and location of the data plate to include the following information:

1. Manufacturer's name and address;
2. Compliance assurance agency certification number;
3. Serial number of each module of the building;
4. Serial number of the Virginia registration seal;
5. Date of manufacture of the building;
6. List of codes and standards for which the building has been evaluated, inspected and found in compliance by the compliance assurance agency and the type of construction and the use and occupancy classification under those codes and standards;
7. Design loads: roof and floor live load and wind load;
8. Seismic design zone number;
9. Thermal transmittance values or "R" values;
10. Special conditions or limitations of use of the building under the standards for which the building has been evaluated, or a list of such conditions and limitations that are furnished separately with the building;
11. Special instructions for handling, installation and erection, or a list of such instructions that are furnished separately with the building;
12. Designation of electrical service ratings, directions for water and drain connections and, where applicable, identification of permissible type of gas for appliances; and
13. Name of manufacturer and model designation of major factory installed appliances.

B. The manufacturer shall maintain copies of the data plate and reports of inspection, tests and any corrective action(s) taken for a minimum period of 10 years from the date of manufacture of the building.

13 VAC 5-91-250. Industrialized buildings eligible for registration.

Any industrialized building must meet the following requirements to be registered and eligible for a Virginia registration seal:

1. The design of the building has been found by a compliance assurance agency to be in full compliance with

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this chapter. *Approved designs shall be evidenced by the stamp and date of approval on each sheet by the compliance assurance agency;*

2. The compliance assurance agency has conducted any necessary testing and evaluation of the building and its component parts;

3. The compliance assurance agency has provided the required inspections and other quality assurance ~~followup~~ *follow-up* services at the point of manufacture to assure the building complies with this chapter; and

4. The building has been provided with appropriate evidence of such compliance with a label, ~~seal or similar device~~ permanently affixed by the compliance assurance agency.

13 VAC 5-91-260. Registration seal for industrialized buildings.

A. Registered industrialized buildings shall be marked with an approved registration seal issued by ~~DHCD~~ *SBCAO*. The seal shall be applied by the manufacturer to a registered industrialized building intended for sale or use in Virginia prior to the shipment of the building from the place of manufacture.

B. Registered industrialized buildings shall bear a registration seal for each dwelling unit in residential occupancies. For nonresidential occupancies, a registration seal is required for each registered building ~~of a single occupancy and use group~~.

C. Approved registration seals may be purchased from ~~DHCD~~ *SBCAO* in advance of use. The fee for each registration seal shall be ~~\$50~~ *\$75*. Checks shall be made payable to "Treasurer of Virginia." Payment for the seals must be received by the ~~administrator~~ *SBCAO* before the seals can be sent to the user.

D. To the extent practicable, the registration seal shall be installed so that it cannot be removed without destroying it. It shall be installed near the label applied by the compliance assurance agency.

E. The compliance assurance agency or the manufacturer under the supervision of the compliance assurance agency shall maintain permanent records of the disposition of all Virginia registration seals obtained by the compliance assurance agency or manufacturer.

13 VAC 5-91-270. Manufacturer's ~~instruction~~; installation instructions.

A. The manufacturer of each industrialized building shall provide with each building, specifications or instructions, or both, for handling, installing or erecting the building. Such instructions may be included as part of the label from the compliance assurance agency or may be furnished separately by the manufacturer of the building. The manufacturer shall not be required to provide the foundation and anchoring equipment for the industrialized building.

B. Persons or firms installing or erecting registered industrialized buildings shall install or erect the building in accordance with the manufacturer's instructions.

DOCUMENTS INCORPORATED BY REFERENCE

~~In addition to the documents referenced in 13 VAC 5-91-160, the following document is incorporated by reference:~~

BOCA National Building Code-1996 Edition.

ICC International Plumbing Code-1995 Edition with 1996 Supplement.

ICC International Mechanical Code-1996 Edition.

National Electrical Code - NFPA NO. 70 1996-Edition.

CABO One- and Two-Family Dwelling Code 1995-Edition.

ICC International Building Code - 2000 Edition.

ICC International Plumbing Code - 2000 Edition.

ICC International Mechanical Code - 2000 Edition.

NFPA 70 National Electrical Code - 1999 Edition.

ICC International Residential Code - 2000 Edition.

ASTM E541-84, Standard Criteria for Agencies Engaged in System Analysis and Compliance Assurance for Manufactured Buildings, American Society for Testing and Materials.

VA.R. Doc. No. R02-173; Filed November 13, 2002, 11:21 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulation: **18 VAC 30-20. Regulations of the Board of Audiology and Speech-Language Pathology (amending 18 VAC 30-20-10, 18 VAC 30-20-150, 18 VAC 30-20-170, 18 VAC 30-20-240, and 18 VAC 30-20-280).**

Statutory Authority: § 54.1-2400 and Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: December 11, 2002 - 9:30 a.m.

Public comments may be submitted until January 31, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Southern States Building, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

Purpose: The purpose of the amended regulation is to revise certain prerequisites for licensure that may be unnecessarily

restrictive and adopt requirements that are reasonable and essential to protect the public health, safety and welfare. The intent of the changes is to eliminate barriers to licensure, such as the requirement that an applicant who passed the qualifying examination more than three years ago be engaged in active practice for the 24 months immediately preceding application. The amendments will also update the unprofessional conduct section to ensure that a practitioner can use electronic communication in the follow-up with a patient or another practitioner.

Substance: The board is recommending amendments to its regulations for the licensure of audiologists and speech-language pathologists in order to update the accrediting bodies that certify competency in one of the professions, to enable the board to license students in a doctoral program who have the equivalency of a master's degree, to allow follow-up on patients by electronic communication, and to address concerns about the adequacy of supervision for unlicensed assistants. Other amendments are recommended for greater clarity for the regulated entities.

Issues: The primary advantage to the public of implementing the amended regulations is the elimination of barriers to licensure that might discourage some persons from seeking licensure as an audiologist or speech-language pathologist. At a time when the number of persons in need of care is increasing, the board is attempting to eliminate or reduce the regulatory burden. Amendments are intended to accept another credential for the profession of audiology and allow an applicant who passed the examination more than three years ago to demonstrate competency by practice for one of the past three years, rather than the current requirement of 24 consecutive months. In addition, an amendment will enable the practitioner to communicate with or about his patient by electronic communication, whereas only written communication is presently allowed.

There are no disadvantages to the public as all amendments are intended to provide the training and education necessary to ensure that practitioners are knowledgeable and experienced in the care and treatment of consumers.

There are no disadvantages to the agency; the amended regulation does not impose a new responsibility on the board and does not involve additional cost or staff time. There may be an advantage to the Commonwealth if the amended regulations have the intended result of encouraging more persons to seek licensure.

Fiscal Impact: Projected cost to the state to implement and enforce:

- (i) Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.
- (ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.
- (iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to

the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be applicants for licensure and licensed audiologists and speech-language pathologists.

Estimate of number of entities to be affected: Currently, there are 423 licensed audiologists and 2,312 licensed speech-language pathologists. It is not known how many potential applicants for licensure might be affected by amendments to the rules.

Projected costs to the affected entities: Depending on their educational and professional background, persons seeking to become licensed may be able to do so more easily. Students of the clinical doctoral program at JMU will be able to be licensed prior to their final clinical year, rather than waiting until the degree has been conferred. Therefore, there are no costs for compliance for the affected entities.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Audiology and Speech-Language (board) proposes to: (i) reduce the active engagement in the profession requirement for individuals licensed in other states who wish to become licensed in Virginia, (ii) accept certificates of clinical competence issued by the American Board of Audiology and (iii) require that licensed audiologists and speech-language pathologists document their supervision of unlicensed assistants.

Estimated economic impact. The board proposes two amendments that will moderately reduce the barriers to entry into the audiology and speech-language pathologist professions in Virginia. First, under the current regulations, individuals licensed in audiology or speech-language pathology in other states who hold a field-specific¹ masters or doctoral degree may become licensed in Virginia if they have been actively engaged in their profession during the 24

¹ Audiology and speech-pathology program.

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months immediately preceding the date of application. The board proposes to reduce the active engagement in the profession requirement to one of the three past consecutive years. This would allow such individuals who have taken some time off, say, for example, to have a baby, to still become licensed in Virginia. The difference in the amount of required recent experience as a licensed audiologist or speech-language pathologist seems unlikely to make a significant difference in the competency level of applicants. The reduced recent experience requirement may moderately increase the likelihood that experienced audiologists and speech-language pathologists move to Virginia to practice or open new practice locations in Virginia from across bordering states. This would increase the availability of services for Virginians. The increase in supply of those services could potentially moderately reduce the market prices for those services.

One of the methods by which an individual can obtain a license in audiology or speech-language pathology includes holding a current and unrestricted Certificate of Clinical Competence (certificate) in the area in which he seeks licensure issued by the American Speech-Language-Hearing Association. The board proposes to also accept certificates from the American Board of Audiology or any other accrediting body recognized by the board. According to the Department of Health Professions, the American Board of Audiology does not currently issue certificates, but intends to issue certificates in audiology in the near future.² By accepting certification in audiology from a second accrediting body (American Board of Audiology in addition to American Speech-Language-Hearing Association), the board potentially makes it easier for audiologists to get licensed in Virginia. Hence, there may be more licensed audiologists than there would have been without the second certification option. This would increase the availability of services for Virginians. The increase in supply of those services could potentially moderately reduce the market prices for those services. Given the board's knowledge of and past experience with the American Board of Audiology, the board believes that individuals who earn certification from the American Board of Audiology will be as well trained as those that are certified from the American Speech-Language-Hearing Association. Both of the proposed amendments intended to reduce barriers to entry have the potential to moderately increase the supply of audiologists and speech-language pathologists without reducing skill-related criteria for licensure. Thus, the proposed amendments will likely provide a net benefit.

Licensed audiologists and speech-language pathologists are required to supervise their unlicensed assistants and are fully responsible for their performance and activities. The board proposes to require that the supervision be "documented." No description of required documentation is provided. A piece of paper signed by the licensee that states that he has supervised his assistants would suffice.³ Since the current regulations already require that licensees supervise their assistants, and the proposed documentation requirement

requires minimal effort and does not require the licensee say anything more specific than he is supervising his assistants, this proposed amendment will have minimal impact.

Businesses and entities affected. The proposed regulations affect the 423 licensed audiologists, 2,312 licensed speech-language pathologists, their assistants, their patients, and individuals considering becoming either audiologists or speech-language pathologists.

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

Projected impact on employment. Together, accepting certificates of clinical competence issued by the American Board of Audiology and reducing the recent-years active engagement in the profession requirement moderately reduce the barriers to entering the audiology or speech-language pathology professions in Virginia. Thus, there may be a moderate increase in the number of audiologists and speech-language pathologists in the Commonwealth.

Effects on the use and value of private property. Some new audiologist and speech-language pathologist practices may open in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 30-20 for changes recommended by a periodic review of regulations.

Summary:

The amendments revise prerequisites for licensure that may be unnecessarily restrictive and adopt requirements that are reasonable and essential to protect the public health, safety and welfare. The intent of the changes is to eliminate barriers to licensure, such as the requirement that an applicant who passed the qualifying examination more than three years ago be engaged in active practice for the 24 months immediately preceding application. The amendments also update the unprofessional conduct section to ensure that a practitioner can use electronic communication in the follow-up with a patient or another practitioner.

18 VAC 30-20-10. Definitions.

A. The words and terms "audiologist," "board," "practice of audiology," "practice of speech-language pathology," "speech-language disorders," and "speech-language pathologist" when used in this chapter shall have the meanings ascribed to them in § 54.1-2600 of the Code of Virginia.

B. The following words when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Contact hour" means 60 minutes of time spent in continuing learning activities.

"School speech-language pathologist" means a person licensed pursuant to § 54.1-2603 of the Code of Virginia to

² Source: Department of Health Professions.

³ Confirmed by the Department of Health Professions.

provide speech-language pathology services solely in public school divisions.

"*Supervision*" means that the audiologist or speech-language pathologist is responsible for the entire service being rendered or activity being performed, is available for consultation, and is providing regular monitoring *and documentation* of clinical activities and competencies of the person being supervised.

"*Type 1*" means continuing learning activities that must be offered by an accredited sponsor or organization as specified in 18 VAC 30-20-300.

"*Type 2*" means continuing learning activities that may or may not be approved by an accredited sponsor or organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning. In Type 2 activities, licensees document their own participation on the Continued Competency Activity and Assessment Form and are considered self-learning activities.

18 VAC 30-20-150. Renewal.

A. A person who desires to renew his license shall, not later than December 31 of each ~~odd-numbered~~ *even-numbered* year, return the renewal notice and applicable renewal fee.

B. A licensee who fails to renew his license by the expiration date shall have an invalid license.

18 VAC 30-20-170. Requirements for licensure.

A. The board may grant a license to an applicant who:

1. Holds a current and unrestricted Certificate of Clinical Competence in the area in which he seeks licensure issued by the American Speech-Language-Hearing Association, *the American Board of Audiology or any other accrediting body recognized by the board*. Verification of currency shall be in the form of a certified letter from ~~the American Speech-Language-Hearing Association~~ *a recognized accrediting body* issued within six months prior to licensure; and

2. Has passed the qualifying examination ~~for the Certificate of Clinical Competence from an accrediting body recognized by the board~~ within three years preceding the date of *applying* for licensure, or has ~~held employment in the area~~ *been actively engaged in the respective profession* for which he seeks licensure for one of the past three consecutive years ~~or two of the past five consecutive years;~~ *or*

B. The board may grant a license to an applicant who:

1. Holds a master's or *its equivalent as determined by the board* or a doctoral degree from a college or university whose audiology and speech-language program is *regionally* accredited by the American Speech-Language-Hearing Association or an equivalent accrediting body; and

2. Has passed a qualifying examination ~~approved~~ *approved* as *recognized* by the board. The applicant shall have passed the examination within three years preceding the date of applying for licensure in Virginia or have been actively engaged in the respective profession ~~during the 24 months~~

~~immediately~~ *for one of the past three consecutive years* preceding the date of application.

C. The board may grant a license to an applicant as a school speech-language pathologist who:

1. Holds a master's degree in speech-language-pathology; and

2. Holds an endorsement in speech-language pathology from the Virginia Department of Education.

18 VAC 30-20-240. Supervisory responsibilities; supervision of unlicensed assistants.

A. A licensed audiologist and speech-language pathologist shall provide *documented* supervision to unlicensed assistants, shall be held fully responsible for their performance and activities, and shall ensure that they perform only those activities which do not constitute the practice of audiology or speech-language pathology and which are commensurate with their level of training.

B. The identity of the unlicensed assistant shall be disclosed to the client prior to treatment and shall be made a part of the client's file.

18 VAC 30-20-280. Unprofessional conduct.

The board may refuse to issue a license to any applicant, suspend a license for a stated period of time or indefinitely, reprimand a licensee or place his license on probation with such terms and conditions and for such time as it may designate, impose a monetary penalty, or revoke a license for any of the following causes:

1. Guarantee of the results of any speech, voice, language, or hearing consultative or therapeutic procedure;

2. Diagnosis or treatment of speech, voice, language, and hearing disorders solely by written correspondence, provided this shall not preclude:

a. Follow-up *by* written correspondence or *electronic communication* concerning individuals previously seen; or

b. Providing patients with general information of an educational nature;

3. Disclosure of confidential patient information to unauthorized persons without the permission of the patient unless otherwise authorized by law;

4. Exploitation of patients by accepting them for treatment when benefit cannot reasonably be expected to occur, or by continuing treatment unnecessarily;

5. Incompetence or negligence in the practice of the profession;

6. Failure to comply with applicable state and federal statutes or regulations specifying the consultations and examinations required prior to the fitting of a new or replacement prosthetic aid for any communicatively impaired person;

7. Failure to refer a client to an appropriate health care practitioner when there is evidence of an impairment for

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which assessment, evaluation, care or treatment might be necessary;

8. Failure to supervise persons who assist them in the practice of speech-language pathology and audiology as well as failure to disclose the use and identity of unlicensed assistants;

9. Conviction of a felony or a misdemeanor involving moral turpitude;

10. Failure to comply with federal, state, or local laws and regulations governing the practice of audiology and speech-language pathology;

11. Failure to comply with any regulations of the board;

12. Inability to practice with skill and safety;

13. Making material misrepresentation in the course of practice;

14. Misrepresentation of one's professional credentials;

15. Aiding and abetting unlicensed activity; or

16. Revocation, suspension, restriction or any other discipline of a license or certificate to practice or surrender of license or certificate while investigation or administrative proceedings are pending in another state, the District of Columbia, a United States possession or territory, or a foreign jurisdiction.

VA.R. Doc. No. R02-144; Filed November 6, 2002, 11:21 a.m.

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-10, 18 VAC 85-20-22, 18 VAC 85-20-30, 18 VAC 85-20-120, 18 VAC 85-20-121, 18 VAC 85-20-131, 18 VAC 85-20-140, 18 VAC 85-20-210, 18 VAC 85-20-230, 18 VAC 85-20-235, 18 VAC 85-20-236, and 18 VAC 85-20-240; repealing 18 VAC 85-20-150).

Statutory Authority: § 54.1-2400 and Chapter 29 of Title 54.1 of the Code of Virginia.

Public Hearing Date: December 13, 2002 - 8:15 a.m.

Public comments may be submitted until January 31, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Summary:

The proposed regulations provide educational and examination requirements for the licensure of doctors of medicine, osteopathy, podiatry and chiropractic. Provisions establish standards of professional conduct, requirements for limited or temporary licenses, and requirements for renewal or reinstatement of a license including evidence of continuing competency.

Amendments are proposed to change the term osteopathy to osteopathic medicine, clarify the board policies on: payment of late fees for failure to renew a license; advertising ethics; and utilization of acupuncture as a treatment modality. Amendments will also reduce the regulatory burden for applicants discharged from the military, for foreign medical graduates seeking a limited license, and for practitioners seeking to return to reinstate or reactivate a license.

Basis: Chapter 24 (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

The legal authority to promulgate regulations for the licensure and practice of doctors of medicine, osteopathy, podiatry and chiropractic is found in Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: While most of the amendments are clarifications of regulations to more clearly state board policy, the changes related to advertising ethics are intended to better protect the public health, safety and welfare by establishing clearer guidance for advertisements of professional services. To ensure that the public is not being misled, the practitioner is required to advertise in a manner that is not deemed to be deceptive or misleading by doing such things as inflating charges for the purpose of advertising a discounted rate.

Amendments to requirements for applicants discharged from the military, foreign-trained applicants seeking limited licensure, or applicants for reinstatement or reactivation of a license are intended to eliminate or reduce any barriers to entry that are not essential for the protection of the public or assurance of competency to practice.

Substance: The board recommends amendments that will eliminate unnecessary provisions of the regulations, clarify others that have raised questions for licensees or the public and further specify restrictions on advertisements to ensure that they are not deceptive to the consumer. Amendments to the fee section are intended to clarify that late fees are assessed for every biennial renewal period in which the license has been lapsed. Amendments to licensure requirements will: reduce the number of years from 10 to five within which an applicant discharged from the military must submit discharge papers; allow a determination of English proficiency to be delegated by the Credentials Committee to facilitate the process; and make the passage of an examination for reinstatement optional if a practitioner seeking reinstatement has not been engaged in active practice. Active practice is now defined as at least 640 hours of clinical practice within the past four years. Finally, the regulation specifies that the use of acupuncture as a treatment modality must be appropriate to the doctor's scope of practice as defined in the law.

Issues: The primary advantage to the public of the proposed regulatory action is making the rules on advertising more explicit to ensure that practitioners are acting ethically and lawfully. For example, advertisements that inflate the cost of treatment in order to advertise a discount or fail to disclose the

total cost are misleading and can be harmful to patients. There is also an advantage to clarifying that acupuncture as a treatment modality must only be used within the scope of a licensee practice, as defined in the Code of Virginia. There have been reports of practitioners, such as chiropractors, who have provided acupuncture treatment unrelated to the statutory scope of practice. Clarity in the regulation should protect patients or at least provide the board with grounds for disciplinary action. There are no disadvantages to the public of any of the proposed amendments.

There are no specific advantages or disadvantages to the agency or to the Commonwealth. Clarity in regulations is always advantageous to the agency as it strives to interpret law and regulation to its licensee and the public.

Fiscal Impact: Projected cost to the state to implement and enforce:

- (i) Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.
- (ii) Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.
- (iii) One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed doctors of medicine, osteopathy, podiatry or chiropractic or persons applying for licensure in one of those categories; interns and residents; and persons with a university limited license.

Estimate of number of entities to be affected:

Doctors of medicine and surgery	28,174
Doctors of osteopathy and surgery	893
Doctors of podiatry	487
Doctors of chiropractic	1,590
Interns and residents	2,154
University limited licensees	24

Projected costs to the affected entities: The only proposed amendment that may have an effect on regulated entities is the requirement for payment of late fees in addition to a reinstatement fee. It is estimated that 50 doctors who have allowed their license to lapse in Virginia seek reinstatement each year. The additional cost for late fees for a doctor of medicine, osteopathy or podiatry will range from \$90 for one biennium of lapsed licensure to \$180 to four or more years of lapsed licensure. Given the income level of physicians in the

Commonwealth, the additional fee of less than \$200 is not anticipated to be a deterrent to reinstatement.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Medicine (board) proposes to (i) allow a designee of the board's credentials committee to make waiver decisions concerning limited licenses to foreign medical graduates, (ii) allow itself to waive the re-examination requirement for individuals seeking to reinstate their license if there is sufficient other evidence of continued competency to practice, and (iii) specify that individuals seeking reinstatement owe late fees in addition to the reinstatement fee.

Estimated economic impact.

Designee for Waiver Decision. A physician applying for a limited professorial license or a limited fellow license to practice medicine in an approved medical school or college in Virginia, who graduated from an institution not approved by an accrediting agency recognized by the board, shall (i) submit evidence of authorization to practice medicine in a foreign country, (ii) submit a recommendation from the dean of an accredited medical school in Virginia that the applicant is a person of professorial rank whose knowledge and special training will benefit the medical school, and (iii) submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent. The board's credentials committee may waive the ECFMG certificate requirement if it determines that there is sufficient other evidence demonstrating the applicant's medical competency and English proficiency.

The credentials committee meets every other month.¹ Applicants who seek waiver of the ECFMG certificate requirement must wait until the committee meets for a decision. The board proposes to allow a designee, usually the executive director or the chairman, to make waiver decisions without waiting for the full committee to meet. This would speed the application process for some individuals seeking either a limited professorial license or a limited fellow license, i.e., the applicant would not have to wait for the next full committee meeting for a decision to be made. Applicants would benefit with the shorter wait; for example, in some circumstances it may allow the applicant to start a new position sooner. Since the members of the committee can

¹ Source: Department of Health Professions.

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choose someone who represents their overall judgment on waiver issues or may choose to not designate anyone to fulfill this function, there appears to be no cost to this proposed amendment. Thus, the amendment produces a net benefit.

Discretion on Re-examination Requirement. Currently, a practitioner seeking to reinstate or reactivate a license, who has not actively practiced for more than four years, is required to re-take and pass their field-relevant license-qualifying examination. The board proposes to allow itself to waive the re-examination requirement if there is sufficient other evidence of continued competency to practice. This proposed amendment will likely produce a net benefit. Say, for example, that a distinguished² physician decides to take four years off from active³ practice to concentrate on research highly relevant to her field. After the four years she wishes to reactivate her license. Her knowledge of the field likely increased with the time spent on research. Thus, there appears to be little benefit to requiring her to retake the licensure-qualifying exam. Retaking the exam is costly in terms of time and resources. For the case of this hypothetical individual, waiving the exam would produce a net benefit. Waiving the retaking of the exam for an individual who has been retired many years and who has not demonstrated that he has kept up with advances in the field could be costly in that patients' health could be put at risk, but presuming that the board uses good judgment and only provides the waiver for individuals who are clearly knowledgeable enough in the field as it currently stands, the proposed amendment will produce a net benefit.

Late Fees for Reinstatement. The fee for biennial license renewal is \$260 in the fields of medicine, osteopathic medicine, and podiatry, and \$235 for chiropractic. If the complete renewal application is filed late, but within two years of when it is due, then an additional late fee is assessed. The late fee is \$90 for medicine, osteopathic medicine, and podiatry, and \$80 for chiropractic. A practitioner whose license has been lapsed for two successive years or more and wishes to reinstate their license must, among other requirements, pay a reinstatement fee (\$305 for medicine, osteopathic medicine, and podiatry; \$290 for chiropractic). The current regulations do not specify that an individual whose license has been expired for at least two years pays a late fee. Indeed, the board has not been assessing late fees to individuals applying for reinstatement.⁴ Since regular license renewal plus the late fee equals \$350 for medicine, osteopathic medicine, and podiatry, and \$315 for chiropractic, while the reinstatement fee is \$305 and \$290, respectively, practitioners who miss paying their renewal fee on time can save money by waiting for two years to elapse and apply for reinstatement rather than pay the late fee plus the regular renewal fee.

The board proposes to explicitly state in the regulations that reinstatement applicants must pay, in addition to the reinstatement fee, late fees (\$90 for medicine, osteopathic medicine, and podiatry, and \$80 for chiropractic) for each year

in which the license has been lapsed, not to exceed four years. Under the proposed language, the practitioner who waited for two years to elapse before applying for reinstatement would pay \$575 (\$530 for chiropractic).⁵ This significant increase in the cost of waiting more than two years to reinstate one's license reduces the incentive for a practitioner to delay paying his licensure fee. To the extent that some practitioners react to the incentive change by being more prompt in paying their licensure fees, the Department of Health Professions may save on some administrative costs: less time and materials expended on collecting overdue fees.

Businesses and entities affected. The proposed amendments affect the 28,174 doctors of medicine and surgery, 893 doctors of osteopathy and surgery, 487 doctors of podiatry, 1,590 doctors of chiropractic, 2,154 interns and residents, the 24 university limited licensees in the Commonwealth, as well as their patients and students.

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

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-20, pursuant to a periodic review of regulations.

CHAPTER 20. REGULATIONS GOVERNING THE PRACTICE OF MEDICINE, ~~OSTEOPATHY~~ *OSTEOPATHIC MEDICINE*, PODIATRY, AND CHIROPRACTIC

18 VAC 85-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

Acupuncturist
Board
Healing arts
Practice of chiropractic
Practice of medicine or ~~osteopathy~~ *osteopathic medicine*
Practice of podiatry

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

² Few or no complaints or malpractice suits from patients.

³ Active practice is defined as at least 640 hours of clinical practice within the four years immediately preceding the reinstatement or reactivation application.

⁴ Source: Department of Health Professions.

⁵ For medicine, osteopathic medicine, and podiatry: \$305 (reinstatement fee) + \$90 (per annum late fee) x 3 (two full years plus a portion of a third year beyond the expiration of the license) = \$575. For chiropractic: \$290 (reinstatement fee) + \$80 (per annum late fee) x 3 (two full years plus a portion of a third year beyond the expiration of the license) = \$530.

"Approved institution" means any accredited school or college of medicine, ~~osteopathy~~ osteopathic medicine, podiatry, or chiropractic located in the United States, its territories, or Canada.

"Principal site" means the location in a foreign country where teaching and clinical facilities are located.

18 VAC 85-20-22. Required fees.

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, ~~osteopathy~~ osteopathic medicine, and podiatry shall be \$225, and the fee for licensure in chiropractic shall be \$200. The fee for board approval to sit for ~~Part~~ Step 3 of the United States Medical Licensing Examination without subsequent licensure in Virginia shall be \$85.

D. The fee for a temporary ~~permit~~ authorization to practice medicine pursuant to § 54.1-2927 B (i) and (ii) of the Code of Virginia shall be ~~\$30~~ 25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18 VAC 85-20-210 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.

F. The application fee for a limited license to interns and residents pursuant to 18 VAC 85-20-220 shall be \$55. The annual renewal fee shall be \$35 a year. An additional fee for late renewal of licensure shall be \$15.

G. The fee for a duplicate wall certificate shall be \$15; the fee for a duplicate license shall be \$5.

H. The fee for biennial renewal shall be \$260 for licensure in medicine, ~~osteopathy~~ osteopathic medicine and podiatry and \$235 for licensure in chiropractic, due in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$90 for licensure in medicine, ~~osteopathy~~ osteopathic medicine and podiatry and \$80 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure pursuant to § 54.1-2921 of the Code of Virginia shall be \$2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia which has expired for a period of two years or more shall be \$305 for licensure in medicine, ~~osteopathy~~ osteopathic medicine and podiatry and \$290 for licensure in chiropractic ~~and in addition to the late fee for each year in which the license has been lapsed, not to exceed a total of four years. The fee shall be submitted with an application for licensure reinstatement.~~

K. The fee for a letter of ~~good standing~~ verification of licensure to another jurisdiction for a license shall be \$10, and the fee for certification of grades to another jurisdiction by the board shall be \$25. Fees shall be due and payable upon submitting a request for verification or certification to the board.

~~L. The fee for certification of grades to another jurisdiction by the board shall be \$25. The fee shall be due and payable upon submitting the form to the board.~~

M. L. The fee for biennial renewal of an inactive license shall be \$130, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$45 for each renewal cycle.

N. M. The fee for a returned check shall be \$25.

18 VAC 85-20-30. Advertising ethics.

A. Any statement specifying a fee, *whether standard, discounted or free*, for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide emergency. *This provision may not be waived by agreement of the patient and the practitioner.*

C. Advertisements of discounts shall disclose the full fee ~~and that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.~~

D. A licensee or certificate holder's authorization of or use in any advertising for his practice of the term "board certified" or any similar words or phrase calculated to convey the same meaning shall constitute misleading or deceptive advertising under § 54.1-2914 of the Code of Virginia, unless the licensee or certificate holder discloses the complete name of the specialty board which conferred the aforementioned certification.

E. It shall be considered unprofessional conduct for a licensee of the board to publish an advertisement which is false, misleading, or deceptive.

18 VAC 85-20-120. Prerequisites to licensure.

A. Every applicant for licensure shall:

1. Meet the educational requirements specified in 18 VAC 85-20-121 or 18 VAC 85-20-122 and the examination requirements as specified for each profession in 18 VAC 85-20-140;
2. File the complete application and appropriate fee as specified in 18 VAC 85-20-22 with the executive director of the board; and

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3. File the required credentials with the executive director by a date established by the board and as specified below:

a. Graduates of an approved institution shall file:

- (1) Documentary evidence that he received a degree from the institution; and
- (2) A complete chronological record of all professional activities since graduation, giving location, dates, and types of services performed.

b. Graduates of an institution not approved by an accrediting agency recognized by the board shall file:

- (1) Documentary evidence of education as required by 18 VAC 85-20-122;
- (2) A translation made and endorsed by a consul or by a professional translating service of all such documents not in the English language; and
- (3) A complete chronological record of all professional activities since graduation, giving location, dates, and types of services performed.

6. B. Every applicant discharged from the United States military service within the last ~~40~~ five years shall in addition file with his application a notarized copy of his discharge papers.

18 VAC 85-20-121. Educational requirements: Graduates of approved institutions.

A. Such an applicant shall be a graduate of an institution that meets the criteria appropriate to the profession in which he seeks to be licensed, which are as follows:

1. For licensure in medicine. The institution shall be approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.
2. For licensure in ~~osteopathy~~ *osteopathic medicine*. The institution shall be approved or accredited by the Bureau of Professional Education of the American Osteopathic Association or any other organization approved by the board.
3. For licensure in podiatry. The institution shall be approved and recommended by the Council on Podiatry Education of the American Podiatry Medical Association or any other organization approved by the board.

B. Such an applicant for licensure in medicine, ~~osteopathy~~ *osteopathic medicine*, or podiatry shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

C. For licensure in chiropractic.

1. If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

2. If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

18 VAC 85-20-131. Requirements to practice acupuncture.

A. To be qualified to practice acupuncture, licensed doctors of medicine, ~~osteopathy~~ *osteopathic medicine*, podiatry, and chiropractic shall first have obtained at least 200 hours of instruction in general and basic aspects of the practice of acupuncture, specific uses and techniques of acupuncture, and indications and contraindications for acupuncture administration. After December 5, 2001, at least 50 hours of the 200 hours of instruction shall be clinical experience supervised by a person legally authorized to practice acupuncture in any jurisdiction of the United States. Persons who held a license as a physician acupuncturist prior to July 1, 2000, shall not be required to obtain the 50 hours of clinical experience.

B. ~~A podiatrist may use acupuncture only for treatment of pain syndromes originating in the human foot~~ *The use of acupuncture as a treatment modality shall be appropriate to the doctor's scope of practice as defined in § 54.1-2900 of the Code of Virginia.*

18 VAC 85-20-140. Examinations, general.

A. The Executive Director of the Board of Medicine or his designee shall review each application for licensure and in no case shall an applicant be licensed unless there is evidence that the applicant has passed an examination equivalent to the Virginia Board of Medicine examination required at the time he was examined and meets all requirements of Part III (18 VAC 85-20-120 et seq.) of this chapter. If the executive director or his designee is not fully satisfied that the applicant meets all applicable requirements of Part III of this chapter and this part, he shall refer the application to the Credentials Committee for a determination on licensure.

B. A Doctor of Medicine or ~~Osteopathy~~ *Osteopathic Medicine* who has passed the examination of the National Board of Medical Examiners or of the National Board of Osteopathic Medical Examiners, FLEX, or the United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada or other such examinations as prescribed in § 54.1-2913.1 of the Code of Virginia may be accepted for licensure.

C. A Doctor of Podiatry who has passed the National Board of ~~Podiatry~~ *Podiatric Medical* Examiners examination and has passed a clinical competence examination equivalent to the Virginia Board of Medicine examination may be accepted for licensure.

D. A Doctor of Chiropractic who has met the requirements of one of the following may be accepted for licensure:

1. An applicant who graduated after January 31, 1996, shall document successful completion of Parts I, II, III, and IV of the National Board of Chiropractic Examiners examination (NBCE).

2. An applicant who graduated from January 31, 1991, to January 31, 1996, shall document successful completion of Parts I, II, and III of the National Board of Chiropractic Examiners examination (NBCE).

3. An applicant who graduated from July 1, 1965, to January 31, 1991, shall document successful completion of Parts I, II, and III of the NBCE, or Parts I and II of the NBCE and the Special Purpose Examination for Chiropractic (SPEC), and document evidence of licensure in another state for at least two years immediately preceding his application.

4. An applicant who graduated prior to July 1, 1965, shall document successful completion of the SPEC, and document evidence of licensure in another state for at least two years immediately preceding his application.

E. The following provisions shall apply for applicants taking Step 3 of the United States Medical Licensing Examination or the Podiatric Medical Licensing Examination:

1. Applicants for licensure in medicine and ~~osteopathy~~ *osteopathic medicine* may be eligible to sit for Step 3 of the United States Medical Licensing Examination (USMLE) upon evidence of having passed Steps 1 and 2 of the United States Medical Licensing Examination (USMLE).

2. Applicants who sat for the United States Medical Licensing Examination (USMLE) shall provide evidence of passing Steps 1, 2, and 3 within a seven-year period except for good cause shown.

3. Applicants shall have completed the required training or be engaged in their final year of required postgraduate training.

4. Applicants for licensure in podiatry shall provide evidence of having passed the National Board of Podiatric Medical Examiners Examination to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia.

18 VAC 85-20-150. Reexamination. (Repealed.)

~~An applicant for licensure in medicine, osteopathy, or podiatry who fails three or more attempts to pass the applicable examination(s) shall be eligible to sit for another series of three attempts upon presenting proof to the Credentials Committee of the board that he has fulfilled the requirements of subdivision 1 or 2 of this section, whichever is appropriate.~~

~~1. An applicant for licensure in medicine or osteopathy who fails three or more attempts to pass Component I and Component II, or Parts I, II, and III of the FLEX examination or the United States Medical Licensing Examination in Virginia or any other state or territory of the United States, the District of Columbia, or province of Canada, or a combination of either of these examinations, shall engage in one year of additional postgraduate training to be obtained in a hospital in the United States or Canada approved by~~

~~the American Medical Association or the American Osteopathic Association.~~

~~2. An applicant for licensure in podiatry who fails three or more attempts to pass the PMLEXIS shall appear before the Credentials Committee of the board and shall engage in such additional postgraduate training as may be deemed appropriate by the Credentials Committee.~~

18 VAC 85-20-210. Limited licenses to foreign medical graduates.

A. A physician who graduated from an institution not approved by an accrediting agency recognized by the board applying for a limited professorial license or a limited fellow license to practice medicine in an approved medical school or college in Virginia shall:

1. Submit evidence of authorization to practice medicine in a foreign country.

2. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent. Such required evidence may be waived by the Credentials Committee *or its designee based on other evidence of medical competency and English proficiency.*

3. Submit a recommendation from the dean of an accredited medical school in Virginia that the applicant is a person of professorial or of fellow rank whose knowledge and special training will benefit the medical school.

B. The limited professorial license or limited fellow license applies only to the practice of medicine in hospitals and outpatient clinics where medical students, interns or residents rotate and patient care is provided by the medical school or college recommending the applicant.

1. The limited professorial license shall be valid for one year and may be renewed annually upon recommendation of the dean of the medical school and upon continued full-time employment as a faculty member.

2. The limited fellow license shall be valid for one year and may be renewed not more than twice upon the recommendation of the dean of the medical school and upon continued full-time employment as a fellow.

C. An individual who has practiced with a limited professorial license for five continuous years may have a waiver when applying for a full license to practice medicine in the Commonwealth of Virginia. The limited professorial licensee applying for a full license shall meet the requirements of 18 VAC 85-20-120 and 18 VAC 85-20-122.

18 VAC 85-20-230. Renewal of an active license.

A. Every licensee who intends to ~~continue his practice~~ *maintain an active license* shall renew his license biennially during his birth month, meet the continued competency requirements prescribed in 18 VAC 85-20-235, and pay to the board the renewal fee prescribed in 18 VAC 85-20-22.

B. An additional fee to cover administrative costs for processing a late application shall be imposed by the board as *prescribed in subsection H of 18 VAC 85-20-22.*

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18 VAC 85-20-235. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially on or after January 1, 2002, a practitioner shall complete the Continued Competency Activity and Assessment Form ("*Form*") which is provided by the board and which shall indicate completion of at least 60 hours of continuing learning activities within the two years immediately preceding renewal as follows:

1. A minimum of 30 of the 60 hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession. At least 15 of the Type 1 hours shall be earned in face-to-face group activities or other interactive courses.

a. Type 1 hours in chiropractic shall be accredited by the Council on Chiropractic Education or any other organization approved by the board.

b. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.

2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of care, patient safety, new medical technology, and patient communication.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed Form with all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit of at least 1.0% to 2.0% of its active licensees to determine compliance. The practitioners selected for the audit shall provide the completed ~~Continued Competency Activity and Assessment~~ Form and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board may grant an exemption for all or part of the requirements for a licensee who is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board.

18 VAC 85-20-236. Inactive license.

A doctor of medicine, ~~osteopathy~~ *osteopathic medicine*, podiatry or chiropractic who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain continuing competency requirements and shall not be entitled to perform any act requiring a license to practice medicine, ~~osteopathy~~ *osteopathic medicine*, podiatry or chiropractic in Virginia.

18 VAC 85-20-240. Reinstatement of an inactive or lapsed license.

A. A practitioner whose license has been lapsed for two successive years or more and who requests reinstatement of licensure shall:

1. File a completed application for reinstatement;

2. Pay the reinstatement fee prescribed in 18 VAC 85-20-22; and

3. Provide documentation of having completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been lapsed.

B. An inactive licensee may reactivate his license upon submission of the required application, payment of the difference between the current renewal fee for inactive licensure and the current renewal fee for active licensure, and documentation of having completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive.

C. If a practitioner has not engaged in active practice in his profession for more than four years and wishes to reinstate or reactivate his license, ~~he shall take and the board may require the practitioner to pass one of the following as applicable to his practice: examinations. For the purpose of determining active practice, the practitioner shall provide evidence of at least 640 hours of clinical practice within the four years immediately preceding his application for reinstatement or reactivation.~~

1. The Special Purpose Examination (SPEX) given by the Federation of State Medical Boards.

2. The Comprehensive Osteopathic Medical Variable Purpose Examination--USA (COMVEX-USA) given by the National Board of Osteopathic Examiners.

3. The Special Purposes Examination for Chiropractic (SPEC) given by the National Board of Chiropractic Examiners.

4. A special purpose examination or other evidence of continuing competency to practice podiatric medicine as acceptable to the board.

D. The board reserves the right to deny a request for *reinstatement or reactivation* to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

VA.R. Doc. No. R02-177; Filed November 6, 2002, 11:20 a.m.

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Title of Regulation: 18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (amending 18 VAC 85-101-10, 18 VAC 85-101-30 through 18 VAC 85-101-60, 18 VAC 85-101-100, 18 VAC 85-101-130, 18 VAC 85-101-140, and 18 VAC 85-101-150; adding 18 VAC 85-101-25 and 18 VAC 85-101-61; repealing 18 VAC 85-101-80, 18 VAC 85-101-90, and 18 VAC 85-101-160).

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

Public Hearing Date: January 8, 2003 - 1:15 p.m.

Public comments may be submitted until January 31, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

The specific statutory authority for the board to license radiologic technologists-limited and to determine requisite education and training is found in Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: During the periodic review of regulations, the primary issue raised was the competency of persons with a limited rad tech license to perform radiographic procedures. In the past, the Advisory Committee has heard testimony and received letters from practitioners and educators expressing concern about the limited amount of training received by these licensees. When the ARRT examination was first required for licensure as a rad tech-limited, the cut score set by the board was 75. Faced with a very poor passage rate, the board looked into solutions to the problem. It was determined that the cut score was set above the national average and should be lowered to be consistent with the score recommended by the ARRT, which was 65. Along with a reduction in the passing score, the educational programs have become more proficient in teaching the material necessary to pass the national examination, and the passage rate has dramatically improved. Similar passage rates are evident on the anatomical exams of chest, extremities, skull, spine and podiatric.

Even with the improved passage on the exam, the actual experience of some practitioners with the skill level of limited licensees has led to a recommendation to require a certain number of procedures to be performed under direct supervision and observation before a license is granted. Consequently, the board has proposed that training in the anatomical areas for which someone is seeking licensure include performance of at least 10 procedures under direct supervision and observation of a licensed rad tech or doctor.

To accommodate the need for practice while in training, the board has added provisions for a traineeship for the limited license similar to that already in effect for the full license. Finally, the board determined that the public health and safety was not adequately protected and further specified certain procedures to be beyond the scope of practice for someone with a limited license. Rad tech-limited licensees do not have the training and are not tested on fluoroscopic procedures, computerized tomography, vascular-interventional procedures or mobile radiography.

Substance: Amendments will provide for additional practical experience for those seeking licensure as a radiologic technologist-limited and will specify that certain radiographic procedures are outside their scope of practice. Amendments are adopted to provide a traineeship in which to gain practical experience under supervision and observation and to implement continuing education requirements as necessary for renewal of a license in 2005. Other amendments are clarifying to eliminate unnecessary or outdated rules or to provide adequate information for compliance with requirements of law and regulation.

Issues:

1) The primary advantages and disadvantages to the public. The primary advantages to the public include the additional assurance that persons with a limited license to perform radiographic procedures in certain anatomical areas have had practical experience in those procedures under the direction and observation of a supervising rad tech or physician. Experience in specific anatomical procedures under the direct supervision and observation of a licensed person will ensure that persons with a limited license have not only the education necessary to pass an examination but also the practical ability to safely perform radiography. Also, specific limitations on the scope of practice for someone with a limited license will ensure that procedures are not being performed by someone who has not been appropriately trained or tested. There are no disadvantages to the public.

2) The primary advantages and disadvantages to the Commonwealth. There are no advantages or disadvantages to the Commonwealth; there will be no additional cost for licensing or enforcement of standards for radiologic technologists-limited.

Fiscal Impact: Projected cost to the state to implement and enforce:

1. Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

2. Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

3. One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$2,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate

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those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be persons interested in becoming licensed as radiologic technologists or radiologic technologists-limited or licensees seeking to comply with requirements for continuing education.

Estimate of number of entities to be affected: There are currently 918 persons licensed as radiologic technologists-limited and 2,309 persons licensed as radiologic technologists.

Projected costs to the affected entities: There should be no cost for compliance for applicants or current licensees. Persons who are receiving training in anatomical areas for a limited license will gain that experience as a trainee in the practice setting under the licensed doctor or rad tech.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Medicine (board) proposes to (i) require persons training as radiologic technologists-limited to gain practical experience in the radiologic procedures for which they are seeking licensure, (ii) establish provisions for traineeships for radiologic technologists-limited that are similar to the traineeships for radiologic technologists, (iii) prohibit the performance of certain procedures by radiologic technologists-limited for which they are not trained or tested, and (iv) eliminate the requirement for an applicant for licensure as a radiologic technologist to submit documented evidence of her graduation from an educational program accepted by ARRT.

Estimated economic impact. According to the Department of Health Professions (department), when the American Registry of Radiologic Technologists (ARRT) examination was first required for licensure as a radiologic technologist-limited, the cut score set by the board was 75. Faced with a very poor passage rate, the board decided to lower the cut score to the score recommended by ARRT, 65. The passage rate has dramatically improved,¹ but there has been a significant amount of dissatisfaction expressed by practitioners with the

skill level of some limited licensees. The board has also heard from educators who believe that under the current regulations radiologic technologists-limited receive inadequate training.

Consequently, the board proposes to require that individuals seeking radiologic technologists-limited licensure provide evidence of having successfully performed in a traineeship at least ten radiologic examinations in the anatomical area for which they are seeking licensure under the direct supervision and observation of a licensed radiologic technologist or a doctor of medicine or osteopathy. Similar to the existing traineeship for individuals seeking radiologic technologist licensure, the traineeship for an applicant for licensure as a radiologic technologist-limited terminates fourteen days after receipt by the candidate of the licensure examination results or, if the training for limited licensure in bone densitometry or abdomen and pelvis, fourteen working days after completion of the required number of procedures. A notarized statement from the supervising practitioner shall attest to the applicant's competency in the areas of radiation safety, positioning, patient instruction, anatomy, pathology, and technical factors.

The proposed traineeship and demonstrated competency requirement is beneficial in that it provides information to employers and potential employers of radiologic technologists-limited concerning actual experience and demonstrated skill level. Employers seeking someone who already likely possesses enough skill to work without direct supervision will know to only interview individuals who are already fully licensed as a radiologic technologist-limited. Employers who hire an individual in a traineeship will know that the new hire will initially require direct supervision. Overall, individuals that have qualified for limited licensure will likely command a higher starting salary than individuals who have yet to demonstrate competency. Thus individuals who have demonstrated evidence of their acquired skills will receive higher pay commensurate with their skill level with the proposed traineeship and demonstrated competency requirement. The increased information provided to employers concerning the skill level of the radiologic technologist may also reduce the probability of mistakes that may adversely affect patients, since the supervisor will have a better idea of how much supervision is required.

The board proposes to prohibit performance of fluoroscopic procedures, computerized tomography, and vascular-interventional procedures by radiologic technologists-limited since those procedures are not covered on the ARRT examination for Limited Scope of Practice in Radiography and considered to be outside the scope of practice for a person with a limited license. According to the department, radiologic technologists-limited are not known to have been performing these procedures. Thus, the proposed prohibitions will have little impact. Explicitly adding the prohibitions to the regulations may help prevent any potential confusion as to whether radiologic technologists-limited are competent to perform the listed procedures.

The board proposes to eliminate the requirement for an applicant for licensure as a radiologic technologist to submit documented evidence of graduation from an educational program accepted by ARRT. The documented evidence is unnecessary since AART requires the submission of

¹ Source: Department of Health Professions.

transcripts documenting graduation as a prerequisite for sitting for the ARRT examination. Successful applicants for the radiologic technologist license must pass the ARRT certification exam. Since applicants will save the time and costs associated with documenting and sending evidence of graduation and the board has no need of the information, this proposed change clearly produces a net benefit.

Businesses and entities affected. The proposed amendments affect the 918 persons licensed as radiologic technologists-limited, the 2,309 persons licensed as radiologic technologists, their employers and potential employers, their patients and potential patients, and individuals interested in becoming licensed as a radiologic technologist-limited or radiologic technologist.

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

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-101 for changes recommended by a periodic review of regulations.

Summary:

The proposed amendments address concerns about the adequacy of training for the limited licensees and provide greater clarity for the regulated entities. Amendments are recommended to require persons training as a radiologic technologist-limited to gain practical experience in the radiologic procedures for which they are seeking licensure, and provisions are established for a traineeship similar to that currently in effect for the radiologic technologists. In addition, the scope of practice for the limited licensee is further specified to exclude certain procedures for which they are not trained or tested. Regulations for endorsement are eliminated since the grandfathering provisions expired in 1999; persons licensed in other states who are seeking licensure in Virginia are licensed based on passage of the national examination. Finally, provisions for the implementation of continuing education requirements are added.

PART I. GENERAL PROVISIONS.

18 VAC 85-101-10. Definitions.

In addition to definitions in § 54.1-2900 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"ACRRT" means the American Chiropractic Registry of Radiologic Technologists.

"ARRT" means the American Registry of Radiologic Technologists.

"Bone densitometry" means a process for measuring bone mineral density by utilization of single x-ray absorptiometry (SXA), dual x-ray absorptiometry (DXA) or other technology that is substantially equivalent as determined by the board.

"Direct supervision" means that a licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic or podiatry is present and is fully responsible for the activities performed by radiologic personnel.

"Direction" means the delegation of radiologic functions to be performed upon a patient from a licensed doctor of medicine, osteopathy, chiropractic, or podiatry, to a licensed radiologic technologist or a radiologic technologist-limited for a specific purpose and confined to a specific anatomical area, that will be performed under the direction of and in continuing communication with the delegating practitioner.

"ISCD" means the International Society for Clinical Densitometry.

"Traineeship" means a period of activity during which an ~~unlicensed applicant for licensure~~ *applicant for licensure* as a radiologic technologist ~~who is seeking licensure~~ works under the direct supervision of a practitioner approved by the board while waiting for the results of the licensure examination or an applicant for licensure as a radiologic technologist-limited working under direct supervision and observation to fulfill the practice requirements in 18 VAC 85-101-60.

18 VAC 85-101-25. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial licensure fees.

1. The application fee for radiologic technologist licensure shall be \$130.

2. The application fee for the radiologic technologist-limited licensure shall be \$90.

3. All examination fees shall be determined by and made payable as designated by the board.

C. Licensure renewal and reinstatement.

1. The fee for active license renewal for a radiologic technologist shall be \$135 and for a radiologic technologist-limited shall be \$70. The fee for inactive license renewal for a radiologic technologist shall be \$70 and for a radiologic technologist-limited shall be \$35.

2. An additional fee of \$50 for a radiologic technologist and \$25 for a radiologic technologist-limited to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.

3. The fee for reinstatement of a license that has lapsed for a period of two years or more shall be \$180 for a radiologic technologist and \$120 for a radiologic technologist-limited and shall be submitted with an application for licensure reinstatement.

4. The fee for reinstatement of a license pursuant to § 54.1-2921 of the Code of Virginia shall be \$2,000.

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D. Other fees.

1. The application fee for a traineeship as a radiologic technologist shall be \$25.
2. The fee for a letter of good standing or verification to another state for licensure shall be \$10; the fee for certification of grades to another jurisdiction shall be \$25.
3. The fee for a returned check shall be \$25.
4. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.

18 VAC 85-101-30. Educational requirements for radiologic technologists.

An applicant for licensure as a radiologic technologist shall be a graduate of an educational program acceptable to the ARRT for the purpose of sitting for the ARRT certification examination ~~and shall submit, with the required application and fee, documented evidence of his graduation from such a program.~~

18 VAC 85-101-40. Examination Licensure requirements.

A. An applicant for board licensure ~~by examination~~ shall:

1. Meet the educational requirements specified in 18 VAC 85-101-30-;
2. Submit the required application, fee, and credentials to the board-; and
3. Submit evidence of passage of the ARRT certification examination with a minimum passing score acceptable to the board.

~~B. To qualify for licensure, the applicant shall take and pass the ARRT certification examination with a minimum passing score as determined by the board. If an applicant has been licensed or certified in another jurisdiction, he shall provide on the application information on the status of each license or certificate held and verification from that jurisdiction of any current, unrestricted license.~~

C. An applicant who fails the ARRT examination shall follow the policies and procedures of the ARRT for successive attempts.

18 VAC 85-101-50. Traineeship for unlicensed graduate.

A. An applicant who is an unlicensed graduate of an ~~AART approved~~ acceptable program may be employed as a trainee under the direct supervision of a licensed radiologic technologist, or doctor of medicine, osteopathy, chiropractic, or podiatry.

B. The graduate shall submit an application for a traineeship to the board for review and approval by the Chairman of the ~~Radiologic Technology Advisory Committee Board on Radiological Technology~~ or his designee.

C. The traineeship shall terminate 14 working days after receipt by the candidate of the licensure examination results. The unlicensed graduate may reapply for a new traineeship while awaiting to take the next examination.

D. An unlicensed graduate may serve in a traineeship for a period not to exceed two years or through three unsuccessful attempts of the licensure examination, whichever comes first. After such time, the graduate shall apply to the Radiologic Technology Advisory Committee for approval to continue in practice as a trainee.

18 VAC 85-101-60. Examination requirements.

A. An applicant for licensure by examination as a radiologic technologist-limited shall submit:

1. The required application and fee as prescribed by the board;
2. Evidence of successful completion of an examination as required in this section; and
3. Evidence of completion of training as required in 18 VAC 85-101-70.

B. To qualify for limited licensure to practice under the direction of a doctor of medicine, osteopathy, or chiropractic with the exception of practice in bone densitometry, the applicant shall:

1. Provide evidence that he has received a passing score as determined by the board on the core section of the ARRT examination for Limited Scope of Practice in Radiography; ~~and~~
2. Meet one of the following requirements:
 - a. Provide evidence that he has received a passing score as determined by the board on the section of the ARRT examination on specific radiographic procedures, depending on the anatomical areas in which the applicant intends to practice, or
 - b. Until the ARRT offers an examination for limited licensure in the radiographic procedures of the abdomen and pelvis, the applicant may qualify for a limited license by submission of a notarized statement from a licensed radiologic technologist or doctor of medicine or osteopathy attesting to the applicant's training and competency to practice in that anatomical area as follows:

(1) To perform radiographic procedures on the abdomen or pelvis, the applicant shall have successfully performed during the traineeship at least 25 radiologic examinations of the abdomen or pelvis *in a traineeship* under the direct supervision and observation of a licensed radiologic technologist or a doctor of medicine or osteopathy. The notarized statement shall further attest to the applicant's competency in the areas of radiation safety, positioning, patient instruction, anatomy, pathology and technical factors.

(2) When a section is added to the limited license examination by the ARRT that includes the abdomen and pelvis, the applicant shall provide evidence that he has received a passing score on that portion of the examination as determined by the board-; and

3. Provide evidence of having successfully performed in a traineeship at least 10 radiologic examinations in the

anatomical area for which he is seeking licensure under the direct supervision and observation of a licensed radiologic technologist or a doctor of medicine or osteopathy. A notarized statement from the supervising practitioner shall attest to the applicant's competency in the areas of radiation safety, positioning, patient instruction, anatomy, pathology and technical factors.

C. To qualify for limited licensure to practice in bone densitometry under the direction of a doctor of medicine, osteopathy, or chiropractic, the applicant shall either:

1. Provide evidence that he has received a passing score as determined by the board on the core section of the ARRT examination for Limited Scope of Practice in Radiography; and

a. The applicant shall provide a notarized statement from a licensed radiologic technologist or doctor of medicine, osteopathy, or chiropractic attesting to the applicant's training and competency to practice in that anatomical area. The applicant shall have successfully performed at least 10 examinations for bone density under the direct supervision and observation of a licensed radiologic technologist or a doctor of medicine or osteopathy; or

b. When a section is added to the limited license examination by the ARRT that includes bone densitometry, the applicant shall provide evidence that he has received a passing score on that portion of the examination as determined by the board; or

2. Provide evidence that he has taken and passed an examination resulting in certification in bone densitometry from the ISCD or any other substantially equivalent credential acceptable to the board.

D. To qualify for a limited license *in the anatomical areas of the spine or extremities or in bone densitometry* to practice under the direction of a doctor of chiropractic, the applicant shall provide evidence that he has taken and passed the appropriate *requirements of subsection C or an examination* by the ACRRT.

E. To qualify for a limited license *in the anatomical area of the foot and ankle* to practice under the direction of a doctor of podiatry, the applicant shall provide evidence that he has taken and passed an examination acceptable to the board.

F. An applicant who fails the examination shall be allowed two more attempts to pass the examination after which he shall reapply and take additional educational hours which meet the criteria of 18 VAC 85-101-70.

18 VAC 85-101-61. Traineeship for an applicant for licensure as a radiologic technologist-limited.

A. *An applicant who is seeking licensure as a radiologic technologist-limited may be employed as a trainee under the direct supervision of a licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic or podiatry.*

B. *The person shall submit an application for a traineeship to the board for review and approval by the Chairman of the Advisory Board on Radiological Technology or his designee.*

C. *The traineeship shall terminate 14 working days after receipt by the candidate of the licensure examination results or, if training for limited licensure in bone densitometry or abdomen and pelvis, 14 working days after completion of the required number of procedures. The trainee may reapply for a new traineeship while waiting to take the next examination or for satisfactory completion of the required number of procedures.*

PART IV.
LICENSURE BY ENDORSEMENT.

18 VAC 85-101-80. Endorsement requirements for radiologic technologist. (Repealed.)

A. ~~A radiologic technologist who has an unrestricted license in the United States, its territories, the District of Columbia, or Canada by an examination equivalent to that required in Virginia at the time of licensure and who has met all other requirements of the board may, upon recommendation of the Radiologic Technology Advisory Committee, be licensed by endorsement. Such a person shall submit to the board, along with a completed application and required fee, verification of a current, unrestricted license in another jurisdiction.~~

B. ~~A radiologic technologist who has practiced satisfactorily in Virginia for five or more years may, upon recommendation of the Radiologic Technology Advisory Committee, be licensed by endorsement. Such a person shall submit to the board, along with a completed application and required fee, evidence of his scope of practice as documented by a supervising radiologist and a supervising radiologic technologist. A radiologic technologist may be initially licensed by endorsement under this subsection until January 1, 1999.~~

18 VAC 85-101-90. Endorsement of previous practice for radiologic technologists-limited. (Repealed.)

~~A radiologic technologist-limited applicant who has practiced satisfactorily in Virginia for the past two consecutive years as a radiologic technologist-limited and who submits evidence from a licensed doctor of medicine, osteopathy, chiropractic, or podiatry attesting to such practice shall be licensed by endorsement. A radiologic technologist-limited may be initially licensed by endorsement under this section until January 1, 1999.~~

PART V. IV.
PRACTICE OF RADIOLOGIC TECHNOLOGISTS.

18 VAC 85-101-100. General requirements.

A. All services rendered by a radiologic technologist shall be performed only upon direction of a licensed doctor of medicine, osteopathy, chiropractic, or podiatry.

B. *Licensure as a radiologic technologist is not required for persons who are employed by a licensed hospital pursuant to § 54.1-2956.8:1 of the Code of Virginia.*

PART V. V.
PRACTICE OF RADIOLOGIC TECHNOLOGIST-LIMITED.

18 VAC 85-101-130. General requirements.

A. A radiologic technologist-limited is permitted to perform radiologic functions within his capabilities and the anatomical

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limits of his training and examination. A radiologic technologist-limited is responsible for informing the board of the anatomical area or areas in which he is qualified by training and examination to practice.

B. A radiologic technologist-limited shall not instill contrast media during radiologic examinations or perform mammography, *fluoroscopic procedures, computerized tomography, or vascular-interventional procedures*. The radiologic technologist-limited is responsible to a licensed radiologic technologist, or doctor of medicine, osteopathy, chiropractic, or podiatry.

18 VAC 85-101-140. Individual responsibilities to patients and licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic, or podiatry.

~~A. The initial patient visit shall be made by a licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic, or podiatry.~~

~~B.~~ A. The radiologic technologist-limited's first procedure with the patient shall only be made after verbal or written communication, or both, with the licensed radiologic technologist, doctor of medicine, osteopathy, chiropractic, or podiatry.

~~C.~~ B. The radiologic technologist-limited's procedures shall be made under direct supervision.

~~D.~~ C. A radiologic technologist-limited, acting within the scope of his practice, may delegate nonradiologic procedures to an unlicensed person, including but not limited to preparing the patient for radiologic procedures and post radiologic procedures. Such nonlicensed personnel shall not perform those patient care functions that require professional judgment or discretion.

PART ~~VII~~ VI. RENEWAL OF LICENSURE.

18 VAC 85-101-150. Biennial renewal of license.

A. A radiologic technologist or radiologic technologist-limited who intends to continue practice shall renew his license biennially during his birth month in each odd-numbered year and pay to the board the prescribed renewal fee.

B. A license that has not been renewed by the first day of the month following the month in which renewal is required shall be expired.

C. An additional fee as prescribed in ~~18 VAC 85-101-160~~ 18 VAC 85-101-125 shall be imposed by the board.

D. *On and after January 1, 2005*, in order to renew an active license as a radiologic technologist, a licensee shall attest to having completed 24 hours of continuing education as ~~approved acceptable to~~ and documented by the ARRT within the last biennium. At least 12 of the hours must be ~~approved by acceptable to~~ the ARRT as Category A.

E. *On and after January 1, 2005*, in order to renew an active license as a radiologic technologist-limited, a licensee shall attest to having completed 12 hours of Category A continuing education within the last biennium that corresponds to the anatomical areas in which the limited licensee practices.

Hours shall be ~~approved acceptable to~~ and documented by the ARRT or by any other entity approved by the board for limited licensees whose scope of practice is podiatry or bone densitometry.

F. *Other provisions for continuing education shall be as follows:*

1. *A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.*

2. *The practitioner shall retain in his records the completed form provided by the board with all supporting documentation for a period of four years following the renewal of an active license.*

3. *The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.*

4. *Failure to comply with these requirements may subject the licensee to disciplinary action by the board.*

5. *The board may grant an extension of the deadline for satisfying continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.*

6. *The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.*

18 VAC 85-101-151. Reinstatement.

A. A licensee who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit to the board a new application, information on practice and licensure in other jurisdictions during the period in which the license was lapsed, evidence of completion of hours of continuing education equal to those required for a biennial renewal and the fees for reinstatement of his license as prescribed in ~~18 VAC 85-101-160~~ 18 VAC 85-101-25.

B. A licensee whose license has been revoked by the board and who wishes to be reinstated shall submit a new application to the board, fulfill additional requirements as specified in the order from the board, and pay the fee for reinstatement of his license as prescribed in ~~18 VAC 85-101-160~~ 18 VAC 85-101-25.

PART VIII. FEES.

18 VAC 85-101-160. Fees required by the board. (Repealed.)

~~A. Unless otherwise provided, fees listed in this section shall not be refundable.~~

~~B. Initial licensure fees.~~

~~1. The application fee for radiologic technologist licensure shall be \$130.~~

~~2. The application fee for the radiologic technologist limited licensure shall be \$90.~~

~~3. All examination fees shall be determined by and made payable as designated by the board.~~

~~C. Licensure renewal and reinstatement.~~

~~1. The fee for active license renewal for a radiologic technologist shall be \$135 and for a radiologic technologist limited shall be \$70. The fee for inactive license renewal for a radiologic technologist shall be \$70 and for a radiologic technologist limited shall be \$35.~~

~~2. An additional fee of \$50 for a radiologic technologist and \$25 for a radiologic technologist limited to cover administrative costs for processing a late renewal application within one renewal cycle shall be imposed by the board.~~

~~3. The fee for reinstatement of a license which has lapsed for a period of two years or more shall be \$180 for a radiologic technologist and \$120 for a radiologic technologist limited and shall be submitted with an application for licensure reinstatement.~~

~~4. The fee for reinstatement of a license pursuant to § 54.1-2921 of the Code of Virginia shall be \$2,000.~~

~~D. Other fees.~~

~~1. The application fee for a traineeship shall be \$25.~~

~~2. The fee for a letter of good standing or verification to another state for licensure shall be \$40; the fee for certification of grades to another jurisdiction shall be \$25.~~

~~3. The fee for a returned check shall be \$25.~~

~~4. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.~~

VA.R. Doc. No. R02-145; Filed November 6, 2002, 11:20 a.m.

BOARD OF NURSING HOME ADMINISTRATORS

Title of Regulation: 18 VAC 95-20. Regulations of the Board of Nursing Home Administrators (amending 18 VAC 95-20-10, 18 VAC 95-20-175, 18 VAC 95-20-200, 18 VAC 95-20-220, 18 VAC 95-20-230, 18 VAC 95-20-300, 18 VAC 95-20-310, 18 VAC 95-20-330, 18 VAC 95-20-340, 18 VAC 95-20-380, and 18 VAC 95-20-390; repealing 18 VAC 95-20-290).

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

Public Hearing Date: January 15, 2003 - 9:30 a.m.

Public comments may be submitted until January 31, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards

including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

Purpose: The purpose of the amended regulation is to revise certain prerequisites for licensure that may be unnecessarily restrictive and adopt requirements that are reasonable and essential to protect the public health, safety and welfare. The intent of the changes is to eliminate barriers to licensure that may discourage a student or a person working in another field from considering a career as a nursing home administrator. Therefore, amendments will allow an applicant to receive credit for certain educational or health care related credentials toward the requirements of an administrator-in-training (A.I.T.) program and will allow an applicant to receive credit for training in another jurisdiction under a preceptor registered by that state. At the same time, the board has recognized its responsibility to license only those individuals who have sufficient knowledge and competency to safely and legally administer a long-term care facility with its population of extremely vulnerable and fragile persons.

Substance: Substantive changes to the existing sections of the regulations include: recognition of training and preceptor in other states; a limitation on the number of continuing education hours required for reinstatement; a reduction in the internship for the degree program; additional hours of credit in an A.I.T. for education or work as a supervising nurse in a nursing home; specification about the responsibilities of a preceptor while eliminating the requirement for direct supervision.

Issues: The primary advantage to the public of implementing the amended regulations is the elimination of barriers to licensure that might discourage some persons from seeking licensure as nursing home administrators. At a time when the number of persons in need of long-term care is increasing, the number of licensed nursing home administrators has decreased – from approximately 750 in 1998 to 708 in 2002. Amendments are intended to reduce the amount of time applicants, who may be changing careers or completing their education in another field, must spend receiving training prior to being licensed as a nursing home administrator. The board will also be able to recognize preceptors licensed as administrators in other jurisdictions and to give credit for time spent in training in those facilities, which will encourage mobility from other states into Virginia. By making the training requirements less restrictive, the board intends to make the profession more attractive to persons who have educational and experiential qualifications.

There are no disadvantages to the public as all amendments are intended to provide the training and education necessary to ensure that administrators are knowledgeable and experienced in the care and treatment of a frail and/or elderly population. Therefore, all training, whether in an internship as a part of a degree or certificate program or in an A.I.T. program must take place in a licensed nursing home. Experience as a hospital administrator or director of nursing is valuable for basic knowledge of health care and administration but is lacking in the essential knowledge of laws and regulations governing the nursing home industry and the challenges of the nursing home population. Therefore,

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amendments specify experience in a nursing home prior to licensure.

There are no disadvantages to the agency; the amended regulation does not impose a new responsibility on the board and does not involve additional cost or staff time. There may be an advantage to the Commonwealth if the amended regulations have the intended result of encouraging more persons to seek licensure. An increase in the number of licensees would help reduce the deficit in the board's budget, but more importantly, would ensure that nursing homes have an available supply of administrators in the future.

Fiscal Impact: Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the board must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending copies of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and board meetings already scheduled.

Projected cost to localities: There are no projected costs to localities.

Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by these regulations would be licensed nursing home administrators, preceptors and applicants for licensure.

Estimate of number of entities to be affected: Currently, there are 708 licensed nursing home administrators and 188 administrators registered as preceptors. It is not known how many potential applicants for licensure might be affected by amendments to the rules for the administrator-in-training program.

Projected costs to the affected entities: Depending on their educational and professional background, many persons seeking to become licensed as a nursing home administrator through the administrator-in-training program will have to obtain fewer hours, and those who are seeking licensure through a degree program will have fewer hours required in an internship. There is no cost to the administrator-in-training for training in a facility; they work as employees of the nursing home while learning the role of an administrator. Reducing the number of hours required for training will allow some applicants to be licensed sooner and assume a higher paid position as an administrator. Therefore, there are no costs for compliance for the affected entities.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in

accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The Board of Nursing Home Administrators (board) proposes several amendments to these regulations that are intended to effectively reduce the barriers to entry into the nursing home administrator profession in Virginia. Proposed changes include (i) allowing individuals seeking initial licensure to obtain their internship or training in other states or in Virginia under the supervision of a preceptor registered or recognized as a preceptor in another state, (ii) reducing the required number of hours of training in the administrator-in-training program for individuals with certain work experience or educational qualifications, (iii) changing which course areas are acceptable for the certificate program, (iv) reducing the internship requirement for individuals with a degree in long term care administration from 400 hours to 320 hours, (v) changing the required employment timeframe for a licensed nursing home administrator to qualify as a preceptor, (vi) establishing a ceiling on the number of hours of continuing education required for individuals seeking to establish their license, and (vii) setting a limit on how long continuing education records must be kept.

Estimated economic impact. In order to obtain initial licensure as a nursing home administrator in Virginia, an applicant must satisfy one of three sets of qualifications: (i) degree and practical experience, (ii) administrator-in-training program, or (iii) certificate program.

All three sets of qualifications require an internship or training under the guidance of a preceptor. The current regulations require that the preceptor be licensed as a nursing home administrator in Virginia and be registered by the board as a preceptor. The proposed regulations require that the preceptor be licensed as a nursing home administrator and registered or recognized as a preceptor by a nursing home administrator licensing board. Thus, unlike the current regulations, the proposed regulations allow individuals seeking initial licensure to obtain their internship or training in other states or in Virginia under the supervision of a preceptor registered or recognized as a preceptor in another state. This proposed change will allow individuals who have received training out of state to become licensed in Virginia without going through redundant training in Virginia. It will also increase the supply of individuals eligible to become preceptors in the Commonwealth. This will make Virginia nursing homes significantly more attractive as a place of employment for out-of-state nursing home administrators.

Increasing the pool of individuals who are qualified to work in the Commonwealth will enable nursing homes to hire better

candidates in some cases who may provide better care for nursing home patients. Additionally, the Department of Health Professions (department) has indicated that the demand for nursing home administrators is increasing while the supply of licensed administrators under the current regulations is declining; in 1998 there were approximately 750 administrators licensed in Virginia, while currently (2002) there are only 708.¹ Thus, increasing the supply of licensed nursing home administrators may enable some nursing homes to continue to operate that otherwise might have to close and may allow some new homes to initiate operations. A greater supply of nursing homes can be beneficial to consumers in that they have increased choices in facilities and existing nursing homes may reduce prices and/or improve services due to the increased competition.

For initial licensure through the administrator-in-training program, the applicant must earn a minimum of 60 credits (semester hours) in an accredited college or university, successfully complete a specified number of hours of training in a board approved training plan, and pass state and national nursing home administrator examinations. The mandated number of hours of training varies depending on the work experience and educational qualifications of the applicant. After comparing the current training requirements in Virginia with requirements in other states and the model administrator-in-training program suggested by the National Association of Boards of Examiners for Long Term Care Administrators (NAB), the board determined that the required number of hours of training in the administrator-in-training program for individuals with certain work experience or educational qualifications could be reduced while ensuring that individuals who obtain licensure through this method have sufficient training to work competently as nursing home administrators. Reducing the number of required hours of training may encourage some individuals to seek licensure as a nursing home administrator who otherwise may not have. This will increase the supply of licensed nursing home administrators, which will be beneficial for nursing homes and consumers as described above. In addition, reducing the required number of training hours will be beneficial to individuals who would have sought licensure either under the current regulations or the proposed regulations; they save time and dollars with fewer training hours to complete.

For initial licensure through the certificate program, the applicant must hold a baccalaureate degree or higher from an accredited college or university, successfully complete a 400-hour internship in a licensed nursing home as part of the certificate program under the supervision of a preceptor, and pass state and national nursing home administrator examinations. Under the current regulations, the applicant's courses must include a minimum of 21-semester hours study in long term care administration. The proposed regulations instead require a minimum of 21-semester hours study in nursing home administration or health care administration. According to the department, long term care administration courses can include areas that are unrelated to nursing home administration. Changing the required course areas to nursing home administration or health care administration allows

some courses to qualify that previously did not, and disqualifies some courses that previously qualified for credit under the certification program. Since the focus of the approved courses appears to better reflect the type of work the applicants are training for, this proposed change is likely beneficial.

For initial licensure through degree and practical experience, the current regulations require a baccalaureate degree or higher in nursing home administration or health care administration, a 400-hour internship in a nursing home as part of the degree program under the supervision of a preceptor, and passing grades on state and national nursing home administrator examinations. The proposed regulations reduce the required length of the internship to a minimum of 320 hours. According to the department, 320-hour internships are the current standard for nursing home administrator degree programs throughout the country. The board has been accepting 320-hour internships under the degree and practical experience method of licensure qualification. Thus, this proposed change clarifies current policy and does not have a significant economic impact.

Under the current regulations, preceptors must be employed full-time at the training facility a minimum of two of the past three years immediately preceding the preceptorship. The proposed regulations permit a licensed administrator to serve as a preceptor provided she is already registered with the board and served as a full-time administrator two out of three years prior to registration. A greater number of individuals will be able to meet the proposed criteria. A larger supply of qualified preceptors will enable a greater number of individuals interested in obtaining initial licensure as a nursing home administrator to find training. As we have discussed, a larger supply of licensed nursing home administrators is beneficial for nursing homes and consumers. The preceptor will still need to be currently licensed as a nursing home administrator and the board will continue to determine approval of training plans proposed by preceptors for administrator-in-training programs.

Individuals who seek to reinstate their expired nursing home administrator license must provide evidence of 20 classroom hours² of continuing education for each year since the last renewal of the license. The board proposes to cap the continuing education requirement for individuals seeking to reinstate their license at 60 hours. It seems likely that the returns to more than 60 hours of continuing education are small, while the cost may be sufficient to discourage experienced nursing home administrators from resuming employment as a licensed nursing home administrator. Thus, this proposed change has the potential to be significantly beneficial by possibly encouraging some experienced nursing home administrators to reenter the profession and increase the supply of licensed nursing home administrators.

Finally, the current regulations imply that continuing education records must be kept indefinitely. The board proposes to require that licensees retain documentation of their continuing education for only three renewal years. Licensees will save on

¹ Source: Department of Health Professions.

² All or some of the hours may be outside a classroom: for example, through online courses.

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storage costs. Since the board has determined that it does not need the records beyond three renewal years, this change produces a net benefit.

Businesses and entities affected. The proposed regulations affect the 708 licensed nursing home administrators, 188 administrators registered as preceptors, potential licensees and preceptors, and nursing home patients in Virginia.

Localities particularly affected. The proposed regulatory changes affect all localities in the Commonwealth.

Projected impact on employment. Several of the proposed amendments reduce the barriers to entry into the nursing home administrator profession in Virginia. Reduced barriers to entry will effectively increase the supply of nursing home administrators. Since the supply of administrators has been declining while the demand for their services has most likely been increasing and will probably continue to do so as the baby boom generation ages, increasing the supply of administrators will likely have a significantly positive impact on employment. As discussed above, increasing the supply of licensed nursing home administrators may enable some nursing homes to continue to operate that otherwise might have to close and may allow some new homes to initiate operations.

Effects on the use and value of private property. The value of current or proposed nursing homes that are having difficulty finding qualified administrators may increase, as they will be more likely to find skilled administrators with reduced barriers to entry into the profession. Since some new nursing homes may be established and some existing homes may continue to operate that would not have without the larger supply of licensed administrators, other nursing homes may be reduced in value as they may face new competition or competition that would have ceased operations without the increased supply of administrators.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing Home Administrators concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 95-20 for changes recommended by a periodic review of regulations.

Summary:

The proposed amendments allow additional hours of credit in an administrator-in-training program for persons with certain educational or professional credentials. Amendments also clarify certain sections and enable a trainee to work in a practicum or administrator-in-training program outside of Virginia in a licensed nursing care facility under the supervision of a nursing home administrator licensed in that jurisdiction.

18 VAC 95-20-10. Definitions.

The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

Board

Nursing home

Nursing home administrator

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

"Accredited institution" means any degree-granting college or university accredited by an accrediting body approved by the United States Department of Education or any diploma-granting program approved by the Virginia Board of Nursing.

"A.I.T." means a person enrolled in the administrator-in-training program in nursing home administration in a licensed nursing home.

"Administrator-of-record" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.

"Approved sponsor" means an individual, business or organization approved by the National Association of Boards of Examiners for Long Term Care Administrators or by an accredited education institution to offer continuing education programs in accordance with this chapter.

"Classroom hour" means 60 minutes of attendance in a program for obtaining continuing education.

"Continuing education" means the educational activities which serve to maintain, develop, or increase the knowledge, skills, performance and competence recognized as relevant to the nursing home administrator's professional responsibilities.

"Full time" means employment of at least 35 hours per week.

"Internship" means a practicum or course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.

~~*"N.A.B."* means the National Association of Boards of Examiners for Long Term Care Administrators.~~

"National examination" means a test used by the board to determine the competence of candidates for licensure as administered by the National Association of Boards of Examiners for Long Term Care Administrators or any other examination approved by the board.

~~*"Practicum"* means a course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.~~

"Preceptor" means a nursing home administrator currently licensed in Virginia and registered or recognized by the a nursing home administrator licensing board to conduct an administrator-in-training (A.I.T.) program.

"State examination" means a test used by the Board of Nursing Home Administrators to determine competency of a candidate relevant to regulations and laws in Virginia for purposes of licensure governing nursing home administration.

18 VAC 95-20-175. Continuing education requirements.

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 classroom hours of approved continuing education for each renewal year.

1. Up to 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.
2. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall be related to health care administration and shall be approved by the National Association of Boards of Examiners for Long Term Care Administrators or by an accredited institution.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files *for a period of three renewal years* complete documentation of continuing education including evidence of attendance as provided by the approved sponsor for each course taken.
2. Evidence of attendance ~~may shall be a wall certificate or~~ an original ~~computerized~~ document provided by the approved sponsor and shall include:
 - a. Date or dates the course was taken;
 - b. Hours attended;
 - c. Participant's name; and
 - d. Signature of an authorized representative of the approved sponsor.
3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

18 VAC 95-20-200. Reinstatement for nursing home administrator license or preceptor registration.

A. The board may reinstate a nursing home administrator license or preceptor registration that was not renewed within one year of the initial expiration date.

B. An applicant for nursing home administrator license reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and provide one of the following:

1. Evidence of ~~attendance at~~ *the equivalent of* 20 classroom hours of continuing education for each year since the last renewal, *not to exceed a total of 60 hours.*

2. Evidence of active practice in another state or U.S. jurisdiction or in the U.S. armed services during the period licensure in Virginia was lapsed.

3. Evidence of requalifying for licensure by meeting the requirements prescribed in 18 VAC 95-20-220 or 18 VAC 95-20-225.

C. An applicant for preceptor reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and meet the current requirements for a preceptor in effect at the time of application for reinstatement.

18 VAC 95-20-220. Qualifications for initial licensure.

One of the following sets of qualifications is required for licensure as a nursing home administrator:

1. Degree and ~~practicum~~ *practical* experience. The applicant shall (i) hold a baccalaureate or higher degree in nursing home administration or a health *care* administration field from an accredited college or university; (ii) have completed ~~a 400-hour practicum (see 18 VAC 95-20-10) not less than a 320-hour internship in a licensed nursing home administration~~ as part of the degree program under the supervision of a preceptor ~~registered by the board~~; and (iii) have received a passing grade on the state examination and the national examination;

2. Certificate program. The applicant shall (i) hold a baccalaureate or higher degree from an accredited college or university; (ii) have completed successfully a program with a minimum of 21 semester hours study in ~~long-term care nursing home administration or health care administration~~ from an accredited college or university; (iii) have completed successfully ~~a 400-hour practicum (see 18 VAC 95-20-10) not less than a 400-hour internship in a licensed nursing home~~ as part of the certificate program under the supervision of a preceptor ~~registered by the board~~; and (iv) have received a passing grade on the state examination and the national examination; or

3. Administrator-in-training program. The applicant shall have (i) successfully completed an A.I.T. program which meets the requirements of Part IV (18 VAC 95-20-300 et seq.) of this chapter and (ii) received a passing grade on the state examination and the national examination.

18 VAC 95-20-230. Application package.

A. *An application for licensure shall be submitted after the applicant completes the qualifications for licensure.*

~~A. B.~~ An individual seeking licensure as a nursing home administrator or registration as a preceptor shall submit simultaneously:

1. A completed application as provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant; and
3. The applicable fee.

~~B. C.~~ With the exception of school transcripts, examination scores, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one

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year, after which time the application shall be destroyed and a new application and fee shall be required.

~~C. An applicant for examination shall submit the application package not less than 45 days prior to an examination date. The application package shall be received in the board office by the examination application deadline date. Postmarks shall not be considered. In exceptional circumstances and for good cause shown by the applicant, the board may waive the time requirement.~~

18 VAC 95-20-290. Examination requirements. (Repealed.)

~~A. An applicant may request in writing to take the scheduled examination most closely preceding the expected completion of the education requirement or the A.I.T. program.~~

~~B. Approval of the written request by the board shall be required prior to submitting the application and fee for examination.~~

~~C. Application for licensure shall be submitted after the applicant completes the qualifications for licensure.~~

18 VAC 95-20-300. Administrator-in-training qualifications.

A. To be approved as an administrator-in-training, a person shall:

1. Have received a passing grade on a total of 60 semester hours of education from an accredited college or university;
2. Obtain a preceptor currently registered with the board to provide training;
3. Submit the fee prescribed in 18 VAC 95-20-80;
4. Submit the application provided by the board; and
5. Submit additional documentation as may be required by the board necessary to determine eligibility of the applicant and the number of hours required for the A.I.T. program.

B. With the exception of school transcripts, all required parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for on year after which time the application shall be destroyed and a new application and fee shall be required.

18 VAC 95-20-310. Required hours of training.

A. The A.I.T. program shall consist of 2,000 hours of continuous training in a facility as prescribed in 18 VAC 95-20-330 to be completed within 24 months. An extension may be granted by the board on an individual case basis. The board may grant credit toward reduce the required hours for applicants with certain qualifications as prescribed in subsection B, and C, or D of this section.

B. An A.I.T. applicant with prior health care work experience may request approval to receive a maximum 1,000 hours of credit toward the total 2,000 hours as follows:

1. Applicant shall have been employed full time for four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing in a training facility as prescribed in 18 VAC 95-20-330 or in a nursing facility licensed by another jurisdiction in the United States.;

2. Applicants with experience as a hospital administrator shall have been employed full time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:

- a. Regulatory;
- b. Fiscal;
- c. Supervisory;
- d. Personnel; and
- e. Management.; or

3. Applicants who hold a license as a registered nurse and who have had at least four years of supervisory experience in a training facility as prescribed in 18 VAC 95-20-330.

C. An A.I.T. applicant with the following educational qualifications may request approval to receive a maximum of 1,000 hours of credit toward the total 2,000 hours shall meet these requirements:

1. An applicant with a master's or a baccalaureate degree in health care administration or a comparable field with no internship shall complete 320 hours in an A.I.T. program; or
2. An applicant with both a bachelor's degree and an internship in health care administration, long-term care or a comparable field. a master's degree in an unrelated field shall complete 1,000 hours in an A.I.T. program;
3. An applicant with a baccalaureate degree in an unrelated field shall complete 1,500 hours in an A.I.T. program; or
4. An applicant with 60 semester hours of education in an accredited college or university shall complete 2,000 hours in an A.I.T. program.

~~D. An A.I.T. applicant with a bachelor's degree in health care administration, long-term care or a comparable field may request approval to receive a maximum of 500 hours of credit toward the total 2,000 hours.~~

~~E. D. An A.I.T. shall be required to serve weekday, evening, night and weekend shifts to receive training in all areas of nursing home operation.~~

18 VAC 95-20-330. Training facilities.

Training shall be conducted only in:

1. A nursing home licensed by the Virginia Board of Health or by a similar licensing body in another jurisdiction;
2. An institution licensed operated by the Virginia State Mental Health, Mental Retardation and Substance Abuse Services Board in which long-term care is provided;
3. A certified nursing home owned or operated by an agency of any city, county, or the Commonwealth or of the United States government; or
4. A certified nursing home unit located in and operated by a general or special hospital licensed under procedures of Rules and Regulations for the Licensure of Hospitals in Virginia (12 VAC 5-410-10 et seq.) of the Virginia

~~Department of Health~~ a licensed hospital as defined in § 32.1-123 of the Code of Virginia, a state-operated hospital, or a hospital licensed in another jurisdiction.

18 VAC 95-20-340. Supervision of trainees.

A. Training shall be under the ~~direct~~ supervision of a preceptor who is registered or recognized by ~~the~~ a licensing board.

B. A preceptor may supervise no more than two A.I.T.'s at any one time.

C. A preceptor shall:

1. Provide direct instruction, planning and evaluation;
2. Shall be routinely present with the trainee in the training facility; and
3. Shall continually evaluate the development and experience of the A.I.T. to determine specific areas needed for concentration.

18 VAC 95-20-380. Qualifications of preceptors.

To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia nursing home administrator license and be employed full time as *an administrator in a training facility* for a minimum of two of the past three years immediately prior to ~~the preceptorship as an administrator in a training facility as prescribed in 18 VAC 95-20-330~~ registration; and

2. Meet the application requirements in 18 VAC 95-20-230.

18 VAC 95-20-390. Training plan.

Prior to the beginning of the A.I.T. program, the preceptor shall develop and submit for board approval a training plan which shall include and be designed around the specific training needs of the administrator-in-training. The training plan shall include the 1996 Domains of Practice approved by the National Association of Boards of Examiners for Long Term Care Administrators *and incorporated by reference into these regulations. An A.I.T. program shall include training in each of the learning areas in the Domains of Practice.*

<p>NOTICE: The forms used in administering 18 VAC 95-20, Regulations of the Board of Nursing Home Administrators, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>

FORMS

Application for Licensure (rev. 1/98).

Endorsement Certification Form (rev. 1/98).

Application for Administrator-in-Training (rev. 1/98).

Application for Preceptor Registration (rev. 1/98).

Application for Reinstatement of License (rev. 1/98).

~~Form Letter and Affidavit of Completion for Required CE Documentation (rev. 10/98).~~

Renewal Notice and Application (rev. ~~7/97~~ 2002).

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RECEIPT—KEEP THIS PORTION FOR YOUR RECORDS—DO NOT RETURN

«First Name» «Last Name»		Renewal Fee—Amount «renewal_fee»
«License Type» - «License No»		License Status: «License_Status»
Renewal Period: «begin_period» to «end_period»		Current Expiration Date: «L_Expiration_Date»
<ol style="list-style-type: none"> 1. For name changes, cross out any incorrect information on the front of the renewal form, write the correct name and check the box on return envelope. Enclose a copy of your marriage license or court order for name changes 2. Address changes, cross out any incorrect information on the front of the renewal form, write the correct address and check the box on return envelope. 3. Detach "renewal form" portion and return completed form with your check in attached return envelope. 4. Make checks payable to "Treasurer of Virginia." Visit our website at www.dhp.state.va.us 		

Please fold and tear on perforated line

Renewal Form for «License_Status» «License_Type»		Amount Due:
«License_No»	Renewal Period: «begin_period» to «end_period»	«renewal_fee»
«First Name» «Middle Name» «Last Name»		
«L_Address_Line_1», «L_Address_Line_2», «L_Address_Line_3»		
<input type="checkbox"/> I wish to renew and I certify that I have met all continuing education requirements to renew an active license.		
I swear that I have not made any misrepresentation on this renewal application and understand that furnishing false information constitutes cause for loss of licensure to practice.		
Signature _____		
If Payment for active licensure is received by Board After «L_Expiration_Date», Amount Due «combined_late_fee»		

Do not staple check to renewal form or fold renewal form.

«Scan_Line»

Disclosure of Addresses

Some licensees have expressed concern that their residence address is accessible. Consistent with Virginia law and the policies of the Commonwealth, the application of new technology makes such information more accessible.

In most cases it is permissible for an individual to provide an address of record other than a residence, such as a Post Office Box or a practice location. Changes of address may be made at the time of renewal or at anytime by written notification to the appropriate health regulatory board. Please be advised that all notices from the board, to include renewal notices, licenses, and other legal documents, will be mailed to the address provided.

Department of Health Professions
6606 West Broad Street, Fourth Floor
Richmond, Virginia 23290-1717



First-Class Mail
US Postage Paid
Richmond, VA
Permit No. 1902

«License_No»

LICENSE RENEWAL NOTICE

«First_Name» «Last_Name»
«L_Address_Line_1»
«L_Address_Line_2»
«L_Address_Line_3»

- Name/Address Change Enclosed
- Licensure Status Change Enclosed



Place
Postage
Stamp
Here

Department of Health Professions
P.O. Box 26566
Richmond, VA 23261-6566



VA.R. Doc. No. R02-8; Filed November 6, 2002, 11:19 a.m.

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BOARD OF COUNSELING

Title of Regulation: 18 VAC 115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants (amending 18 VAC 115-30-10, 18 VAC 115-30-30, 18 VAC 115-30-40, 18 VAC 115-30-45, 18 VAC 115-30-50, 18 VAC 115-30-60, 18 VAC 115-30-90, 18 VAC 115-30-110, and 18 VAC 115-30-140; adding 18 VAC 115-30-61 and 18 VAC 115-30-62; repealing 18 VAC 115-30-70).

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Date: January 24, 2003 - 10 a.m.

Public comments may be submitted until January 31, 2003.
(See Calendar of Events section for additional information)

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Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, levy fees, administer a licensure and renewal program, and discipline regulated professionals.

The specific statutory authority for the board to certify substance abuse counselors and substance abuse counseling assistants is found in § 54.1-3505 of the Code of Virginia.

Purpose: The Board of Counseling is charged with issuing certificates and regulating the practice of substance abuse counselors. As the regulating agency, the board has the duty to protect the public by establishing qualifications and requirements for certification that are necessary to ensure the competence and integrity of certificate holders and by taking disciplinary action for violations of applicable law and regulations. Regulations are the mechanisms by which the board sets forth qualifications and requirements for certification, and standards of professional conduct that provide the basis for disciplinary action. The board considers the deficiencies the regulations are intended to address, and utilizes professional expertise, review of requirements of other states and national associations, historical information and public comment to determine optimal requirements that will ensure competency of its certificate holders and protect the public health, safety and welfare.

The board has determined that the regulations are generally clear and easily understandable; however, it must comply with Chapter 460 of the 2001 Acts of Assembly to promulgate regulations for certification of substance abuse counselors with a bachelor's degree level of education and substance abuse counseling assistants with a high school or GED degree level of education.

Substance: Chapter 460 of the 2001 Acts of Assembly specifically sets forth the scope of practice of a certified substance abuse counselor and a certified substance abuse counseling assistant and provides the requirement for

supervision of their practice. The board is required, however, to promulgate regulations to establish adequate education, experience and examination requirements to ensure competency of practitioners and protect the public.

For each of the two levels of certification, the law is specific about the degree requirement: (i) § 54.1-3507.1 of the Code of Virginia states that a certified substance abuse counselor (CSAC) must have a bachelor's degree from a college or university accredited by an accrediting agency recognized by the board and (ii) § 54.1-3507.2 of the Code of Virginia specifies that a certified substance abuse counseling assistant must have received a high school diploma or its equivalent.

The new substantive provisions as well as the changes to existing sections primarily reflect the addition of a second tier certification level for substance abuse counselors. The new substance provisions are necessary for the creation of the certified substance abuse counseling assistant certification. Language is needed and has been proposed to provide for the prerequisites for certification, and educational requirements for certified substance abuse counseling assistants.

Additionally, existing sections must also be changed to include requirements for substance abuse counseling assistants in sections on examination, renewal of certification, and standards of practice.

Issues: The primary advantages and disadvantages to the public, such as individual private citizens or business, of implementing the new or amended provisions: The primary advantage of the new provisions is that qualified individuals who have spent many years in the substance abuse treatment field but who find the attainment of 400 clock hours of training unfeasible now have an avenue to obtain certification.

The primary disadvantage of the new provisions is that the creation of a two-tiered level of certification will result in an increase in the requirements for certification as a substance abuse counselor. A bachelor's degree will now be required for certification as a substance abuse counselor. Additionally, certification as a substance abuse counselor or a substance abuse counseling assistant does not allow for independent practice, activities of these professionals are limited to certain activities under the supervision of a licensed substance abuse counselor and certified substance abuse counselor respectively.

The primary advantages and disadvantages to the agency or the Commonwealth: There are no discernable advantages or disadvantages to the agency of the Commonwealth. The fee structure set in regulation is intended to ensure that costs related to specific activities are borne by the applicants or certificate holders. Agencies of the Commonwealth that offer substance abuse services may benefit from having additional certified providers who have more specific training for their job.

Other pertinent matters of interest to the regulated community, government officials, and the public: Many substance abuse facilities (government and nonprofit entities) are exempt from licensure requirements. However, some require certification or licensure of staff. It is expected that these new provisions will have little or no advantageous or disadvantageous effects on these entities.

Fiscal Impact:

A. Projected cost to the state to implement and enforce:

Fund source: As a special fund agency, the Board of Counseling must generate sufficient revenue to cover its expenditures from nongeneral funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation.

Budget activity by program or subprogram: There is no change required in the budget of the Commonwealth as a result of this program.

One-time versus ongoing expenditures: The agency will incur some costs (less than \$1,000) for mailings to the Public Participation Guidelines Mailing List, conducting a public hearing, and sending copies of final regulations to regulated entities.

B. Projected cost to localities: Employees of many governmental agencies are exempted by law from the certification requirements set out in these regulations. Agencies may elect to pay the licensure application and examination fees for qualified certified substance abuse counselors on their staff. However, this would depend on the policy of individual agencies and is not a requirement of the Board of Counseling or its regulations.

C. Description of entities that are likely to be affected by regulation: The entities that are likely to be affected by this regulation would include prospective certified substance abuse counselors and certified substance abuse counseling assistants. In each level of certification, the number who would qualify would depend on formal educational experience and educational hours in the mental health field. Prospective CSAC applicants would now be required to possess a bachelor's degree. Applicants for certified substance abuse counseling assistant (CSACA) would only need a high school diploma or GED.

A certified substance abuse counselor shall be (i) qualified to perform, under appropriate supervision or direction, the substance abuse treatment functions of screening, intake, orientation, the administration of substance abuse assessment instruments, recovery and relapse prevention planning, substance abuse treatment, case management, substance abuse or dependence crisis intervention, client education, referral activities, record keeping, and consultation with other professionals; (ii) qualified to be responsible for client care of persons with a primary diagnosis of substance abuse or dependence; and (iii) qualified to supervise, direct and instruct certified substance abuse counseling assistants. Certified substance abuse counselors shall not engage in independent or autonomous practice.

A certified substance abuse counseling assistant shall be qualified to perform, under appropriate supervision or direction, the substance abuse treatment functions of orientation, implementation of substance abuse treatment plans, case management, substance abuse or dependence crisis intervention, record keeping, and consultation with other professionals. Certified substance abuse counseling assistants may participate in recovery group discussions, but

shall not engage in counseling with either individuals or groups or engage in independent or autonomous practice.

D. Estimate of number of entities to be affected: The department has no information on the number who may seek certification as a CSAC or a CSACA under this proposal. Since the certification is not required to work in publicly supported mental health settings, it is believed to be low.

E. Projected cost of the regulation for affected individuals. The cost of initial licensure by examination would be \$40 for both substance abuse counselors and counseling assistants; thereafter, the annual renewal fee would be \$50 for counselors and \$40 for counseling assistants. In the case of substance abuse counselors those costs may be borne by the individual applicant or may be underwritten by an employer who wants to have counselors licensed for reimbursement purposes. Substance abuse counselors do not have to be licensed unless they choose to practice in a private setting.

The proposed education requirement of a bachelors degree for certification as a substance abuse counselor will result in future applicants obtaining said degree. The proposed amendments do not require nor specify an area of study for the degree. The board believes that this flexibility will allow for many options in obtaining the bachelor's degree. This will however increase the costs for a person seeking certification as a CSAC. The State Counsel of Higher Education for Virginia (SCHEV) estimates that it costs \$4,222 per year on average to pursue a bachelor's degree at one of the 15 four-year colleges and universities in the Commonwealth. This figure only includes tuition and mandatory fees, it does not include costs for books, lab fees, room and board, as well as any incidental that may occur or be required. Therefore, based on it taking a person four years to complete the degree it can be expected that the cost would be somewhere around \$16,888 at a minimum.

Costs associated with obtaining certification, as a CSACA would be slightly less than the current cost of obtaining certification as a CSAC. Because certain specific educational and training requirements necessary for CSAC practice have either not been included or have been included to a lesser extent for CSACA's, the costs associated with obtaining the certification will be less than for the CSAC. Currently, the average cost for taking courses necessary for certification as a CSAC is approximately \$3,500. This amount was estimated using graduate courses at William and Mary as the basis for the required coursework. The costs were found to be \$175 per credit hour.

Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private

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property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Pursuant to §§ 54.1-3507.1 and 54.1-3507.2 of the Code of Virginia, the Board of Counseling (board) proposes to require that newly certified substance abuse counselors have a bachelor's degree and to create the substance abuse counseling assistant certification.

Estimated economic impact. Under both the current and proposed regulations, in order to obtain a substance abuse counselor certification individuals must (i) have completed 400 clock hours of substance abuse education, (ii) have had 2,000 hours of supervised experience in the delivery of clinical substance abuse counseling services, and (iii) pass a written exam approved by the board. The current regulations require that the applicant have a high school diploma or general education development certificate (GED).

In order to comply with House Bill 2095 (Chapter 460 of the 2001 Acts of Assembly), the board proposes to require that newly certified substance abuse counselors (CSAC) have a bachelor's degree. The bachelor's degree can be in any field.

Under the proposed regulations someone who has earned credits in numerous courses relevant to substance abuse counseling (psychology, for example) without earning a bachelor's degree, followed by the completion of 400 clock hours of substance abuse education, would not qualify for substance abuse counselor certification; while someone who earned a bachelor's degree without taking any courses related to substance abuse counseling, followed by the 400 clock hours of substance abuse education, would qualify for substance abuse counselor certification (assuming other requirements are met). It is not evident that the person without a bachelor's degree who has taken several courses relevant to counseling would be less qualified to perform substance abuse counseling duties than the person with a bachelor's degree in an unrelated field who has taken no courses relevant to counseling (other than the 400 clock hours of substance abuse education required of both individuals). Yet the former would be required to take the time and incur the expense of taking additional undergraduate courses while the latter would not. Since the courses taken to earn the bachelor's degree could be entirely unrelated to substance abuse counseling, the benefit of requiring a bachelor's degree may be relatively small while the time and tuition costs may be substantial.

Also in order to comply with House Bill 2095 (Chapter 460 of the 2001 Acts of Assembly), the board proposes to create the substance abuse counseling assistant certification. Substance abuse counseling assistant certification will require a high school diploma or GED, 300 clock hours of substance abuse education, and passing a board-approved exam. According to the Department of Health Professions, the certified substance abuse counseling assistant exam will most likely only cover contents of the regulation, be administered by the board, and have no charge for the examinees. The certification does not legally permit the holder to perform any actions that a non-holder may not perform. However, the substance abuse counseling assistant certification can be a useful informational tool for potential employers to use in comparing applicants for positions in a substance abuse counseling office.

Businesses and entities affected. There are currently 1,245 individuals in the Commonwealth that are certified substance abuse counselors. Those individuals will not be required to obtain a bachelor's degree, but they will be indirectly affected by the proposed requirement that new CSACs have a bachelor's degree. The bachelor's degree requirement will likely reduce competition in the CSAC labor market by reducing the number of new individuals that obtain that designation. Employers and clients of CSACs will also be affected.

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

Projected impact on employment. The bachelor's degree requirement will likely discourage some individuals from pursuing the certified substance abuse counselor designation, but will not likely have a significant effect on overall employment levels.

Effects on the use and value of private property. The proposed amendments will likely encourage some individuals to complete their bachelor's degree who would not have done so otherwise.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Counseling does not concur with the analysis of the Department of Planning and Budget for amendments to 18 VAC 115-30 for certification of substance abuse counselors and substance abuse counseling assistants.

The analysis questions the value of a requirement in the regulation that an applicant for certification as a substance abuse counselor must hold a bachelor's degree. Such a requirement is specifically mandated by the Code of Virginia, so the board has no option other than imposing the requirement for certification. Section 54.1-3507.1 C of the Code of Virginia specifies: "Pursuant to regulations adopted by the Board, an applicant for certification as a substance abuse counselor shall submit evidence satisfactory to the Board that the applicant has (i) completed a specified number of hours of didactic substance abuse education courses in a program or programs recognized or approved by the Board and received a bachelor's degree from a college or university accredited by an accrediting agency recognized by the Board; and (ii) accumulated a specified number of hours of experience involving the practice of substance abuse treatment while supervised by a licensed substance abuse treatment practitioner, or by any other mental health professional licensed by the Department, or by a certified substance abuse counselor who shall submit evidence satisfactory to the Board of clinical supervision qualifications pursuant to regulations adopted by the Board, such number of hours being greater than the number of hours required of a certified substance abuse counseling assistant."

The requirement is clearly mandated by the Code of Virginia. For the board to certify an individual who did not hold a bachelor's degree would place the board out of compliance with the law.

Summary:

The amendments are proposed to comport with Chapter 460 of the 2001 Acts of Assembly. The proposed amendments require substance abuse counselors to have attained a bachelor's degree in order to be certified and establish a separate level of certification for substance abuse counseling assistants.

CHAPTER 30.
REGULATIONS GOVERNING THE CERTIFICATION OF
SUBSTANCE ABUSE COUNSELORS AND SUBSTANCE
ABUSE COUNSELING ASSISTANTS.

18 VAC 115-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

- "Board"
- "Certified substance abuse counselor"
- "Certified substance abuse counseling assistant"
- "Practice of substance abuse treatment"
- "Substance abuse" and "substance dependence"
- "Substance abuse treatment"

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

"Applicant" means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor or substance abuse counseling assistant.

"Appropriately credentialed authority" means an entity licensed by an agency of the Commonwealth to render the services of substance abuse counselors or substance abuse counseling assistants.

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor or substance abuse counseling assistant.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case-related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in 18 VAC 115-30-60 C.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Didactic" means teaching-learning methods which impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

"Endorsement" means the waiver of the examination requirement for certification as a substance abuse counselor for persons currently certified or licensed in another jurisdiction.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse or dependency; and
2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social or vocational functioning.

~~"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.~~

~~"Clinical supervisor" means one who provides case-related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in 18 VAC 115-30-40 C and 18 VAC 115-30-60 C.~~

18 VAC 115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	\$55
Substance abuse counseling assistant annual certification renewal	\$40
Substance abuse counselor initial certification by examination	\$40
Substance abuse counseling assistant initial certification by examination	\$40
Initial certification by endorsement of substance abuse counselors	\$40
Duplicate certificate	\$5
Late renewal	\$20
Reinstatement of a lapsed certificate	\$100
Replacement of or additional wall certificate	\$15
Returned check	\$25
Reinstatement following revocation or suspension	\$500

B. Fees shall be paid to the board or its contractor or both in appropriate amounts as specified in the application instructions. All fees are nonrefundable.

~~C. Examination fees shall be determined and made payable as determined by the board.~~

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18 VAC 115-30-40. Prerequisites for certification by examination for substance abuse counselors.

A. A candidate for certification as a substance abuse counselor shall meet all the requirements of this ~~chapter section~~, including passing the examination prescribed in 18 VAC 115-30-90.

B. Every prospective applicant for examination for certification by the board shall:

1. Meet the educational and experience requirements prescribed in 18 VAC 115-30-50 and 18 VAC 115-30-60;
2. Submit the following to the board or its contracting agent within the time frame established by the board or that agent:
 - a. A completed application form;
 - b. Official transcript documenting attainment of a ~~high school diploma or general educational development (GED) certificate~~ *bachelor's degree*;
 - c. Official transcripts or certificates verifying completion of the didactic training requirement set forth in subsection B of 18 VAC 115-30-50;
 - d. Verification of supervisor's education and experience as required under 18 VAC 115-30-60;
 - e. Verification of supervision forms documenting fulfillment of the experience requirements of 18 VAC 115-30-60;
 - f. Documentation of any other professional license or certificate ever held in another jurisdiction; and
 - g. The application processing and initial ~~licensure~~ *certification* fee.

18 VAC 115-30-45. Prerequisites for certification by endorsement for substance abuse counselors.

Every applicant for certification by endorsement shall submit in one package:

1. A completed application;
2. The application processing fee;
3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis. *The board will also determine whether any or all other professional licenses or certificates held in another jurisdiction are substantially equivalent to those sought in Virginia;*
4. Affidavit of having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia; and
5. Further documentation of one of the following:
 - a. Licensure or certification as a substance abuse counselor in another jurisdiction in good standing obtained by standards substantially equivalent to the education and experience requirements set forth in this

chapter as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency, or a copy of the regulations in effect at the time of initial licensure or certification and verification of a passing score on a licensure examination in the jurisdiction in which licensure or certification was obtained, *and which is deemed substantially equivalent by the board*; or

b. Verification of a current board-recognized national certification in substance abuse counseling in good standing obtained by standards substantially equivalent to those set forth in this chapter.

18 VAC 115-30-50. Educational requirements for substance abuse counselors.

A. An applicant for examination for certification as a substance abuse counselor shall:

1. Have ~~an official high school diploma or general educational development (GED) certificate; and a bachelor's degree.~~
2. Have completed 400 clock hours of substance abuse education from one of the following programs:
 - a. An accredited university or college;
 - b. An integrated program ~~approved by~~ *acceptable to* the board; or
 - c. An individualized program of seminars and workshops to be approved by the board at the time of application.

B. Substance abuse education.

1. The education will include 220 hours spent in receiving didactic training in substance abuse counseling. Each applicant shall have received a minimum of 10 clock hours in each of the following ~~six~~ *eight* areas:
 - a. Understanding the dynamics of human behavior;
 - b. Signs and symptoms of substance abuse;
 - c. ~~Counseling and Treatment approaches, substance abuse research, group therapy, dynamics and other adjunctive treatment and recovery support groups;~~
 - d. Continuum of care and case management skills;
 - e. Recovery process and relapse prevention methods; ~~and~~
 - f. ~~Ethics and professional identity;~~
 - g. *Professional identity in the provision of substance abuse services; and*
 - h. *Crisis intervention.*

In addition, each applicant shall have at least 20 hours in each of the following two areas:

- (i) Substance abuse counseling treatment planning and substance abuse research; and*
- (ii) Group counseling.*

2. The education shall also consist of 180 hours of experience performing the following tasks with substance abuse clients:

- a. Screening clients to determine eligibility and appropriateness for admission to a particular program;
- b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program;
- c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client;
- d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan;
- e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes;
- f. Counseling the client utilizing specialized skills in both individual and group approaches to achieve treatment goals and objectives;
- g. Case management activities which bring services, agencies, people and resources together in a planned framework of action to achieve established goals;
- h. Crisis intervention responses to clients' needs during acute mental, emotional or physical distress;
- i. Education of clients by providing information about drug abuse and available services and resources;
- j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources;
- k. Reporting and charting information about client's assessment, treatment plan, progress, discharge summaries and other client-related data; and
- l. Consultation with other professionals to assure comprehensive quality care for the client.

Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

C. Groups and classes attended as a part of a therapy or treatment program will not be accepted as any part of the educational experience.

18 VAC 115-30-60. Experience requirements for substance abuse counselors.

A. Registration. Supervision obtained without prior board approval will not be accepted if it does not meet the requirements set forth in subsections B and C of this section. Individuals who wish to register supervision for board approval prior to obtaining the supervised experience shall submit in one package:

1. A supervisory contract;
2. Verification of the supervisor's education and experience as required under subsection C of this section;

3. Official transcripts documenting completion of a high school diploma or general education development certificate; and

4. The registration fee.

B. Experience requirements.

1. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the delivery of clinical substance abuse counseling services.

2. The supervised experience shall include an average of two hours per week of face-to-face consultation between the supervisor and the applicant to total 100 hours within the required experience. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of face-to-face supervision.

3. *Applicants must document successful completion of their supervised experience on the Verification of Supervision Form at the time of application. Supervised experience obtained prior to January 19, 2000, may be accepted toward certification if this supervised experience met the board's requirements that were in effect at the time the supervision was rendered.*

C. Supervisory requirements.

1. A board-approved *clinical* supervisor shall:

a. Be a licensed professional counselor, licensed clinical psychologist, licensed clinical social worker, *licensed marriage and family therapist*, medical doctor, or registered nurse ~~with, and possess either~~ a board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter, or a minimum of one year experience in substance abuse counseling and at least 100 hours of didactic training covering the areas outlined in 18 VAC 115-30-50 B 1 a through f ~~h~~; or

b. Be a licensed substance abuse treatment practitioner; or

c. Be a substance abuse counselor certified by the Virginia Board of ~~Licensed Professional Counselors, Marriage and Family Therapists and Substance Abuse Treatment Professionals~~ *Counseling* who has:

(1) Board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter; or

(2) Two years experience as a Virginia board-certified substance abuse counselor.

2. Supervisors shall assume responsibility for the professional activities of the prospective applicants under their supervision.

3. Supervisors shall not provide supervision for activities for which prospective applicants have not had appropriate education.

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4. Supervisors shall provide supervision only for those substance abuse counseling services which they are qualified to render.

5. At the time of formal application for certification, the board-approved supervisor shall document the applicant's total hours of supervision, length of work experience, competence in substance abuse counseling and any needs for additional supervision or training.

6. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited.

7. The applicant shall keep the board's contracting agent informed of his current supervisor's license or certificate number, business address, and phone number. The board's contracting agent shall be informed within 30 days of any changes in the applicant's supervision.

18 VAC 115-30-61. Prerequisites for certification by examination for substance abuse counseling assistant.

A. A candidate for certification as a substance abuse counseling assistant shall meet all the requirements of this section, including passing the examination prescribed in 18 VAC 115-30-90.

B. Every prospective applicant for examination for certification by the board shall:

1. Meet the educational requirements prescribed in 18 VAC 115-30-62;

2. Submit the following to the board or its contracting agent within the time frame established by the board or that agent:

- a. A completed application form;
- b. Official transcript documenting attainment of a high school diploma or general education development (GED) certificate; and
- c. The application processing and initial certification fee.

18 VAC 115-30-62. Educational requirements for substance abuse counseling assistants.

A. An applicant for certification as a substance abuse counseling assistant shall:

1. Have an official high school diploma or general educational development (GED) certificate; and

2. Have completed 300 clock hours of substance abuse education from one of the following programs:

- a. An accredited university or college;
- b. An integrated program approved by the board at the time of application; or
- c. An individualized program of seminars and workshops approved by the board at the time of application.

B. Substance abuse education.

1. The education will include 120 hours spent in receiving didactic training in substance abuse counseling. Each

applicant shall have received a minimum of 10 clock hours in each of the following eight areas:

- a. Understanding the dynamics of human behavior;
- b. Signs and symptoms of substance abuse;
- c. Treatment approaches, group dynamics and other adjunctive treatment and recovery support;
- d. Case management skills and continuum of care;
- e. Recovery process and relapse prevention methods;
- f. Ethics;
- g. Professional identity in the provision of substance abuse services; and
- h. Crisis intervention.

2. The education shall include 180 hours of experience performing the following tasks with substance abuse clients while under supervision:

- a. Screening clients and gathering information used in making the determination for the need for additional professional assistance;
- b. Intake of clients by performing the administrative tasks necessary for admission to a program;
- c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client;
- d. Assisting the client in identifying and ranking problems to be addressed, establish goals, and agree on treatment processes;
- e. Implementation of a substance abuse treatment plan as directed by the supervisor;
- f. Implementation of case management activities that bring services, agencies, people and resources together in a planned framework of action to achieve established goals;
- g. Assistance in identifying appropriate crisis intervention responses to clients' needs during acute mental, emotional or physical distress;
- h. Education of clients by providing information about drug abuse and available services and resources;
- i. Facilitating the client's utilization of available support systems and community resources to meet needs identified in clinical valuation or treatment planning;
- j. Reporting and charting information about client's treatment, progress, and other client-related data; and
- k. Consultation with other professionals to assure comprehensive quality care for the client.

Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

C. Groups and classes attended as a part of a therapy or treatment program shall not be accepted as any part of the educational experience.

18 VAC 115-30-70. Documentation of supervision. (Repealed.)

~~Applicants must document successful completion of their supervised experience on the Verification of Supervision Form at the time of application. Supervised experience obtained prior to January 19, 2000, may be accepted toward certification if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.~~

18 VAC 115-30-90. General examination requirements for substance abuse counselors and substance abuse counseling assistants.

- A. Every applicant for certification as a substance abuse counselor or substance abuse counseling assistant by examination shall pass a written examination approved by the board. The board shall determine the passing score on the examination.
- B. Every applicant for certification by endorsement shall have passed an examination deemed by the board to be substantially equivalent to the Virginia examination.
- C. The contracting agent shall notify all applicants in writing of the time and place of the examination for which they have been approved to sit.
- D. The contracting agent will notify all applicants in writing of their success or failure on any examination.

18 VAC 115-30-110. Annual renewal of certificate.

- A. Every certificate issued by the board shall expire on June 30 of each year.
- B. Along with the renewal application, the certified substance abuse counselor or certified substance abuse counseling assistant shall submit the renewal fee prescribed in 18 VAC 115-30-30.
- C. Certified individuals shall notify the board of change of address within 60 days. Failure to receive a renewal notice and application forms shall not excuse the certified substance abuse counselor from the renewal requirement.

18 VAC 115-30-140. Standards of practice.

- A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.
- B. Persons certified by the board shall:
 - 1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.
 - 2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes.
 - 3. Practice only within the competency area for which they are qualified by training or experience.
 - 4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified

substance abuse counselors or certified substance abuse counseling assistants.

- 5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.
- 6. Disclose counseling records to others only in accordance with the requirements of state and federal statutes and regulations, including, but not limited to §§ 32.1-127.1:03 (Patient Health Records Privacy Act), 2.2-3704 (Virginia Freedom of Information Act), and 54.1-2400.1 (Mental Health Service Providers; Duty to Protect Third Parties; Immunity) of the Code of Virginia; 42 USC § 290dd-2 (Confidentiality of Drug and Alcohol Treatment Records); and 42 CFR Part 2 (Alcohol and Drug Abuse Patient Records and Regulations).
- 7. Not engage in dual relationships with clients, former clients, supervisees and supervisors that are harmful to the client's, former client's, or supervisee's well being, or which would impair the substance abuse counselor's, substance abuse counseling assistant's or supervisor's objectivity and professional judgment, or increase the risk of client or supervisee exploitation. This prohibition includes, but is not limited to, such activities as counseling close friends, former sexual partners, employees or relatives; or engaging in business relationships with clients.

Engaging in sexual intimacies with current clients or supervisees is strictly prohibited. For at least five years after cessation or termination of professional services, certified substance abuse counselors and certified substance abuse counseling assistants shall not engage in sexual intimacies with a client or those included in collateral therapeutic services. Since sexual or romantic relationships are potentially exploitative, certified substance abuse counselors and certified substance abuse counseling assistants shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of or participation in sexual behavior or involvement with a certified substance abuse counselor or certified substance abuse counseling assistants does not change the nature of the conduct nor lift the regulatory prohibition.

- 8. Recognize conflicts of interest and inform all parties of obligations, responsibilities and loyalties to third parties.

NOTICE: The forms used in administering 18 VAC 115-30, Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants, 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 Board of Counseling, 6603 W. Broad Street, 5th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Certification as a Substance Abuse Counselor, Form 1 (rev. 8/99 10/02).

Substance Abuse Counselor Verification of Supervision, Form 3 (rev. 8/99 10/02).

Proposed Regulations

Supervisor's Experience and Education, Form 3A (eff. 10/02).

Licensure or Certification Verification of Out-of-State Supervisor, Form 4 (eff. 10/02).

Application for Certification as a Substance Abuse Counseling Assistant, Form 1A (eff. 10/02).

Substance Abuse Certification Licensure/Certification Verification of Applicant, Form 2 (eff. 10/02).

Application for Reinstatement of a Lapsed Certification (eff. 10/02).

Renewal Notice and Application (rev. 2/00).

VA.R. Doc. No. R02-23; Filed November 6, 2002, 11:21 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Division of Energy Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20 VAC 5-312. Rules Governing Retail Access to Competitive Energy Services (amending 20 VAC 5-312).

Statutory Authority: §§ 12.1-13 and 56-593 of the Code of Virginia.

Public Hearing Date: Hearing will be scheduled if requested.

Public comments may be submitted until December 17, 2002.

Agency Contact: Mary Owens, Principal Financial Analyst, Division of Economics and Finance, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9295, FAX (804) 371-9935, toll-free 1-800-552-7945 or e-mail mowens@scc.state.va.us.

Summary:

The proposed amendment requires that competitive service providers subject to the Virginia Electric Utility Restructuring Act maintain records identifying persons or entities performing promotional or marketing activities on behalf of, or in conjunction with, such competitive service providers.

AT RICHMOND, NOVEMBER 1, 2002

COMMONWEALTH OF VIRGINIA

CASE NO. PUE-2002-00174

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning the aggregation of retail electric customers under the provisions of the Virginia Electric Utility Restructuring Act

ORDER INVITING COMMENTS

By Order dated March 18, 2002, the Virginia State Corporation Commission ("Commission") established an investigation for the purpose of developing and refining policies, rules, and regulations for the provision of aggregation service. We directed that the following three areas of concern be explored: (i) licensing of aggregators, (ii) contractual relationships between aggregators and their customers (and also as between aggregators and suppliers or other aggregators), and (iii) the impact of incumbent electric utilities' relationships with their aggregator affiliates on the development of effective competition within the Commonwealth.

Specifically, we directed the Staff of the Commission ("Staff ") to conduct this investigation with input from a working group ("Work Group") comprised of interested parties and stakeholders, and previously assembled in the Commission's proceeding that developed proposed rules governing retail access to competitive energy services.¹ Additionally, we directed that, on or before August 1, 2002, the Commission Staff file a report concerning the results of its investigation, together with any proposed changes to the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules") 20 VAC 5-312-10 *et seq.* On August 1, 2002, the Staff filed its report ("Report") outlining the issues examined in the course of its investigation directed by the Commission, and recommendations relating thereto.

The Report states, *inter alia*, that the Staff and Work Group² discussed a proposal to clarify the definition of aggregator in § 56-576 by removing references to purchasing or offering to purchase electricity as falling within the scope of aggregation activity. Some Work Group participants said this language might cause local distribution companies ("LDC") to subject aggregators completely uninvolved in the purchase of electricity to the complete competitive supplier registration process, including those relating to financial security and electronic data interexchange ("EDI"). The Staff, however, did not recommend amending the statute as proposed, noting that 20 VAC 5-312-20 A of the Commission's retail access rules currently enable persons seeking aggregator licensure to request waivers. The Staff concluded that the waiver process is an appropriate means of fine-tuning a license applicant's obligations vis-à-vis LDCs.

¹ Commonwealth of Virginia *ex rel.* State Corporation Commission, *Ex Parte: In the matter of establishing rules for retail access*, Case No. PUE0100013 (Commission Order adopting rules entered on June 19, 2001).

² The Work Group participants included: Rappahannock Electric Cooperative; Southside Electric Cooperative; Dominion Virginia Power; Dominion Resources; Energy Consultants, Inc.; American Electric Power; Imagine Communications; Allegheny Energy; Allegheny Power; Community Electric Cooperative; Virginia Manufacturers Association; Columbia Gas of Virginia; Shenandoah Valley Electric Cooperative; Virginia, Maryland, & Delaware Association of Electric Cooperatives; and the Division of Consumer Counsel, Office of the Attorney General.

The Staff's Report also reviewed the question of aggregator licensing under § 56-588 with respect to those persons engaged *solely* in marketing activities on behalf of licensed aggregators or suppliers. For example, the Report notes, trade associations might conduct marketing activities on behalf of licensed suppliers or aggregators, and receive compensation for those activities from these suppliers or aggregators. Guided by the definition of aggregator in § 56-576 of the Restructuring Act, the Staff concluded that aggregator licensing should not be required for persons engaged solely in such marketing.

In support of that conclusion, the Staff distinguishes in its Report between those persons *promoting* a provider of competitive services, and those actually *providing* those services (whether it be as suppliers or as aggregators), stating that such a distinction results from a sensible construction of §§ 56-576 and 56-588 of the Restructuring Act. Thus, the Staff concluded that legislation is not required to keep marketing activities *on behalf of* aggregators or suppliers outside the aggregator licensing scheme.

The Staff does note, however, that licensed aggregator and suppliers are responsible for marketing activities conducted on their behalf by third parties, to the extent that these activities result in harm to the public. Such responsibility would be enforced, in the Staff's view, through the provisions of § 56-593—the Restructuring Act's provisions prescribing remedies for "any deceptive or unfair practices in providing, distributing or marketing electric service." In that vein, the Staff has recommended that 20 VAC 5-312-20 D of the Commission's retail access rules be amended to require licensed suppliers and aggregators to maintain information in their books and records identifying persons or entities with whom they have marketing relationships. This requirement, in Staff's view, would assist the Commission in carrying out its responsibilities under § 56-593 of the Restructuring Act with respect to deceptive or unfair marketing practices.

The Report also reviews several other proposals that were discussed by the Work Group, but not recommended by the Staff. These suggestions include a proposal to establish two levels of licensure for aggregators, establishing a lower level of licensure with reduced filing obligations and filing fees. Closely related to this suggestion was an additional proposal to require licensure for some aggregators and not for others. The Report also notes that the Restructuring Act's current provisions concerning "opt in" municipal aggregation (§ 56-589) were discussed by the Work Group, but no changes were suggested at this time by any members of the Work Group. The Staff made no recommendations concerning municipal aggregation.

Finally, the Commission Staff and Work Group reviewed the issue of contractual relationships between aggregators and their customers (and also as between aggregators and suppliers or other aggregators). The Staff made no recommendations for new consumer protection provisions to be incorporated into aggregation contracts, i.e., provisions that would be over and above those contractual requirements presently imposed by the Retail Access Rules for both suppliers and aggregators. Additionally, the Staff and Work Group reviewed the issue of aggregation by entities affiliated

with incumbent electric utilities, and the impact of that relationship—one currently authorized by the Restructuring Act—on the development of effective competition within the Commonwealth. No changes in this area were recommended by the Work Group or by the Staff.

Subsequent to the Staff's filing of its Report, we issued an order dated September 20, 2002 ("September 20 Order"), by which we directed interested parties to file comments in response to the Report on or before October 8, 2002. We received comments from three parties: Appalachian Power Company ("APCO"); the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"); and the Virginia, Maryland, & Delaware Association of Electric Cooperatives ("Cooperatives").³

In its comments, APCO states that it agrees with the changes to the Retail Access Rules proposed by the Staff, i.e., requiring licensed CSPs and aggregators to maintain information about their marketing activities and persons conducting them. However, APCO expressed concern about granting aggregators waivers of certain provisions of the Retail Access Rules (pursuant to 20 VAC 5-312-20 A). In particular, APCO believes that aggregators should not be granted waivers of EDI compliance or certification *unless* LDCs can conduct transactions directly with those CSPs (i) providing supply service to aggregators, and (ii) registered with the LDCs. Put another way, APCO is concerned that APCO and other LDCs might be required to maintain communications on a non-EDI basis with an aggregator that has received a waiver of the EDI requirements under the rules.

APCO states that, if the Commission decides to adopt a case-by-case waiver approach, it should retain jurisdiction in this proceeding to re-examine that approach (after a reasonable period of time) to ensure that the waivers result in an overall policy creating efficient transactions between local distribution companies and competitive service providers.

The Consumer Counsel states that it generally supports the Report's identification of current issues concerning the regulation of aggregation services and Staff's recommendations therein. The Consumer Counsel also states that the recommendations made by the Staff appear to properly protect consumers and are consistent with the goal of developing effective competition in electric service in the public interest.

The comments of the Cooperatives also generally support the conclusions contained in the Report and the proposed amendment to the Retail Access Rules. The Cooperatives state that they support exploring retail access strategies that will generate economic savings for their consumer/owners.

However, the Cooperatives assert that no further amendments to the Retail Access Rules requiring the Cooperative to

³ The Virginia, Maryland & Delaware Association of Electric Cooperatives filed comments on behalf of A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, Inc.

Proposed Regulations

implement system changes should be adopted by the Commission unless the economic benefit enjoyed by consumers resulting from these changes will demonstrably exceed the cost of implementation. The Cooperatives note that the Report discusses the ability of an aggregator to request a waiver of any cumbersome or unnecessary registration requirements. However, the Cooperatives seek assurances that the Commission will not waive those requirements currently contained in the Retail Access rules that protect the personal information of their member/owners.

NOW THE COMMISSION, having examined the Staff's Report, and the comments filed in response thereto by APCO, Consumer Counsel, and the Cooperatives, finds that the rule amendment proposed by the Staff should be published in the *Virginia Register* and made available for further and formal comment. We appreciate the participation of interested parties and stakeholders who contributed to the development of issues this Commission identified in its order that established this investigation as part of this Order. We will briefly address several of the issues the parties raised in this proceeding.

First, with respect to the issue of marketing on behalf of licensed CSPs and aggregators, we find the Staff's conclusions sensible as well as grounded in the statutory provisions of the Restructuring Act. As a practical matter, any person or entity engaged in marketing activities concerning the competitive sales of electricity will either be a licensed CSP or aggregator, or someone acting in an agency capacity on their behalf. In either event, the provisions of § 56-593 provide this Commission ample authority to address any inappropriate marketing activities associated with the competitive sale of retail generation, or the aggregation of retail customers. Accordingly, and by this Order, we will invite comment on a proposed amendment to 20 VAC 5-312-20 D of the Retail Access Rules, such amendment requiring licensed aggregators and CSPs to maintain information identifying all persons or entities conducting marketing activities with them or on their behalf.⁴

Next, we will comment briefly on the issue raised by APCO and discussed above. APCO is concerned that one could imply from the Report that this Commission could waive EDI certification for an aggregator while concurrently requiring LDCs to communicate with them on a non-EDI basis. We conclude, however, that in citing the possibility of case-by-case waivers of Retail Access Rules, the Staff was simply emphasizing the current availability of flexibility in the licensure process afforded by 20 VAC 5-312-20 A. This provision has been a part of the Retail Access Rules since their original adoption.

To specifically address APCO's concerns, however, and based on information on file with the Commission concerning aggregators currently licensed by this Commission, it would appear that most aggregators intend to contract with CSPs for supply services. Such CSPs, in turn, will undoubtedly be EDI certified for purposes of communicating electronically with LDCs. With respect to relationships between an LDC and a CSP, we are not aware of anything in the Retail Access Rules requiring LDCs to communicate electronically with more than one party to such an arrangement.⁵ That party, in all likelihood would be the CSP.

Nonetheless, like APCO, we want to ensure that our policy creates efficient transactions between LDCs, CSPs, and aggregators. As such, we will direct our Staff to monitor aggregators' requests for waivers of EDI compliance, or compliance with the registration procedures included in the local distribution companies' tariffs.

We will also comment briefly on an issue that we identified in our order establishing this investigation, namely aggregation activities by affiliates of incumbent electric utilities. As we noted in the March 18, 2002, Order, aggregation activities by such affiliates may impact the development of competition within incumbents' service territories. To be clear, the development of a competitive market was our primary focus in asking that this issue be addressed.

Dominion Retail, a CSP affiliate of Dominion Virginia Power and a Work Group participant, noted in its response to Staff questions (and made part of the Staff Report) that codes of conduct in the Retail Access Rules govern the marketing practices of aggregators affiliated with LDCs.⁶ Moreover, the company notes, the General Assembly authorized incumbent affiliates to engage in retail activities.⁷ Dominion Virginia Power filed comments to the same effect. AEP's comments included in the Staff report also emphasized the presence of the codes of conduct in the Commission's Retail Access Rules, and urged that aggregators affiliated with incumbents not be treated any differently than unaffiliated aggregators.

Another Work Group participant, Energy Consultants, Inc. ("Energy Consultants"), however, provided a different view of the issue stating that it had concerns about "the market power of branding," i.e., that an incumbent's affiliate effectively projects the strength, reliability and infrastructure of the incumbent. Energy Consultants also noted that electricity customers may perceive risk in shifting their electric service away from incumbents. Consequently, Energy Consultants predicts that a substantial majority of customers that switch

⁴ The proposed rule included with this Order is framed slightly differently than the one included in the Report. The language now amending 20 VAC 5-312-20 D (as set forth in Attachment A) makes the maintenance of marketing-related information an explicit obligation imposed upon licensed competitive service providers. The language suggested by Staff in its Report stated that such an obligation could be required by the Commission. We would also note that while the focus of this Order is the aggregation of retail electricity customers and issues related thereto, the amendment to 20 VAC 5-312-20 D will be applicable to competitive service providers of natural gas as well as to those furnishing electricity.

⁵ Moreover, we would note that in our recent Order approving changes to our Retail Access Rules with respect to consolidated billing, 20 VAC 5-312-90 C 4 was amended to clarify that, for billing purposes, LDCs would not be required to exchange billing information for any customer account with more than one competitive service provider for the same billing period. *Commonwealth of Virginia, ex. rel. State Corporation Commission. Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for consolidated billing services.* Case No. PUE-2001-00297. (Final Order dated August 21, 2002.)

⁶ 20 VAC 5-312-30.

⁷ We note, in that regard, that § 56-587 D authorizes affiliates of incumbent electric utilities to be licensed as CSPs and as aggregators.

will do so to the affiliate of their existing utility.⁸ This company goes on to state that "[T]he risk of 'unintended consequences,' i.e., an unregulated monopoly, needs to be monitored very carefully."

As emphasized by Dominion Retail, the Restructuring Act (in § 56-587 D) does specifically authorize affiliates of incumbents to be licensed as CSPs or aggregators. It is also true that our Retail Access Rules in 20 VAC 5-312-30 specifically address marketing issues associated with competitive service providers (a defined term in these rules that encompasses both CSPs and aggregators) affiliated with incumbent electric utilities. Subsection A of this rule permits such affiliated providers to use the names and logos of their affiliated LDCs so long as they indicate the distinction between the two entities. However provisions in subsection F prohibit joint advertising and marketing activities; additional provisions—particularly in subsections B, C and H—require these affiliated companies to maintain separate business structures, personnel and operations. Subsection D emphasizes that LDCs are prohibited from giving any "undue preference" to affiliated competitive service providers.

The concerns of Energy Consultants are unlikely to be resolved by the Codes of Conduct we adopted in our Retail Access Rules, however. At bottom, Energy Consultants' core concern is that incumbent-affiliated CSPs and aggregators are permitted to provide competitive services in the service territories of affiliated LDCs—particularly to the extent that these affiliated companies share common "branding." It would appear from the comments incorporated into the Report, and also from the comments concerning the Report filed in response to our September 20, 2002 Order, that the only party articulating concern about the market power implications of such affiliate activities was Energy Consultants. However, we think that Energy Consultants' recommendation that this situation be monitored is a good one, and we will direct the Staff to do so. Moreover, in conjunction with such monitoring, by this Order we will direct the Staff to submit a report on or about July 1, 2004, assessing the impact on the development of a competitive market, of incumbent-affiliated competitive service providers (as that term is presently defined in our Retail Access Rules) and their activities in affiliated LDCs' service territories.

We also directed the Staff and the Work Group as part of this investigation to review contractual relationships between aggregators and their customers, particularly with respect to contract length and liquidated damages provisions. Clearly, contract length is of some consequence to aggregators. By "locking up" a finite load for a specified period—the longer the better, presumably—an aggregator can better shop for a competitive supplier with which to marry up the load aggregated.

⁸ Energy Consultants cited the local telephone market as a "classic example" of how incumbent local exchange carriers have established virtual monopolies and prevented the emergence of serious competition. The key factor, according to Energy Consultants, is the incumbent's market power. "[S]o long as the affiliate of the incumbent utilities can enter the same market area as the incumbent utility with essentially the same branding as perceived by the customer," Energy Consultants stated in their comments, "it will bring significant market power whether they call themselves a CSP or an aggregator."

May there be circumstances, however, in which the length of an aggregation contract may actually operate to deter the development of competition? To the extent that such contracts prescribe liquidated damages to be paid by aggregation customers seeking to exit that arrangement prior to the expiration of such contracts, might such provisions also serve to deter the development of a competitive market? As noted in the Report, in written comments concerning these two issues, Dominion Virginia Power, Dominion Retail and Energy Consultants suggested, in the collective, that new rules addressing these issues with respect to aggregators were not seen as necessary at this time.

While not specifically addressed in the parties' comments, or discussed in the Report, it would appear that one potential concern with respect to the development of competition would be aggregation arrangements initiated by incumbent-affiliated aggregators that "lock in" substantial load in their affiliated LDCs' service territories. On one hand, such activity may serve to "prime the pump" for retail shopping activity in the near term. However, the fact that this activity comes courtesy of an incumbent's affiliate could be counter-productive, discouraging competitive entry by unaffiliated CSPs or aggregators over the longer haul. This would be particularly the case if the aggregation contracts simply committed the customer to the aggregation pool for a lengthy period of time, with no corresponding contractual assurance of any actual savings during that period.

Another deterrent to competitive market development might be embedded in requirements that aggregation customers pay liquidated damages if they exit aggregation pools prior to the expiration of such aggregation contracts. The presence of liquidated damages provisions might deter aggregation customers from taking advantage of better competitive offers—either as a general matter, or because the liquidated damages to be paid would wipe out any potential savings from other competitive offers.⁹ Overall, we think this issue warrants further monitoring on the part of the Staff as the markets in Virginia continue to open to retail choice. By this Order, we will direct the Staff to file a report with this Commission on or about July 1, 2004, assessing the impact of aggregation contracts on the development of competitive retail markets in the Commonwealth.

Finally, the Commission is of the opinion and finds that the proposed modification to 20 VAC 5-312-20 D, requiring that competitive service providers (which, by definition in these rules, includes both aggregators and CSPs) maintain records identifying persons or entities performing promotional or marketing activities on behalf of, or in conjunction with, a competitive service provider, should be published in the

⁹ Closely related is the cancellation rights customers are afforded under the Retail Access Rules. Under these rules, customers may cancel contracts entered into with CSPs or aggregators (collectively "competitive service providers") within 10 days of a competitive supplier mailing a competitive supplier enrollment request to an LDC, without penalty. However, an aggregation contract that simply promises the potential for savings if the aggregator can find them (but does not guarantee them) coupled with liquidated damages provisions that might be applicable regardless of whether customers actually take service from competitive suppliers during the term of the aggregation contract, could effectively eliminate the protections that the right to cancel under 20 VAC 5-312-70 C might otherwise afford.

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Virginia Register of Regulations. The Commission further finds that interested persons should be afforded an opportunity to file written comments on such regulation, as the same is proposed to be amended, appended hereto as Attachment A.

ACCORDINGLY, IT IS ORDERED THAT:

(1) Interested persons may obtain a copy of this Order, together with a copy of the proposed amended rule upon which comment is sought (Attachment A, hereto), by directing a request in writing for the same to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such requests shall refer to Case No. PUE-2002-00174.

(2) A copy of this Order and the proposed amended regulation shall also be made available for public review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during its regular hours of operation, Monday through Friday, from 8:15 a.m. to 5:00 p.m.

(3) On or before December 17, 2002, any person desiring to comment upon the proposed amended regulation shall file an original and fifteen (15) copies of their comments with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, making reference in such comments to Case No. PUE-2002-00174. Such comment should set forth the person's interest in this proceeding, and if such person objects to any provision of the proposed amended regulation, proposed alternative language for the regulation should be included in such person's comments.

(4) Any person desiring a hearing in this matter shall file such a request with the comments on or before December 17, 2002, and shall state in detail why a hearing is necessary. Such a request should identify the factual issues likely in dispute upon which the person seeks a hearing, together with the evidence expected to be introduced at any hearing. If no sufficient request for a hearing is received, the Commission may enter an order promulgating the amended regulation upon the basis of the written comments received.

(5) The Commission Staff shall monitor any requests by aggregators for waivers of EDI compliance or compliance with the registration process included in the tariffs of the local distribution companies. Specifically, Staff, in its review of a prospective aggregator's license application, shall evaluate whether any such requested waivers would impact the efficiency of transactions between local distribution companies, competitive service providers, and aggregators. A summary of such evaluations shall be included in the Staff's reports concerning each such license application.

(6) The Staff shall further monitor the activities of licensed aggregators affiliated with incumbent utilities, and providing aggregation services within the service territories of such incumbents to determine whether such affiliated relationships, coupled with the nature, provisions and duration of contracts with customers in such service territories, may be deterring the development of a competitive market for retail generation services within that service territory. The Staff shall also monitor the nature, provisions and duration of aggregation contracts between retail electricity customers and aggregators

not affiliated within any Virginia incumbent electric utility, for the purposes of assessing the impact of such contracts on the development of a competitive retail electricity market within the Commonwealth. On or about July 1, 2004, the Staff shall submit to the Commission a report summarizing its findings and recommendations concerning the monitoring activities required pursuant to this Ordering Paragraph.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

20 VAC 5-312-20. General provisions.

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. The provisions of this chapter shall not be deemed to preclude a person aggrieved by a violation of these regulations from pursuing any civil relief that may be available under state or federal law, including, without limitation, private actions for damages or other equitable relief.

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require reports and statements, of a competitive service provider as required to verify qualifications to conduct business within the Commonwealth, to support affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider. *Every competitive service provider licensed pursuant to this chapter shall establish and maintain records identifying persons or entities performing promotional or marketing activities on behalf of or in conjunction with such competitive service provider.*

E. Absent the designation of a default service provider as determined by the State Corporation Commission pursuant to § 56-585 of the Code of Virginia, the local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a

competitive service provider but whose service is terminated for any reason.

F. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.
2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, and the Federal Energy Regulatory Commission, or any successor agencies thereto.
3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.

G. The local distribution company and a competitive service provider shall not:

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or
2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company shall conduct its forecasting, scheduling, balancing, and settlement activities in a nondiscriminatory and reasonably transparent manner.

I. The local distribution company or competitive service provider shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.

J. The local distribution company and a competitive service provider, shall coordinate their customer communication activities with the State Corporation Commission's statewide consumer education campaign.

K. The local distribution company and a competitive service provider shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT or the local distribution company's tariff, then the competitive service provider shall file a plan with the State Corporation Commission's Division of Economics and Finance to implement VAEDT or tariff approved standards within 180 days of the initial retail offering.

L. The local distribution company and a competitive service provider that is responsible for exchanging customer information electronically with such local distribution company shall, except as otherwise provided by the local distribution

company's tariff approved by the State Corporation Commission, successfully complete EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection K of this section.

M. A competitive service provider offering billing service that requires the direct delivery of a bill to a customer and that requires the electronic exchange of data with the local distribution company shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process, or comparable electronic data exchange process, as described in subsection L of this section, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.

N. The local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance a monthly report which shall, at a minimum, include all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) if readily available, a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff and regarded as confidential unless and until the State Corporation Commission orders otherwise.

O. The local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and nonresidential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. The amount of load shall be measured in MW or dekatherm capacity of peak load contribution and in kWh or therms of associated energy. Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.

P. By March 31 of each year, the provider of electricity supply service shall report to its customers and file a report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the provider of electricity supply service shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

Q. A competitive service provider shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A \$100 administrative fee payable to the State Corporation Commission shall accompany this report.

R. A competitive service provider shall inform the State Corporation Commission within 30 days of the following: (i)

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any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20 VAC 5-312-40 A 13; and (iv) any changes to information provided pursuant to 20 VAC 5-312-40 A 15.

S. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company or a competitive service provider claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.

VA.R. Doc. No. R03-65; Filed November 4, 2002, 4:35 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-220. Agency Placement Adoptions -- Guiding Principles (repealing 22 VAC 40-220-10 and 22 VAC 40-220-20).**

Statutory Authority: §§ 63.1-25 and 63.1-56 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until January 31, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Karin Clark, Adoption Program Consultant, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1251, FAX (804) 692-1284, or e-mail kac900@dss.state.va.us.

Basis: Sections 63.1-25 and 63.1-56 of the Code of Virginia grant authority to the State Board of Social Services to promulgate regulations for the provision of foster care services that shall be directed toward the prevention of unnecessary foster care placements and toward permanent planning for children in the custody of or placed by local boards of social services. Rulemaking under these two sections is discretionary rather than mandatory.

Purpose: The regulation was enacted in 1989, based on best practices and state and federal laws in place at that time. Since that time, changes to state and federal laws have impacted adoption practice and the guiding principles included in the regulation. Those principles that were not reflective of state and federal laws represent practice recommendations,

not statutory requirements. It is recommended that the regulation be repealed in order to omit reference to obsolete state/federal requirements. The regulation is not essential to protect the health, safety or welfare of citizens.

Substance: The proposed action repeals the regulation setting forth the guiding principals that must be followed by the local departments of social services during adoption placements. Best practice recommendations will be incorporated in the adoption services guidance document.

Issues: The advantage to the public, agency and Commonwealth is that applicable state and federal laws and suggested best practices will remain available in the adoption services guidance document. By not having this information in the form of a regulation, the ability to update and clarify the information will be greatly simplified.

There are no disadvantages to the public or Commonwealth.

Fiscal Impact: There is no anticipated fiscal impact of repealing the regulation.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The proposed changes will repeal from the regulations the guiding principles that must be followed by the local departments of social services during adoption placements.

Estimated economic impact. These regulations contain 13 guiding principles to be followed when the local departments of social services provide adoption services. These principles do not establish any specific requirements, but merely contain statements enunciating the desired practices. For example, the first principle states, "legal adoption offers a child greater permanence and security than foster care." The remaining principles contain similar statements on desired practices about other aspects of the adoption process. The Board of State Social Services proposes to repeal these guiding principles from its regulations.

Among these principles, one is already obsolete due to passage of the federal Multi-Ethnic Placement Act in 1994. The language in the regulation suggests that the preferred adoptive parent is one with the same race and ethnic and cultural background of that of the child. The Department of Social Services (the agency) believes that this principle was reflective of the paradigm at the national level and may have caused some delay in placements of African American children as the number of these children available for adoption

greatly exceeds the number of available adoptive parents with the same ethnic background. According to the agency, there has been a shift away from this approach at the national level. In the meantime, Multi-Ethnic Placement Act prohibited payments from federal funds to entities that delay or deny placement of a child on the basis of race, color, and national origin in 1994. Following this change in federal law, the agency no longer considers the relevant language in the regulations as a guiding principle and compliance with it is currently not expected and not enforced. Since, this particular guiding principle has been obsolete in practice since 1994, its proposed repeal is not expected to create any significant economic effects.

All of the remaining 12 guiding principles are currently contained in the agency's guidance documents and will be accessible to members of the public as well as to the local departments of social services.¹ Thus, the proposed repeal of the remaining guiding principles from regulations is unlikely to create significant economic effects, as there will be no change in current agency practices. Despite their presence in the agency guidance documents, these principles will no longer be a part of the agency's regulations upon promulgation of the proposed amendments. As a result it will be easier for the agency to revise its guiding principles if needed while members of the public may no longer be afforded the chance to provide comments on these principles.

Businesses and entities affected. The proposed regulations apply to 120 local departments of social services. Additionally, the agency places approximately 500 children with adoptive parents annually. These regulations also apply to these adoptive parents.

Localities particularly affected. The proposed regulations apply throughout Virginia.

Projected impact on employment. The proposed repeal of these regulations is unlikely to create any significant effect on employment.

Effects on the use and value of private property. No significant effect on the use and value of private property is expected.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This regulation sets forth guiding principles for local departments of social services in providing agency placement adoption services. The goal of the regulation is to provide a set of principles to guide best practices relative to agency placement adoptions. It is recommended that the regulation be repealed as the state and federal laws reflected in the regulation are no longer in affect.

VA.R. Doc. No. R02-152; Filed November 12, 2002, 11:44 a.m.

¹ Among these, the guiding principle that adult adoptees have full access to their records except that would reveal the identity of their family or the origin is now also a statutory requirement and mandated in § 63.2-1246 of the Code of Virginia.

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 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 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 Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: Regulations for the Control and Abatement of Air Pollution (Rev. C00).

9 VAC 5-40. Existing Stationary Sources (amending 9 VAC 5-40-90 and 9 VAC 5-40-120).

9 VAC 5-50. New and Modified Stationary Sources (amending 9 VAC 5-50-90 and 9 VAC 5-50-120).

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).

Effective Date: February 1, 2003.

Summary:

The regulations concerning visible emissions and fugitive dust/emissions (Rules 4-1 and 5-1) are revised because of a conflict with Virginia statutory law: § 62.1-44.34:18 of the Code of Virginia prohibits the discharge of oil upon land. 9 VAC 5-40-90 and 9 VAC 5-50-90 are amended to remove the provision that allows oil to be applied to dirt roads, material stockpiles, and other surfaces which may create airborne dust.

In addition to revisions to comply with the Code of Virginia, some minor editorial changes are necessary, primarily for consistency with the Regulations for the Control and Abatement of Air Pollution.

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

9 VAC 5-40-90. Standard for fugitive dust/emissions.

No owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but are not limited to, the following:

1. Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures,

construction operations, the grading of roads or the clearing of land.

2. Application of asphalt, ~~oil~~, water, or suitable chemicals on dirt roads, materials stockpiles and other surfaces which may create airborne dust; the paving of roadways and maintaining them in a clean condition.

3. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations.

4. Open equipment for conveying or transporting materials likely to create objectionable air pollution when airborne shall be covered or treated in an equally effective manner at all times when in motion.

5. The prompt removal of spilled or tracked dirt or other materials from paved streets and of dried sediments resulting from soil erosion.

9 VAC 5-40-120. Waivers.

A. A waiver from the opacity emission limitation in 9 VAC 5-40-80 may be granted by the ~~executive~~ director, provided that a technical decision is reached that the plume opacity observations made in accordance with 9 VAC 5-40-20 and 9 VAC 5-40-110 are not representative of the pollutant loading of the plume.

B. Upon granting the above waiver, the ~~executive~~ director shall require one or more alternate source surveillance methods, which ~~methods~~ may include, but are not limited to, the following:

1. Requiring the owner to install, calibrate, maintain and operate systems for continuously monitoring and recording emissions of specified pollutants in accordance with 9 VAC 5-40-40 and 9 VAC 5-40-100.

2. Requiring the owner to conduct, at specified intervals, emission tests for measuring emissions of specified pollutants in accordance with 9 VAC 5-40-30.

3. Establishing an opacity emission limitation for the facility based on a correlation between tests of visible and other specified pollutant emissions.

C. The waiver may be granted for an indefinite period of time; however, approval may be withdrawn by the ~~executive~~ director:

1. For failure to adhere to any terms or conditions of the waiver;

2. If the affected facility is found to be in violation of any applicable emission standard; or

3. For failure to conduct or adhere to any alternate source surveillance method required for waiver approval.

9 VAC 5-50-90. Standard for fugitive dust/emissions.

During the construction, modification or operation phase of a stationary source or any other building, structure, facility or installation, no owner or other person shall cause or permit any materials or property to be handled, transported, stored, used, constructed, altered, repaired or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but are not limited, to the following:

1. Used, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;
2. Application of asphalt, oil water, or suitable chemicals on dirt roads, materials stockpiles and other surfaces which may create airborne dust; the paving of roadways and the maintaining of them in a clean condition;
3. Installation and use of hoods, fans and fabric filters to enclose and vent the handling of dusty materials. Adequate containment methods shall be employed during sandblasting or other similar operations;
4. Open equipment for conveying or transporting materials likely to create objectionable air pollution when airborne shall be covered, or treated in an equally effective manner at all times when in motion; and
5. The prompt removal of spilled or tracked dirt or other materials from paved streets and of dried sediments resulting from soil erosion.

9 VAC 5-50-120. Waivers.

A. A waiver from the opacity emission limitation in 9 VAC 5-50-80 may be granted by the executive director, provided that a technical decision is reached that the plume opacity observations made in accordance with 9 VAC 5-50-20 A 2 and 9 VAC 5-50-110 are not representative of the pollutant loading of the plume.

B. Upon granting the above waiver, the executive director shall require one or more alternate source surveillance methods, which may include, but are not limited to, the following:

1. Requiring the owner to install, calibrate, maintain and operate systems for continuously monitoring and recording emissions of specified pollutants in accordance with 9 VAC 5-50-40 and 9 VAC 5-50-100;
2. Requiring the owner to conduct, at specified intervals, performance tests for measuring emissions of specified pollutants in accordance with 9 VAC 5-50-30; and
3. Establishing an opacity emission limitation for the facility based on a correlation between performance tests of visible and other specified pollutant emissions.

C. The waiver may be granted for an indefinite period of time; however, approval may be withdrawn by the executive director:

1. For failure to adhere to any terms or conditions of the waiver;

2. If the affected facility is found to be in violation of any applicable standard of performance; or
3. For failure to conduct or adhere to any alternate source surveillance method required for waiver approval.

VA.R. Doc. No. R03-70; Filed November 13, 2002, 8:19 a.m.

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: Regulations for the Control and Abatement of Air Pollution (Rev. 102).

9 VAC 5-50. New and Modified Stationary Sources (amending 9 VAC 5-50-400, 9 VAC 5-50-410, and 9 VAC 5-50-420).

9 VAC 5-60. Hazardous Air Pollutant Sources (amending 9 VAC 5-60-60, 9 VAC 5-60-90, and 9 VAC 5-60-100).

Statutory Authority: § 10.1-1308 of the Code of Virginia and § 112 of the Clean Air Act (40 CFR Parts 61 and 63).

Effective Date: February 1, 2003.

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2002. The new standards in the federal regulations that are incorporated into the regulations by reference are as follows.

1. 40 CFR Part 60 - Standards of performance for new stationary sources. No new NSPS are incorporated; however, the date of the Code of Federal Regulations book incorporated by reference is updated to the latest version. Some title information is updated, as well.
2. 40 CFR Part 61 - National emissions standards for hazardous air pollutants. No new NESHAP are incorporated; however, the date of the Code of Federal Regulations book incorporated by reference is updated to the latest version.
3. 40 CFR Part 63 - National emissions standards for hazardous air pollutants for source categories (new standards in new edition are listed below).
 - a. Subpart VVVV - Boat Manufacturing (40 CFR 63.5680 through 40 CFR 63.5779).
 - b. Subpart TTTT - Leather Finishing Operations (40 CFR 63.5280 through 40 CFR 63.5460).
 - c. Subpart HHHH - Wet-formed Fiberglass Mat Production (40 CFR 63.2980 through 40 CFR 63.3079).

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d. Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR 63.1560 through 40 CFR 63.1579).

e. Subpart SSSS - Surface Coating of Metal Coil (40 CFR 63.5080 through 40 CFR 63.5209)

f. Subpart UUUU - Cellulose Products Manufacturing (40 CFR 63.5480 through 40 CFR 63.5610).

g. Subpart QQQ - Primary Copper Smelting (40 CFR 63.1440 through 40 CFR 63.1459).

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

9 VAC 5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (40 CFR Part 60) designated in 9 VAC 5-50-410 are, unless indicated otherwise, incorporated by reference into these regulations as amended by the word or phrase substitutions given in 9 VAC 5-50-420. The complete text of the subparts in 9 VAC 5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9 VAC 5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (~~2004~~) (2002) in effect July 1, ~~2004~~ 2002. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means § 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9 VAC 5-50-410. Designated standards of performance.

Subpart A--General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B--Not applicable.

Subpart C--Not applicable.

Subpart D--Fossil-Fuel Fired Steam Generators for which Construction is Commenced after August 17, 1971.

40 CFR 60.40 through 40 CFR 60.46

(fossil-fuel fired steam generating units of more than 250 million Btu per hour heat input rate, and fossil-fuel fired and wood-residue fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da--Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978.

40 CFR 60.40a through 40 CFR 60.49a

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel); electric utility combined cycle gas turbines capable of combusting more than 250 million Btu per hour heat input in the steam generator)

Subpart Db--Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc--Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E--Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

Subpart Ea--Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb--Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec--Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F--Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.64

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G--Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart H--Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I--Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J--Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart K--Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka--Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb--Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L--Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M--Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N--Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na--Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O--Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P--Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q--Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R--Primary Lead Smelters

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S--Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T--Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.204

(reactors, filters, evaporators, and hot wells)

Subpart U--Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.214

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V--Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

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40 CFR 60.220 through 40 CFR 60.224

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W--Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.234

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X--Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through 40 CFR 60.244

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y--Coal Preparation Plants.

40 CFR 60.250 through 40 CFR 60.254

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z--Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA--Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa--Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB--Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart CC--Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD--Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE--Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF--(Reserved)

Subpart GG--Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH--Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

Subparts II through JJ--(Reserved)

Subpart KK--Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL--Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart)

Subpart MM--Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN--Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO--(Reserved)

Subpart PP--Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ--Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR--Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447

(pressure sensitive tape and label material coating lines)

Subpart SS--Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456

(surface coating operations in large appliance coating lines)

Subpart TT--Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU--Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474

(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV--Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry.

40 CFR 60.480 through 40 CFR 60.489

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW--Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX--Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ--(Reserved)

Subpart AAA--New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(wood heaters)

Subpart BBB--Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC--(Reserved)

Subpart DDD--Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE--(Reserved)

Subpart FFF--Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG--Equipment Leaks of VOC in Petroleum Refineries.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH--Synthetic Fiber Production Facilities.

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40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III--Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ--Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK--Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL--Onshore Natural Gas Processing: Sulfur Dioxide Emissions.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM--(Reserved)

Subpart NNN--Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO--Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP--Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ--VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR--Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS--Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT--Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU--Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV--Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW--Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart AAAA--Small Municipal Waste Combustors *for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001*

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB--(Reserved) *Not applicable.*

Subpart CCCC--Commercial/Industrial Solid Waste Incinerators for which Construction is Commenced after November 30, 1999, or for which Modification or Construction is Commenced on or after June 1, 2001

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD--(Reserved) *Not applicable.*

Appendix A--Test methods.

Appendix B--Performance specifications.

Appendix C--Determination of Emission Rate Change.

Appendix D--Required Emission Inventory Information.

Appendix E--(Reserved)

Appendix F--Quality Assurance Procedures.

Appendix G--(Not applicable)

Appendix H--(Reserved)

Appendix I--Removable label and owner's manual.

9 VAC 5-50-420. Word or phrase substitutions.

In all the standards designated in 9 VAC 5-50-410 substitute make the following substitutions:

1. In all the standards, "board" for "administrator."
2. In all the standards, "board" for "U.S. Environmental Protection Agency" (except in references).
3. In subpart WWW, Department of Environmental Quality for state, local, or tribal agency responsible for regulating the landfill. Waste management permits are issued by the department under the authority of the Virginia Waste Management Act (Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia), using the procedures in Part VII (9 VAC 20-80-480 et seq.) of 9 VAC 20 Chapter 80.

9 VAC 5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61) designated in 9 VAC 5-60-70 are, unless indicated otherwise, incorporated by reference into these regulations as amended by the word or phrase substitutions given in 9 VAC 5-60-80. The complete text of the subparts in 9 VAC 5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each Subpart in 9 VAC 5-60-70 identify the specific provisions of the Subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (2004) (2002) in effect July 1, 2004 2002. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the

Code of Federal Regulations; 40 CFR 61.01 means § 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

9 VAC 5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (40 CFR Part 63) designated in 9 VAC 5-60-100 are, unless indicated otherwise, incorporated by reference into these regulations as amended by the word or phrase substitutions given in 9 VAC 5-60-110. The complete text of the subparts in 9 VAC 5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9 VAC 5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (2004) 2002 in effect July 1, 2004 2002. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means Section 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

9 VAC 5-60-100. Designated emission standards.

Subpart A--General Provisions.

40 CFR 63.1 through 40 CFR 63.11

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements)

Subpart B--Not applicable.

Subpart C--Not applicable.

Subpart D--Not applicable.

Subpart E--Not applicable.

Subpart F--Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G--Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H--Organic Hazardous Air Pollutants for Equipment Leaks.

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40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I--Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J--Reserved.

Subpart K--Reserved.

Subpart L--Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M--Perchloroethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchloroethylene)

Subpart N--Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O--Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P--Reserved.

Subpart Q--Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R--Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S--Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T--Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchlorethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U--Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, HypalonTM, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V--Reserved.

Subpart W--Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X--Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 63.550

(at all secondary lead smelters: blast, reveratory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y--Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z--Reserved.

Subpart AA--Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.610

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB--Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.631

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC--Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.654

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD--Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE--Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF--Reserved.

Subpart GG--Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.752

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH--Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II--Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ--Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK--Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL--Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM--Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN--Reserved.

Subpart OO--Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP--Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ--Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR--Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS--Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT--Equipment Leaks--Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU--Equipment Leaks--Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV--Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

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Subpart WW--Storage Vessels (Tanks)--Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX--Reserved.

Subpart YY--Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ--Reserved.

Subpart AAA--Reserved.

Subpart BBB--Reserved.

Subpart CCC--Steel Pickling--Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD--Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE--Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1213

(hazardous waste combustors)

Subpart FFF--Reserved.

Subpart GGG--Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH--Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III--Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ--Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate

butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK--Reserved.

Subpart LLL--Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM--Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN--Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO--Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP--Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart ~~QQQ--Reserved.~~ *Primary Copper Smelting.*

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR--Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS--Reserved.

Subpart TTT--Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart ~~UUU--Reserved.~~ *Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.*

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV--Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW--Reserved.

Subpart XXX--Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY--Reserved.

Subpart ZZZ--Reserved.

Subpart AAAA--Reserved.

Subpart BBBB--Reserved.

Subpart CCCC--Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD--Reserved.

Subpart EEEE--Reserved.

Subpart FFFF--Reserved.

Subpart GGGG--Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH--Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII--Reserved.

Subpart JJJJ--Reserved.

Subpart KKKK--Reserved.

Subpart LLLL--Reserved.

Subpart MMMM--Reserved.

Subpart NNNN--Reserved.

Subpart OOOO--Reserved.

Subpart PPPP--Reserved.

Subpart QQQQ--Reserved.

Subpart RRRR--Reserved.

Subpart SSSS--Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT--Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU--Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV--Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW--Reserved.

Subpart XXXX--Reserved.

Subpart YYYY--Reserved.

Subpart ZZZZ--Reserved.

Appendix A--Test Methods.

Appendix B--Sources Defined for Early Reduction Provisions.

Appendix C--Determination of the Fraction Biodegraded (F_{subbio}) in a Biological Treatment Unit.

Appendix D--Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R03-71; Filed November 13, 2002, 8:18 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

REGISTRAR'S NOTICE: The Virginia Waste Management Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Title of Regulation: 9 VAC 20-150. Waste Tire End User Reimbursement Regulation (amending 9 VAC 20-150-30, 9 VAC 20-150-40, 9 VAC 20-150-80, 9 VAC 20-150-100, 9 VAC 20-150-110, and 9 VAC 20-150-130).

Statutory Authority: §§ 10.1-1402 and 10.1-1422.4 of the Code of Virginia.

Effective Date: November 13, 2002.

Final Regulations

Summary:

The amendments increase the tire pile rate to \$75 per ton, subject to available funding, to renew interest by cleanup contractors.

Agency Contact: R. Allan Lassiter, Jr., Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4215 or e-mail ralassiter@deq.state.va.us.

9 VAC 20-150-30. Regulation Regulations review.

This chapter will be reviewed every six months by the director to determine whether ~~they~~ *the regulations* should be continued, amended, or terminated based on the intent to enhance markets for waste tires, chips, or similar tire materials that is specified in the authorizing legislation.

9 VAC 20-150-40. End uses of waste tires eligible for reimbursement.

A. The following uses of waste tire materials will be eligible for the reimbursement if the use complies with applicable local ordinances and regulations and the Virginia Solid Waste Management Regulations, 9 VAC 20-80-40 ~~et seq.~~, or the equivalent regulations in another state. The eligible uses are:

1. Civil engineering applications, which utilize waste tire materials as a substitute for soil, sand, or aggregate in a construction project such as land or surface applications, road bed base and embankments; fill material for construction projects; and daily cover *and other substitutions* at a permitted solid waste facility if the facility's permit is so modified;
2. Burning of waste tire materials for energy recovery;
3. Pyrolysis; and
4. Products made from waste tire materials such as molded rubber products, rubberized asphalt, *soil amendments, playground and horse arena surfacing materials, mulches, mats, sealers, etc.*

B. Uses that are not eligible for reimbursement include:

1. Reuse as a vehicle tire;
2. Retreading;
3. Burning without energy recovery; and
4. Landfilling, except use as ~~daily cover~~ *specified in subdivision A 1 of this section.*

9 VAC 20-150-80. Maximum rate of reimbursement.

The maximum amount of the reimbursement for waste tires specified in ~~9 VAC 20-150-40~~ 9 VAC 20-150-100 A 1 shall be ~~\$30 per ton through March 31, 1996, and \$22.50 per ton beginning on April 1, 1996~~ \$22.50. The maximum amount of the reimbursement for waste tires specified in ~~9 VAC 20-150-40~~ 9 VAC 20-150-100 A 2 and A 3 shall be ~~\$30~~ \$50 per ton through March 31, 1996, and \$50 per ton beginning on April 1, 1996 *increasing to \$75 per ton beginning October 25, 2002, and \$100 per ton beginning July 1, 2003, subject to available funding.*

9 VAC 20-150-100. Qualification as Virginia generated waste tires.

A. A Virginia generated waste tire is a waste tire that is:

1. Discarded as the result of a sale, trade, or exchange in Virginia;
2. From a Virginia tire pile that existed prior to December 20, 1994; or
3. From a Virginia tire pile that was created without the property owner's knowledge or permission.

B. Tires qualifying for subdivision A 2 or A 3 of this section must be certified as such through a field inspection conducted by the department using department form DEQ-WTG CERT 12/97.

C. Before removal of any tires from a site which meets the criteria of subdivision A 2 or A 3 of this section, a hazard prevention plan, prepared in accordance with department guidelines, must be fully implemented.

9 VAC 20-150-110. Documentation.

To be considered as Virginia generated waste tires eligible for reimbursement, the waste tires must be documented as such in a manner acceptable to the director. Acceptable documentation must provide at a minimum a certifying statement signed by the end user stating that the waste tires are Virginia generated in accordance with the requirements of 9 VAC 20-150-100. One type of acceptable documentation is form DEQ-WTC, completed in the following manner:

1. Completion of ~~Part I~~ *Part 1* by the generator. The generator, who has the waste tires for disposal, must fill in all pertinent information in ~~Part I~~ *Part 1* and sign the statement certifying that the waste tires are Virginia generated in accordance with the requirements of 9 VAC 20-150-100. When the generator is not known, the property owner is the generator.
2. Completion of ~~Part II~~ *Part 2* by the hauler *if applicable*. The hauler must fill in all pertinent information in ~~Part II~~ *Part 2* and sign the statement certifying that he accepted the waste tire materials in the amounts indicated from the generator in ~~Part I~~ *Part 1*.
3. Completion of ~~Part III~~ *Part 3* by the collector, if applicable. The collector must fill in all pertinent information in ~~Part III~~ *Part 3* and sign the statement certifying that he accepted the waste tire materials in the amounts indicated from the hauler *or generator as applicable*.
4. Completion of ~~Part IV~~ *Part 4* by the processor. The processor must fill in all pertinent information and sign the statement certifying that he accepted the waste tire materials in the amounts indicated in ~~Part II from the hauler or Part III from the collector from a generator, hauler and/or collector, as applicable.~~

9 VAC 20-150-130. Review of application.

A. The director shall review the reimbursement application form, DEQ-EURR, for completeness and eligibility within three *working* days of receipt.

B. If an application is not complete as required in 9 VAC 20-150-120 D, the director may require the applicant to submit the missing information. The director may delay reimbursement until the information is received.

C. The director will process for payment all applications for reimbursement that are complete and in compliance with the regulations up to the amount of available funds. The complete applications will be processed in the order received and until available funds are exhausted. ~~Complete applications will be reviewed and acted on within three working days.~~ When available funds for a given fiscal year are exhausted, all remaining eligible applications will be held and paid first in the following fiscal year.

D. When an applicant believes an error has been made in the review of or response to his application, he shall notify the director in writing within 30 days of receiving the director's response. The notice shall contain a copy of the application and the director's response, a brief statement describing the believed error, and copies of any documents supporting the statement.

The director shall review the notice and attached documents and may further investigate the matter. The director shall advise the applicant in writing in due course of his response to the applicant's notice of error.

If the director concludes that an error has been made, he shall reinstate the application and act on it. If the available funds are exhausted, and would not have been had the director acted correctly on the application originally, the reinstated application shall be carried over to the next year and paid from available funds.

NOTICE: The forms used in administering 9 VAC 20-150, Waste Tire End User Reimbursement Regulation, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

[FORMS

Commonwealth of Virginia Waste Tire Certification, DEQ-WTC CERT, (rev. 4/96 12/97).

Waste Tire Program End User Reimbursement Application, DEQ-EURR, (rev. 8/97).]



**WASTE TIRE PROGRAM
WASTE TIRE PILE CERTIFICATION
(Form DEQ - CERT.)**

No. 154

12/97

I, _____ as an agent of the Commonwealth of Virginia, Department of Environmental Quality hereby certify that the below mentioned tire pile is being certified in accordance with the Waste Tire Program, End User Reimbursement Regulation (9 VAC 20-150-100).

PART 1 (PILE INFORMATION):

Location of Pile _____

 Property Owners Name _____
 Address _____
 City or County of Pile _____ Zip _____
 Telephone _____
 DEQ Regional Office _____
 Estimated Tire Pile Size _____

**TIRE PILE STAMP & CERTIFICATION
NUMBER** _____

Signature (DEQ Inspector)

Date

PART 2 (CHECK LIST):

Pile listed on the 1993 Waste Tire Pile Survey	Yes	No
New Pile	Yes	No
Survey Attached	Yes	No
Pile created without property owners knowledge	Yes	No
Date created _____		
Clean-up scheduled (if yes start date _____)	Yes	No
Contractor (if known) _____		
Waste Tire Certifications Stamped and Initialed	Yes	No
Initialed Waste Tire Certification Numbers Recorded	Yes	No
_____ to _____		

Signature (Property Owner)

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Title of Regulation: **18 VAC 50-22. Board for Contractors Regulations (amending 18 VAC 50-22-100, 18 VAC 50-22-140, 18 VAC 50-22-170, and 18 VAC 50-22-250).**

Title of Regulation: **18 VAC 50-30. Tradesman Rules and Regulations (amending 18 VAC 50-30-90 through 18 VAC 50-30-130 and 18 VAC 50-30-150).**

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Effective Date: January 1, 2003.

Summary:

The amendments increase licensing and certification fees for regulants of the Board for Contractors.

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: Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, (804) 367-2785, FAX (804) 367-2474 or e-mail olson@dpor.state.va.us.

REGISTRAR'S NOTICE: The proposed regulations were adopted as published in 18:21 VA.R. 2746-2751 July 1, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulations is not set out.

VA.R. Doc. No. R01-221; Filed November 13, 2002, 10:40 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-705. Child Protective Services (amending 22 VAC 40-705-10, 22 VAC 40-705-30 through 22 VAC 40-705-90, [22 VAC 40-705-100,] 22 VAC 40-705-110 through 22 VAC 40-705-160, 22 VAC 40-705-180, and 22 VAC 40-705-190).**

Statutory Authority: §§ 63.2-217 and 63.2-1503 of the Code of Virginia.

Effective Date: January 1, 2003.

Summary:

The amendments establish a differential response system for child abuse/neglect reports received by the local child protective services departments. The differential response system will allow the local departments to utilize a family

assessment track or an investigation track, as appropriate. Other amendments (i) require a memorandum of understanding to be developed by local departments of social services with local law enforcement and the local office of the commonwealth's attorney and (ii) require the department to report child fatalities to the state board.

As a result of public comments received, additional amendments (i) eliminate the current language required for entry into the home during an investigation but reinforces that the rights, responsibilities and authorities of Child Protective Services be explained to the family during either a family assessment or investigation; (ii) add a clause clarifying that service provision is subject to availability of funding; and (iii) eliminate some of the confusing timelines of the predispositional consultation currently required to be offered the alleged abuser prior to making a founded disposition.

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: Betty Jo Zarris, CPS Policy Specialist, Department of Social Services, Theater Row Building, 730 East Broad Street, 2nd Floor, Richmond, VA 23219, telephone (804) 692-1220, FAX (804) 692-2215, or e-mail bjz900@dss.state.va.us.

22 VAC 40-705-10. Definitions.

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

"*Abuser or neglector*" means any person who is found to have committed the abuse and/or neglect of a child pursuant to Chapter [42.4 15] (§ 63.1-248.1 [~~63.1-248.2~~ 63.2-1500] et seq.) of Title [~~63.4~~ 63.2] of the Code of Virginia.

"*Administrative appeal rights*" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § [~~63.1-248.6.1~~ 63.2-1526] of the Code of Virginia, under which an individual who is found to have committed abuse and/or neglect may request that the local department's records be amended.

"*Appellant*" means anyone who has been found to be an abuser and/or neglector and appeals the founded disposition to the director of the local department of social services, an administrative hearing officer, or to circuit court.

"*Assessment*" means the process by which child protective services workers determine a child's and family's needs.

"*Caretaker*" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.

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"Case record" means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.

"Central Registry" means a subset of the *child abuse and neglect* information system and is the name index with identifying information of individuals named as an abuser and/or neglector in founded child abuse and/or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Child abuse and neglect information system" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of *founded complaints not on appeal*, and a database that can be accessed only by the department and local departments ~~consisting of that contains all nonpurged investigation information CPS reports. This system is the official state automated system.~~

"Child protective services" means the identification, receipt and immediate ~~investigation of response to~~ complaints and reports of alleged child abuse and/or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means one who is qualified by virtue of education, training and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse and/or neglect.

"Chronically and irreversibly comatose" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to § ~~63.1-248.2:5~~ [~~63.1-248.2~~ 63.2-100] of the Code of Virginia.

"Consultation" means the process by which the alleged abuser and/or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the

local department rendering a founded disposition of abuse and/or neglect against that person pursuant to § [~~63.1-248.6:4~~ 63.2-1526] A of the Code of Virginia.

"Controlled substance" means a drug, substance or marijuana as defined in § 18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.1 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means that local departments of social services may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence, pursuant to 22 VAC 40-720-20.

"Family assessment" means the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child; and
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"He" means he or she.

"His" means his or her.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"*Indirect evidence*" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"*Investigation*" means the ~~formal collection of information gathering process utilized by the local department in determining whether or not child abuse or neglect has occurred.~~ *to determine:*

1. *The immediate safety needs of the child;*
2. *The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;*
3. *Risk of future harm to the child;*
4. *Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;*
5. *Whether or not abuse or neglect has occurred;*
6. *If abuse or neglect has occurred, who abused or neglected the child; and*
7. *A finding of either founded or unfounded based on the facts collected during the investigation.*

"*Investigative narrative*" means the written account of the investigation contained in the child protective services case record.

"*Legitimate interest*" means a lawful, demonstrated privilege to access the information as defined in § [~~63.1-209~~ 63.2-104] of the Code of Virginia.

"*Licensed substance abuse treatment practitioner*" means a person who (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

"*Local department*" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations of child abuse and/or neglect complaints or reports pursuant to § [~~63.1-248.6~~ 63.2-1503] of the Code of Virginia.

"*Local department of jurisdiction*" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.

"*Mandated reporters*" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to § [~~63.1-248.3~~ 63.2-1509] of the Code of Virginia.

"*Monitoring*" means contacts with the child, family and collaterals which provide information about the child's safety and the family's compliance with the service plan.

"*Multidisciplinary teams*" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal and law enforcement, which will assist local departments in the protection and prevention of child abuse and neglect pursuant to § [~~63.1-248.6~~] F [63.2-1503] K of the Code of Virginia. Citizen representatives may also be included.

"*Notification*" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"*Preponderance of evidence*" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

"*Purge*" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ [~~63.1-248.5-1~~ 63.2-1513] and [~~63.1-248.5-1.04~~ 63.2-1514] of the Code of Virginia.

"*Reasonable diligence*" means the exercise of justifiable and appropriate persistent effort.

"*Report*" means either a complaint as defined in this section or an official document on which information is given concerning abuse and neglect ~~and which~~. A *report* is required to be made by persons designated herein and by local departments in those situations in which ~~investigation of a response~~ to a complaint from the general public reveals suspected child abuse and/or neglect pursuant to subdivision 5 of the definition of abused or neglected child in § [~~63.1-248.2~~ 63.2-100] of the Code of Virginia.

"*Safety plan*" means an immediate course of action designed to protect a child from abuse or neglect.

"*Service plan*" means a plan of action to address the service needs of a child and/or his family in order to protect a child and his siblings, to prevent future abuse and neglect, and to preserve the family life of the parents and children whenever possible.

"*State automated system*" means the "*child abuse and neglect information system*" as previously defined.

"*Substance abuse counseling or treatment services*" are services provided to individuals for the prevention, diagnosis, treatment, or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency.

"*Terminal condition*" means a condition caused by injury, disease or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"*Unfounded*" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

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"Valid report or complaint" means the local department of social services has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child or children are under the age of 18 at the time of the complaint or report;
2. The alleged abuser is the alleged victim child's parent or other caretaker;
3. The local department receiving the complaint or report is a local department of jurisdiction; and
4. The circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician's or physicians' reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

22 VAC 40-705-30. Types of abuse and neglect.

A. Physical abuse occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means or creates a substantial risk of death, disfigurement, or impairment of bodily functions.

B. Physical neglect occurs when there is the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent's or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § [~~63.1-248.2~~ 63.2-100] of the Code of Virginia. In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.

1. Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.
2. Physical neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

C. Medical neglect occurs when there is the failure by the caretaker to obtain or follow through with a complete regimen of medical, mental or dental care for a condition which if untreated could result in illness or developmental delays pursuant to § [~~63.1-248.2~~ 63.2-100] of the Code of Virginia. Medical neglect also includes withholding of medically indicated treatment.

1. A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination pursuant to § [~~63.1-248.2~~ 63.2-100] of the Code of Virginia shall not for that reason alone be considered a neglected child.

2. For the purposes of this regulation, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:

- a. The infant is chronically and irreversibly comatose;
- b. The infant has a terminal condition and the provision of such treatment would:

(1) Merely prolong dying;

(2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(3) Otherwise be futile in terms of the survival of the infant; or

~~e. The infant has a terminal condition and the provision of such treatment would~~ (4) Be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

D. Mental abuse or neglect occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

Mental abuse or neglect may include failure to thrive.

1. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

2. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

E. Sexual abuse occurs when there is any act of sexual exploitation or any sexual act upon a child in violation of the law which is committed or allowed to be committed by the child's parents or other persons responsible for the care of the child pursuant to § [~~63.1-248.2~~ 63.2-100] of the Code of Virginia.

22 VAC 40-705-40. Complaints and reports of suspected child abuse and/or neglect.

A. Persons who are mandated to report are those individuals defined in § [~~63.1-248.3~~ 63.2-1509] of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.

2. Mandated reporters shall disclose all information that is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department

any records and reports that document the basis for the complaint and/or report.

3. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.

~~2-~~ 4. Pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 B] of the Code of Virginia, certain specified facts indicating that a newborn infant may have been exposed to controlled substances prior to birth are sufficient to suspect that a child is abused or neglected. A diagnosis of fetal alcohol syndrome is also sufficient. Any report made pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 A] of the Code of Virginia constitutes a valid report of abuse or neglect and requires a child protective services investigation, unless the mother sought treatment or counseling as required in this section and pursuant to § [~~63.1-248.6-E-2~~ 63.2-1505 B] of the Code of Virginia.

a. The attending physician may designate a hospital staff person to make the report to the local department on behalf of the attending physician. That hospital staff person may include a nurse or hospital social worker.

b. Pursuant to § [~~63.1-248.3-B~~ 63.2-1509] of the Code of Virginia, whenever a physician makes a finding pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 A] of the Code of Virginia, then the physician or his designee must make a report to child protective services immediately. Pursuant to § [~~63.1-248.3-B~~ 63.2-1509 D] of the Code of Virginia, a physician who fails to make a report pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 A] of the Code of Virginia is subject to a fine.

c. When a report or complaint alleging abuse or neglect is made pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 A] of the Code of Virginia, then the local department must immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to 22 VAC 40-705-110 A, the local department must conduct an initial assessment.

d. When a report or complaint alleging abuse or neglect is made pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 A] of the Code of Virginia, then the local department must immediately determine whether to petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

e. Within the first 14 days of receipt of a report made pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 A] of the Code of Virginia, the local department shall invalidate the complaint if the following two conditions are met: (i) the mother of the infant sought substance abuse counseling or treatment during her pregnancy prior to the infant's birth and (ii) there is no evidence of child abuse and/or neglect by the mother after the infant's birth.

(1) The local department must notify the mother immediately upon receipt of a complaint made pursuant to § [~~63.1-248.3-A1~~ 63.2-1509 A] of the Code of Virginia. This notification must include a statement informing the mother that, if the mother fails to present

evidence within 14 days of receipt of the complaint that she sought substance abuse counseling/treatment during the pregnancy, the report will be accepted as valid and an investigation initiated.

(2) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a substantive effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services due to no fault of her own, then the local department should invalidate the complaint or report.

(3) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department may initiate the investigation.

f. Substance abuse counseling or treatment includes, but is not limited to, education about the impact of alcohol, controlled substances and other drugs on the fetus and on the maternal relationship; education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs.

g. The substance abuse counseling or treatment should attempt to serve the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

h. The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse treatment practitioner.

i. Facts indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient, in and of themselves, to render a founded disposition of abuse or neglect. The local department must establish, by a preponderance of the evidence, that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

j. The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment.

~~3. Mandated reporters shall disclose all information which is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports which document the basis for the complaint and/or report.~~

~~4. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.~~

B. Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused

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and/or neglected pursuant to § [~~63.1-248.4~~ 63.2-1510] of the Code of Virginia.

C. Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

D. Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to § [~~63.1-248.5~~ 63.2-1512] of the Code of Virginia.

E. When the identity of the reporter is known to the department or local department, these agencies shall make every effort to protect the reporter's identity.

F. If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to § [~~63.1-248.5-1~~ 63.2-1514] of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse and/or neglect and is convicted shall be guilty of a Class 4 1 misdemeanor for a first offense pursuant to § [~~63.1-248.5-1.04~~ 63.2-1513] of the Code of Virginia.

1. A subsequent conviction results in a Class 2 ~~misdemeanor~~ 6 felony.
2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.
3. The subject of the records may have the records purged upon presentation of proof of such conviction.

H. To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to § [~~63.1-248.4~~ 63.2-1510] of the Code of Virginia.

1. The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that ~~the complaint or report is investigated~~ a family assessment or an investigation is conducted.
2. A local department may ask another local department ~~which~~ that is a local department of jurisdiction to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.
3. A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.
4. If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The

judge ~~may~~ shall assign the report for investigation to the ~~court services unit~~ or to a local department that is not the employer of the subject of the report pursuant to §§ [~~63.1-248.3~~ 63.2-1509] and [~~63.1-248.4~~ 63.2-1510] of the Code of Virginia. *The judge may consult with the department in selecting a local department to respond.*

22 VAC 40-705-50. Actions to be taken upon receipt of a complaint or report.

A. All complaints and reports of suspected child abuse and/or neglect shall be recorded in ~~writing on the intake document~~ the child abuse and neglect information system and either screened out or determined valid within 14 days of receipt. A record of all reports and complaints made to a local department or to the department, regardless of whether the report or complaint was found to be a valid complaint of abuse and/or neglect, shall be retained for one year from the date of the complaint.

B. *In all valid complaints or reports of child abuse and/or neglect shall be investigated the local department of social services shall determine whether to conduct an investigation or a family assessment.* A valid complaint or report is one in which:

1. The alleged victim child or children are under the age of 18 at the time of the complaint and/or report;
2. The alleged abuser is the alleged victim child's parent or other caretaker;
3. The local department receiving the complaint or report is a local department of jurisdiction; and
4. The circumstances described allege suspected child abuse and/or neglect.

C. The local department shall not *conduct a family assessment or* investigate complaints or reports of child abuse and/or neglect that fail to meet all of the criteria in subsection B of this section.

D. The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the Commonwealth and the local law-enforcement agency pursuant to § [~~63.1-248.6~~ E 63.2-1503 D] 5 of the Code of Virginia.

E. *Pursuant to § [~~63.1-248.6~~ L 63.2-1503 J] of the Code of Virginia, local departments shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the commonwealth's attorney.*

~~E.~~ F. The local department shall report to the following when the death of a child is involved:

1. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner pursuant to § [~~63.1-248.6~~ 63.2-1503] ~~E-9~~ [FE] of the Code of Virginia.
2. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the attorney for the

Commonwealth and the local law-enforcement agency pursuant to § [~~63.1-248.6~~] E-5 [63.2-1503 D] of the Code of Virginia.

3. The local department shall contact the department immediately upon receiving a complaint involving the death of a child and at the conclusion of the investigation.

4. *The department shall immediately, upon receipt of information, report on all child fatalities to the state board in a manner consistent with department policy and procedures approved by the board. At a minimum, the report shall contain information regarding any prior statewide child protective services involvement of the family, alleged perpetrator, or victim.*

~~F.~~ G. Valid complaints or reports which meet the criteria for investigation shall be screened for high priority based on the following:

1. The immediate danger to the child;
2. The severity of the type of abuse or neglect alleged;
3. The age of the child;
4. The circumstances surrounding the alleged abuse or neglect;
5. The physical and mental condition of the child; and
6. Reports made by mandated reporters.

~~G.~~ H. The local department shall initiate an immediate investigation response. *The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with § [~~63.1-248.6-02-B~~ 63.2-1506 C] of the Code of Virginia, those cases shall be investigated that involve: (i) sexual abuse, (ii) a child fatality, (iii) abuse or neglect resulting in a serious injury as defined in § 18.2-371.1 of the Code of Virginia, (iv) a child having been taken into the custody of the local department of social services, or (v) a caretaker at a state-licensed child day care center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.*

1. The purpose of an investigation is to collect the information necessary to determine or assess the following:

- a. Immediate safety needs of the child;
- b. Whether or not abuse or neglect has occurred;
- c. Who abused or neglected the child;
- d. To what extent the child is at risk of future harm, either immediate or longer term;
- e. What types of services can meet the needs of this child or family; and
- f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

2. *The purpose of a family assessment is to engage the family in a process to collect the information necessary to determine or assess the following:*

- a. Immediate safety needs of the child;
- b. The extent to which the child is at risk of future harm, either immediate or longer term;
- c. The types of services that can meet the needs of this child or family; and
- d. *If services are indicated and the family appears to be unable or unwilling to participate in services, the plans that will be developed in consultation with the family to provide for the child's safety. These arrangements may be made in consultation with the caretaker(s) of the child.*

~~2.~~ 3. The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse and/or neglect has been received and is under investigation determined valid or persons who are the subject of a valid report that is under investigation if the whereabouts of such persons are unknown to the local department pursuant to § [~~63.1-248.6~~ 63.2-1503] E-10 [~~G~~ F] of the Code of Virginia.

~~3.~~ 4. The local department shall document its attempts to locate the child and family.

~~4.~~ 5. In the event the alleged victim child or children cannot be found, *the time the child cannot be found shall not be computed as part of the 45-60-day time frame to complete the investigation, pursuant to subdivision 5 of § ~~63.1-248.6~~ E-7 [~~63.1-248.6-01~~ 63.2-1505] of the Code of Virginia, is stayed.*

22 VAC 40-705-60. Authorities of local departments.

When conducting investigations responding to valid complaints or reports local departments have the following authorities:

1. To talk to any child suspected of being abused and/or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § [~~63.1-248.10~~ 63.2-1518] of the Code of Virginia.

2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in § [~~63.1-248.13~~ 63.2-1520] of the Code of Virginia.

3. To take a child into custody on an emergency removal for up to 72-96 hours under such circumstances as set forth in § [~~63.1-248.9~~ 63.2-1517] of the Code of Virginia.

a. A child protective services (CPS) worker planning to take a child into 72-96-hour emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the CPS worker's part if a supervisor cannot be contacted and the situation requires immediate action.

b. *When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately to an investigation.*

~~b.~~ c. Any person who takes a child into custody pursuant to § [~~63.1-248.9~~ 63.2-1517] of the Code of Virginia shall be immune from any civil or criminal liability in connection

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therewith, unless it is proven that such person acted in bad faith or with malicious intent.

~~e-~~ d. The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to § [~~63.1-248.13~~ 63.2-1520] of the Code of Virginia.

~~d-~~ e. When a child in 72-96-hour custody is in need of immediate medical or surgical treatment, the local director of social services or his designee(s) may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.

~~e-~~ f. When a child is not in the local department's custody, the local department cannot consent to medical or surgical treatment of the child.

22 VAC 40-705-70. Collection of ~~evidence~~ information.

A. When conducting an investigation the local department shall seek first-source information about the allegation of child abuse and/or neglect. When applicable, the local department shall include in the case record: police reports; depositions; photographs; physical, medical and psychological reports; and any tape recordings of interviews.

B. When completing a family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.

C. All information collected must be entered in the state automated system and maintained according to § [~~63.1-248.5:4~~ 63.2-1514] for unfounded investigations or family assessments or according to 22 VAC 40-700-30 for founded investigations. The automated record entered in the statewide automation system is the official record. When documentation is not available in electronic form, it must be maintained in the hard copy portion of the record. Any hard copy information, including photographs and recordings, shall be noted as an addendum to the official record.

22 VAC 40-705-80. Family assessment and investigation contacts.

A. During the course of the family assessment, the child protective services (CPS) worker shall make and record the following contacts and observations.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child and siblings.

2. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.

3. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services (CPS) worker shall make and record in writing in the ~~investigative narrative~~ state automated system the following

contacts and observations. When any of these contacts or observations is not made, the CPS worker shall record in writing ~~in the investigative narrative~~ why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child. All interviews with alleged victim children must be audio tape recorded except when the child protective services worker determines that:

a. The child's safety may be endangered by audio taping;

b. The age and/or developmental capacity of the child makes audio taping impractical;

c. A child refuses to participate in the interview if audio taping occurs; or

d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that audio taping is not appropriate.

In the case of an interview conducted with a nonverbal child where none of the above exceptions apply, it is appropriate to audio tape record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision not to audio tape record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an audio recording is unavailable due to equipment failure or other cause.

2. The child protective services (CPS) worker shall conduct a face-to-face interview with the alleged abuser and/or neglector.

a. The CPS worker shall inform the alleged abuser and/or neglector of his right to tape record any communication pursuant to § [~~63.1-248.6:2~~ 63.2-1516] of the Code of Virginia.

b. The local department shall provide the necessary equipment in order to tape record the interview and retain a copy of the tape for the record.

3. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.

4. The child protective services worker shall observe the environment where the alleged victim child lives.

5. The child protective services worker shall observe the site where the alleged incident took place.

6. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

22 VAC 40-705-90. Family assessment and investigative protocol.

A. *In conducting a family assessment [or an investigation], the child protective services (CPS) worker may enter the home if permitted to enter by [a an adult] person who resides in the home. [In conducting an investigation, the child protective services (CPS) worker may enter the home if permitted to enter by a person who resides in the home after advising the person who resides in the home that he may refuse to permit entry.]* Only in those instances where the CPS worker has probable cause to believe that the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a law-enforcement officer, may a CPS worker enter the home without permission. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for the decision to enter the house without permission.

B. *Before conducting a family assessment or investigation, the child protective services worker shall explain the responsibilities and authorities of CPS so that the parent or other caretaker can be made aware of the possible benefits and consequences of completing the family assessment or investigation. The explanation must be provided orally and in writing.*

~~B.~~ C. *The child protective services worker may transport a child ~~with~~ without parental consent, only when the local department has assumed custody of that child by virtue of 72-96-hour removal authority pursuant to § ~~63.1-248.9~~ 63.2-1517] of the Code of Virginia, by an emergency removal court order pursuant to § 16.1-251 of the Code of Virginia, or by a preliminary removal order pursuant to § 16.1-252 of the Code of Virginia.*

~~C.~~ D. *When a child protective services worker has reason to believe that the ~~alleged abuser and/or neglector~~ caretaker in a valid report of child abuse or neglect is abusing substances and such behavior may be related to the matter being investigated or assessed, the worker may request that person to consent to substance abuse screening or may petition the court to order such screening.*

1. Local departments must develop guidelines for such screening.
2. Guidelines may include child protective services worker administration of urine screening.

[22 VAC 40-705-100. Judicial proceedings.

A. *A child protective services worker may petition for removal pursuant to §§ 16.1-251 and 16.1-252 of the Code of Virginia.*

B. *A child protective services worker may petition for a preliminary protective order pursuant to § 16.1-253 of the Code of Virginia.*

C. *Whenever the local department assumes custody of a child under subsection A or B of this section, a child protective services worker shall petition the court for parental child support.*

D. *Any person who participates in a judicial proceeding resulting from making a child protective services report or complaint or from taking a child into custody pursuant to §§ ~~63.1-248.3, 63.1-248.4, and 63.1-248.9~~ 63.2-1509, 63.2-1510 and 63.2-1517 of the Code of Virginia shall be immune from any civil or criminal liability in connection therewith unless it is proven that such person acted in bad faith or with malicious intent pursuant to § ~~63.1-248.5~~ 63.2-1512 of the Code of Virginia.]*

22 VAC 40-705-110. Assessment Assessments in family assessments and investigations.

A. *In both family assessments and investigations the child protective services worker shall conduct an initial assessment of the child's circumstances and threat of danger or harm, and where appropriate shall make a safety plan to provide for the protection of the child.*

~~B.~~ *The child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.*

~~C.~~ B. *In all founded cases and in completed family assessments, the child protective services worker shall make a risk assessment to determine whether or not the child is in jeopardy of future abuse and/or neglect and whether or not intervention is necessary to protect the child.*

C. *In investigations, the child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.*

22 VAC 40-705-120. Complete the family assessment or investigation.

A. *The local department shall promptly notify the alleged abuser and/or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the family assessment or investigation pursuant to § ~~63.1-248.6 E 7~~ [~~63.1-248.6:02 A 3~~ 63.2-1506 B 3] or subdivision 5 of § [~~63.1-248.6:04~~ 63.2-1505] of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.*

B. *At the completion of the family assessment, the subject of the report shall be notified orally and in writing of the results of the assessment.*

C. *The subject of the report shall be notified immediately if during the course of completing the family assessment the situation is reassessed and determined to meet the requirements, as specified in § [~~63.1-248.6:02 B~~ 63.2-1506 B] of the Code of Virginia, to be investigated.*

~~B.~~ D. *When completing an investigation, prior to rendering a founded disposition concerning a complaint of child abuse and/or neglect, the local department shall provide [an opportunity for] the alleged abuser and/or neglector [with written notice of the options available to him pursuant to subdivisions] ~~C [E-1 and] G [E-2 of this section to have a local consultation with the local director or his designee to hear and refute the evidence supporting a founded disposition]~~. Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same*

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victim child as investigated by the local department, [~~a predispositional conference is not an option sharing the evidence prior to the court hearing is prohibited~~].

[1. The alleged abuser and/or neglector shall be afforded the opportunity to informally present testimony, witnesses or documentation to representatives of the local department.

2. The local department shall consider any evidence presented by the alleged abuser and/or neglector prior to rendering a disposition.]

~~C. E. [Otherwise, an alleged abuser and/or neglector involved in an investigation may elect to proceed under either subdivision 1 or 2 of this subsection. If the alleged abuser and/or neglector does not advise the local department of his decision within 10 days of receipt of the written notice, he will be deemed to have elected to proceed under subdivision 2 of this subsection.~~

~~1. Predispositional consultation. The purpose of the predispositional consultation shall be to allow a person suspected of committing child abuse and/or neglect the opportunity to meet with the local department conducting the investigation and discuss the local department's investigation findings prior to the disposition.~~

~~a. In order to participate in a predispositional consultation, the alleged abuser and/or neglector must agree to waive the 45-60 day time frame to conduct the investigation, not to exceed an additional 30 working days. Further, the alleged abuser and/or neglector must agree to waive his right to a local conference pursuant to § 63.1-248.6:1 of the Code of Virginia.~~

~~b. The alleged abuser and/or neglector shall be afforded the opportunity to informally present testimony, witnesses or documentation to representatives of the local department.~~

~~c. The local department shall consider any evidence presented by the alleged abuser and/or neglector prior to rendering a disposition.~~

~~d. Should the local department render a founded disposition following a predispositional consultation, the local department shall notify the abuser and/or neglector, in writing, of that person's right to appeal the local department's finding to the Commissioner of the Virginia Department of Social Services pursuant to 22 VAC 40-705-140 and § 63.1-248.6:1 A of the Code of Virginia.~~

~~2.] Local conference.~~

~~a. [If the alleged abuser and/or neglector elects not to participate in a predispositional consultation or does not advise the local department of his decision within 10 days of receiving written notification of the local department's findings pursuant to subsection B-D of this section, he will be deemed to have elected to proceed under this subdivision 2.]~~

If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment

of the determination and the local department's related records pursuant to § [~~63.1-248.6:1 A~~ 63.2-1526 A] of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector.

b. The local conference shall be conducted in accordance with 22 VAC 40-705-190.

22 VAC 40-705-130. Report findings family assessment or investigation conclusions.

A. Pursuant to § [~~63.1-248.5:4~~ 63.2-1514] of the Code of Virginia, the local department shall report all unfounded case dispositions to the child abuse and neglect information system (CANIS) when disposition is made.

1. The department shall retain unfounded complaints and/or reports in CANIS *the child abuse and neglect information system* to provide local departments with information regarding prior investigations.

2. This record shall be kept separate from the Central Registry and accessible only to the department and to local departments.

3. The record of the unfounded case *or family assessment* shall be purged one year after the date of the complaint or report if there are no subsequent founded or unfounded complaints and/or reports regarding the individual against whom allegations of abuse and/or neglect were made or regarding the same child in that one year.

4. If the individual against whom allegations of abuse and/or neglect were made or if the same child is involved in subsequent complaints and/or reports, the information from all complaints and/or reports shall be maintained until the last purge date has been reached.

5. The individual against whom allegations of abuse and/or neglect were made may request in writing that the local department retain the record for an additional period of up to two years.

6. The individual against whom allegations of abuse and/or neglect were made may request in writing that both the local department and the department shall immediately purge the record after a court rules that the report was made in bad faith or with malicious intent pursuant to § [~~63.1-248.5:4~~ 63.2-1514] of the Code of Virginia.

B. The local department shall report all founded case dispositions to the child abuse and neglect information system for inclusion in the Central Registry pursuant to *subdivision 5 of* § 63.1-248.6 ~~E-7~~ [~~63.1-248.6:01~~ 63.2-1505] of the Code of Virginia and 22 VAC 40-700-30. Identifying information about the abuser and/or neglector and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint. The identifying information shall be retained based on the determined level of severity of the abuse or neglect pursuant to the regulation dealing with retention in the Central Registry, 22 VAC 40-700-30.

22 VAC 40-705-140. Notification of findings.

A. Upon completion of the investigation the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse and/or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local department retain the record for up to an additional two years.

a. If the individual against whom allegations of abuse and/or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.

b. The local worker shall notify the individual against whom allegations of abuse and/or neglect were made of the procedures set forth in § [63.1-248.5:1 63.2-1514] of the Code of Virginia.

c. When an unfounded investigation involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case pursuant to § 32.1-283.1 D of the Code of Virginia.

~~[2. Pursuant to 22 VAC 40-705-120 and 22 VAC 40-705-190, when a predispositional consultation results with the local department rendering a founded disposition of abuse and/or neglect, the child protective services worker shall notify the abuser and/or neglecter by letter, with a copy included in the case record. The letter shall include:~~

~~a. A clear statement that they are the abuser and/or neglecter;~~

~~b. The type of abuse and/or neglect;~~

~~c. The disposition, level and retention time;~~

~~d. The name of the victim child or children; and~~

~~e. A statement informing the abuser of the right to appeal to the commissioner of the department and to have access to the case record.~~

~~3. Pursuant to 22 VAC 40-705-120 and 22 VAC 40-705-190, if a predispositional consultation did not occur and the local department renders a founded disposition of abuse and/or neglect, the child protective services worker shall notify the abuser and/or neglecter by letter, with a copy included in the case record. The letter shall include:~~

~~a. A clear statement that they are the abuser and/or neglecter;~~

~~b. The type of abuse and/or neglect;~~

~~c. The disposition, level and retention time;~~

~~d. The name of the victim child or children; and~~

~~e. A statement informing the abuser and/or neglecter of his right to request the local department for a local conference and to have access to the case record.~~

4. 2.] When the abuser and/or neglecter in a founded complaint is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

~~[5. 3.] No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment.~~

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse and/or neglect were made, that the complaint involving their child was determined to be unfounded and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglecter, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

3. *When the founded case of abuse or neglect does not name the parents or guardians of the child as the abuser or neglecter and when the abuse or neglect occurred in a licensed or unlicensed day care center, a regulated family day home, a private or public school, a child-caring institution or a residential facility for juveniles, the parent or guardian must be consulted and must give permission for the child's name to be entered into the central registry pursuant to § [63.1-248.8 63.2-1515] of the Code of Virginia.*

D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary

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action was taken. The local worker shall file a copy in the case record.

3. *When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.*

E. Family Advocacy Program. When a founded disposition is made, the child protective services worker shall notify the Family Advocacy Program representative in writing as set forth in 22 VAC 40-720-20.

22 VAC 40-705-150. Services.

A. ~~When abuse or neglect is found~~ *At the completion of a family assessment or investigation, the local department shall consult with the family to provide or arrange for necessary protective and rehabilitative services to be provided to the child and his family [to the extent funding is available] pursuant to subdivision [3 A 2] of § 63.1-248.6 E-3 [63.1-248.6-01 or 63.1-248.6-02 A 63.2-1505 or § 63.2-1506] of the Code of Virginia.*

B. *Families may decline services offered as a result of family assessment. If the family declines services, the case shall be closed unless there is an existing court order or the local department determines that sufficient cause exists due to threat of harm or actual harm to the child to redetermine the case as one that needs to be investigated or brought to the attention of the court. In no instance shall these actions be taken solely because the family declines services.*

C. *At the completion of a family assessment or investigation, local departments of social services may petition the court for services deemed necessary.*

~~B.~~ D. Protective services also includes preventive services to children about whom no formal complaint of abuse or neglect has been made, but for whom potential harm or threat of harm exists, to be consistent with §§ 16.1-251, 16.1-252, 16.1-279.1, [~~63.1-248.6 63.2-1503~~] F [~~K J~~], and [~~63.1-248.7 63.2-1502~~] of the Code of Virginia.

~~G.~~ E. Local departments shall support the establishment and functioning of multidisciplinary teams pursuant to § [~~63.1-248.6 63.2-1503~~] F [~~K J~~] of the Code of Virginia.

~~D.~~ F. The local department must use reasonable diligence to locate any child for whom a founded disposition of abuse or neglect has been made and a child protective services case has been opened pursuant to § [~~63.1-248.6 63.2-1503~~] E-10, 41 and/or 42 [~~G~~(#) F] of the Code of Virginia. The local department shall document its attempts to locate the child and family.

~~E.~~ G. When an abused or neglected child and persons who are the subject of an open child abuse services case have relocated out of the jurisdiction of the local department, the local department shall notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth of Virginia, and forward to such agency relevant portions of the case records pursuant to § [~~63.1-248.6 63.2-1503~~] E-11 [~~H G~~] of the Code of Virginia.

~~F.~~ H. The receiving local department shall arrange necessary protective and rehabilitative services pursuant to § [~~63.1-248.6 H 63.2-1503 G~~] of the Code of Virginia.

22 VAC 40-705-160. Releasing information.

A. In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

1. Report to attorney for the Commonwealth and law enforcement pursuant to § [~~63.1-248.6 E 63.2-1503 D~~] 5 of the Code of Virginia.

2. Report to the medical examiner's office pursuant to §§ 32.1-283.1 C and [~~63.1-248.6 63.2-1503 E~~] E-9 F of the Code of Virginia.

3. If a court mandates disclosure of information from a child abuse and neglect case record, the local department must comply with the request. The local department may challenge a court action for the disclosure of the case record or any contents thereof. Upon exhausting legal recourse, the local department shall comply with the court order.

4. When a ~~disposition~~ *family assessment or investigation is made completed*, the child protective services worker shall notify the complainant/reporter that either a complaint/report is unfounded or that necessary action is being taken.

5. Any individual, including an individual against whom allegations of child abuse and/or neglect were made, may exercise his Privacy Protection Act (§ ~~2-1-377 2.2-3800~~ et seq. of the Code of Virginia) rights to access personal information related to himself which is contained in the case record including, with the individual's notarized consent, a search of the Central Registry pursuant to § ~~2-1-342 2.2-3704~~ of the Code of Virginia.

6. When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.

7. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

8. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), the department shall develop guidelines to allow for public disclosure in instances of child fatality or near fatality.

9. An individual's right to access information under the Privacy Protection Act is stayed during criminal prosecution pursuant to § ~~2-1-384-7 2.2-3802~~ of the Code of Virginia.

10. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22 VAC 40-720-20.

11. Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § [63.1-274.6 63.2-103] of the Code of Virginia.

12. The local department shall release child protective services information to a court appointed special advocate pursuant to § 9-173.42 9.1-156 A of the Code of Virginia.

13. The local department shall release child protective services information to a court-appointed guardian ad litem pursuant to § 16.1-266 E of the Code of Virginia.

B. The local department may use discretion in disclosing or releasing child protective services case record information, investigative and on-going services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § [63.1-209 A 63.2-105] of the Code of Virginia.

C. The local department shall not release the identity of persons reporting incidents of child abuse or neglect, unless court ordered, in accordance with § [63.1-248.6:1 63.2-1526] of the Code of Virginia, 42 USC § 5101 et seq., and federal regulations (45 CFR Part 1340).

D. Prior to disclosing information to any individuals or organizations, and to be consistent with § [63.1-209 63.2-104] of the Code of Virginia, pursuant to § [63.1-248 63.2-1500] of the Code of Virginia, the local department must be satisfied that:

1. The information will be used only for the purpose for which it is made available;
2. Such purpose shall be related to the goal of child protective or rehabilitative services; and
3. The confidential character of the information will be preserved to the greatest extent possible.

22 VAC 40-705-180. Training.

A. The department shall implement a uniform training plan for child protective services workers. The plan shall establish minimum standards for all child protective services workers in the Commonwealth of Virginia.

B. Workers shall complete skills and policy training specific to child abuse and neglect investigations within the first year of their employment.

~~[C. In order to comply with § 63.1-248.2:1, all local departments must ensure that staff involved in the differential response system attend the training provided by the department. An agency shall become designated as a CPS differential response agency by the department after staff have received the training.]~~

22 VAC 40-705-190. Appeals

A. Appeal is the process by which the abuser and/or neglector may request amendment of the record when the investigation into the complaint has resulted in a founded disposition of child abuse and/or neglect.

~~B. [If the alleged abuser and/or neglector elects not to participate in a predispositional consultation or does not advise the local department of his decision within 10 days of receiving written notification of the local department's findings pursuant to 22 VAC 40-705-120 B, he will be deemed to have elected to proceed under 22 VAC 40-705-120 C-2.]~~

If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records, pursuant to § [63.1-248.6:1 A 63.2-1526 A] of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector. The local department shall notify the child abuse and neglect information system (CANIS) that an appeal is pending.

C. Whenever an appeal is requested and a criminal charge is also filed against the appellant for the same conduct involving the same victim child as investigated by the local department, the appeal process shall be stayed until the criminal prosecution in circuit court is completed pursuant to § [63.1-248.6:1 C 63.2-1526 C] of the Code of Virginia. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation pursuant to § [63.1-248.6:1 C 63.2-1526 C] of the Code of Virginia.

D. The local department shall conduct an informal, local conference and render a decision on the appellant's request to amend the record within 45 days of receiving the request. If the local department either refuses the appellant's request for amendment of the record as a result of the local conference, or if the local department fails to act within 45 days of receiving such request, the appellant may, within 30 days thereafter and in writing, request the commissioner for an administrative hearing pursuant to § [63.1-248.6:1 A 63.2-1526 A] of the Code of Virginia.

E. The appellant may request, in writing, an extension of the 45-day requirement for a specified period of time, not to exceed an additional 60 days. When there is an extension period, the 30-day time frame to request an administrative hearing from the Commissioner of the Department of Social Services shall begin on the termination of the extension period pursuant to § [63.1-248.6:1 A 63.2-1526 A] of the Code of Virginia.

F. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In case of any information withheld, the appellant shall be advised of the

Final Regulations

general nature of the information and the reasons, of privacy or otherwise, that it is being withheld, pursuant to § [~~63.1-248.6:4~~ 63.2-1526] A of the Code of Virginia.

G. The director of the local department, or a designee of the director, shall preside over the local conference. With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the local conference pursuant to § [~~63.1-248.6:4~~ 63.2-1526] A of the Code of Virginia.

1. The appellant may be represented by counsel pursuant to § [~~63.1-248.6:4~~ 63.2-1526] A of the Code of Virginia.

2. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof pursuant to § [~~63.1-248.6:4~~ 63.2-1526] A of the Code of Virginia.

3. The director of the local department, or a designee of the director, shall notify the appellant, in writing, of the results of the local conference within 45 days of receipt of the written request from the appellant unless the time frame has been extended as described in subsection E of this section. The director of the local department, or the designee of the director, shall have the authority to sustain, amend, or reverse the local department's findings. Notification of the results of the local conference shall be mailed, certified with return receipt, to the appellant. The local department shall notify the child abuse and neglect information system (~~CANIS~~) of the results of the local conference.

H. If the appellant is unsatisfied with the results of the local conference, the appellant may, within 30 days of receiving notice of the results of the local conference, submit a written request to the commissioner for an administrative hearing pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

1. The commissioner shall designate a member of his staff to conduct the proceeding pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

2. A hearing officer shall schedule a hearing date within 45 days of the receipt of the appeal request unless there are delays due to subpoena requests, depositions or scheduling problems.

3. After a party's written motion and showing good cause, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing. The victim child and that child's siblings shall not be subpoenaed, deposed or required to testify, pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

4. Upon petition, the juvenile and domestic relations district court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

5. Upon providing reasonable notice to the other party and the hearing officer, a party may, at his own expense,

depose a nonparty and submit that deposition at, or prior to, the hearing. The victim child and the child's siblings shall not be deposed. The hearing officer is authorized to determine the number of depositions that will be allowed pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

6. The local department shall provide the hearing officer a copy of the investigation record prior to the administrative hearing. By making a written request to the local department, the appellant may obtain a copy of the investigation record. The appellant shall be informed of the procedure by which information will be made available or withheld from him.

In any case of information withheld, the appellant shall be advised of the general nature of the information and the reasons that it is being withheld pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

7. The appellant and the local department may be represented by counsel at the administrative hearing.

8. The hearing officer shall administer an oath or affirmation to all parties and witnesses planning to testify at the hearing pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

9. The local department shall have the burden to show that the preponderance of the evidence supports the founded disposition. The local department shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

10. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

11. The hearing officer may allow either party to submit new or additional evidence at the administrative hearing if it is relevant to the matter being appealed.

12. The hearing officer shall not be bound by the strict rules of evidence. However, the hearing officer shall only consider that evidence, presented by either party, which is substantially credible or reliable.

13. The hearing officer may allow the record to remain open for a specified period of time, not to exceed 14 days, to allow either party to submit additional evidence unavailable for the administrative hearing.

14. In the event that new or additional evidence is presented at the administrative hearing, the hearing officer may remand the case to the local department for reconsideration of the findings. If the local department fails to act within 14 days or fails to amend the findings to the satisfaction of the appellant, then the hearing officer shall render a decision, pursuant to § [~~63.1-248.6:4~~ 63.2-1526] B of the Code of Virginia.

I. Within 60 days of the close of receiving evidence, the hearing officer shall render a written decision. The hearing officer shall have the authority to sustain, amend, or reverse the local department's findings. The written decision of the hearing officer shall state the findings of fact, conclusions

based on regulation and policy, and the final disposition. The decision will be sent to the appellant by certified mail, return receipt requested. Copies of the decision shall be mailed to the appellant's counsel, the local department and the local department's counsel. The hearing officer shall notify the child abuse and neglect information system (~~CANIS~~) of the hearing decision. The local department shall notify all other prior recipients of the record of the findings of the hearing officer's decision.

J. The hearing officer shall notify the appellant of the appellant's further right of review in circuit court in the event that the appellant is not satisfied with the written decision of the hearing officer. Appeals are governed by Part 2A of the Rules of the Supreme Court of Virginia. The local department shall have no further right of review pursuant to § [~~63.1-248.6:1~~ 63.2-1526] B of the Code of Virginia.

K. In the event that the hearing officer's decision is appealed to circuit court, the department shall prepare a transcript for that proceeding. That transcript or narrative of the evidence shall be provided to the circuit court along with the complete hearing record. If a court reporter was hired by the appellant, the court reporter shall prepare the transcript and provide the court with a transcript.

VA.R. Doc. No. R02-54; Filed November 5, 2002, 10:17 a.m.



LEGISLATIVE OBJECTIONS TO REGULATIONS

JOINT COMMISSION ON ADMINISTRATIVE RULES

October 31, 2002

Robert Stroube, M.D., Commissioner of Health
Virginia Department of Health
1500 E. Main Street, Room 214
Richmond, Virginia 23219

Re: Proposed Regulation 12 VAC 5-610, Sewage Handling
and Disposal

Dear Commissioner Stroube:

Please accept this letter on behalf of the Joint Commission on Administrative Rules as the filing of an objection to the above referenced proposed regulation pursuant to the Commission's powers provided in § 2.2-4014 and § 30-73.3 of the Code of Virginia. Since this regulation has not been formally adopted, it cannot be suspended at this time. However, the Commission has expressed its disapproval by a unanimous vote.

The Commission held a meeting October 30, 2002 and received testimony regarding the proposed mass sewage disposal system regulations from both the Department of Health and various developers from around the Commonwealth. The testimony presented, in addition to the many letters in opposition received by the Commission, indicates a far-reaching economic impact that will be burdensome and possibly prohibitive not just to builders and developers, but in the siting of schools and universities, and to businesses and industries that may want to locate in parts of Virginia that are sorely in need of economic development.

The Commission was not presented any evidence that delineates an immediate health threat to the citizens of the Commonwealth. The fact that the vast majority of the existing systems perform as designed under the old regulations and/or installed when no regulations existed seems to go counter to the need for regulation. There was evidence to suggest when there was a system failure that maintenance of the system was more often at fault than system design. The fact that the vast majority of systems, when properly maintained, perform as designed indicates that the regulation is unnecessary given the lack of evidence of a health risk.

Thank you for your attention to this matter.

With kindest regards, I am

Sincerely,

/s/ Frank W. Wagner
Chairman

cc: The Honorable Mark Warner, Governor of Virginia
Members, Joint Commission on Administrative Rules
Ms. Jane Chaffin, Registrar of Regulations
Mr. Donald J. Alexander, Director, Div. of Onsite Sewage and
Water Services

VA.R. Doc. No. R01-192; Filed November 6, 2002, 12:14 p.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Request for Citizen Nominations of Surface Waters for Water Quality Monitoring by the Virginia Department of Environmental Quality

In accordance with § 62.1-44.19:5 F of the Code of Virginia, Water Quality Monitoring Information and Restoration Act, the Virginia Department of Environmental Quality (DEQ) has developed guidance for requests from the public regarding specific segments that can be nominated for consideration to be included in the Virginia Department of Environmental Quality (DEQ's) annual Water Quality Monitoring Plan. Any citizen of the Commonwealth who wishes to nominate a water body or stream segment for inclusion in DEQ's Water Quality Monitoring Plan should refer to the guidance for submitting requests. All nominations must be received by December 31, 2002, to be considered for the upcoming fiscal year. Copies of the guidance document and nomination form are available from Joyce Brooks, Virginia Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 698-4026 or (800) 592-5482, or by e-mail at jfbrooks@deq.state.va.us.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

Forms for Filing Material for Publication in *The Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in the Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: <http://register.state.va.us>

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS -
RR08
PETITION FOR RULEMAKING - RR13

CALENDAR OF EVENTS

Symbol Key

- † Indicates entries since last publication of the *Virginia Register*
♿ Location accessible to persons with disabilities
☎ Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

† **December 11, 2002 - 10 a.m.** -- Open Meeting
The Manor House, 9400 Charter Crossing, Mechanicsville, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to discuss matters requiring board action. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. The time of the meeting is subject to change. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the American 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

† **December 5, 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)

The Public Relations Committee will meet at 9 a.m. followed by a regular business meeting of the council at 10 a.m.. Public comments will be received at both meetings.

Contact: Marsha Mucha, Virginia Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia 23229, telephone (804) 662-9312, e-mail mmucha@vdh.state.va.us.

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

NOTE: EXTENSION OF PUBLIC COMMENT PERIOD
January 15, 2003 -- 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 Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-320. Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including the following: amending the regulation to (i) remove the currently named plants that are no longer considered globally rare and (ii) add those threatened or endangered plant and insect species that are considered rare both globally and in Virginia.

Statutory Authority: § 3.1-1025 of the Code of Virginia.

Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail ffulgham@vdacs.state.va.us.

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March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

NOTE: EXTENSION OF PUBLIC COMMENT PERIOD
January 15, 2003 -- 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 Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-360. Regulations for the Enforcement of the**

Virginia Commercial Feed Act. The purpose of the proposed action is to amend the current regulation to incorporate the changes made to the commercial feed industry standards by the Association of American Feed Control Officials in the last decade and statutory changes made to Virginia's Commercial Feed Law in 1994.

Statutory Authority: § 3.1-828.4 of the Code of Virginia.

Contact: J. Alan Rogers, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476, FAX (804) 371-1571 or e-mail jrogers@vdacs.state.va.us.

March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

December 9, 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 Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-440. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine.** The purpose of the proposed regulatory action is to amend the regulation to (i) establish the fixed date of July 1 as the official reporting and payment date for acreage assessment, (ii) reduce penalties assessed on farm operators for the late payment or nonpayment of fees from \$10 to \$5.00 per acre, and (iii) eliminate the mandate for destruction of the cotton crop for nonpayment of fees and assessments by farm operators.

Statutory Authority: § 3.1-188.23 of the Code of Virginia.

Contact: Frank M. Fulgham, Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793 or e-mail ffulgham@vdacs.state.va.us.

March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

December 9, 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 Agriculture and Consumer Services intends to **repeal** regulations entitled: **2 VAC 5-500. Rules and Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory** and **adopt** regulations entitled: **2 VAC 5-501. Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk.** The purpose of the proposed action is to (i) make the regulations applicable to the milk of goats, sheep, water buffalo, and other mammals if the milk or dairy products are intended for human consumption and

(ii) require permits for milk pickup trucks, milk transport tanks, laboratories, persons testing milk samples for pay purposes, persons collecting official milk samples in dairy plants, and milk tank truck cleaning facilities.

Statutory Authority: §§ 3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia.

Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail jbeers@vdacs.state.va.us.

March 13, 2003 - 10 a.m. -- Public Hearing
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

December 9, 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 Agriculture and Consumer Services intends to **repeal** regulations entitled: **2 VAC 5-530. Rules and Regulations Governing the Production, Handling and Processing of Milk for Manufacturing Purposes and Establishing Minimum Standards for Certain Dairy Products to be Used for Human Food** and **adopt** regulations entitled: **2 VAC 5-531. Regulations Governing Milk for Manufacturing Purposes.** The purpose of the proposed action is to adopt regulations consistent with the most recent USDA recommendations on milk for manufacturing purposes and regulate manufactured milk and milk products from goats, sheep, water buffalo and other noncow sources in the interest of public health and safety.

Statutory Authority: §§ 3.1-530.1 and 3.1-530.2 of the Code of Virginia.

Contact: John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, 1100 Bank St., Room 505, Richmond, VA 23219, telephone (804) 786-1453, FAX (804) 371-7792 or e-mail jbeers@vdacs.state.va.us.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Corn Board

† **December 11, 2002 - 9 a.m.** -- Open Meeting
Wallace Manor, 3821 North Courthouse Road, Providence Forge, Virginia. ♿


The board will hear and approve previous meeting minutes, review checkoff revenues, and the financial status resulting from sale of the 2002 Virginia corn crop. Reports will be heard from the chairman, board member representation to the U.S. Grains Council, the National Corn Growers Association, and the Virginia Corn Growers' Association. In addition, the nomination and election of 2003 officers will take place at this meeting. The board will entertain public comment at the conclusion of all other business for a period

Calendar of Events

not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phickman@vdacs.state.va.us.


Virginia Seed Potato Board

† **December 10, 2002 - 7:30 p.m.** -- Open Meeting
Eastern Shore Research Station, Research Drive, Painter, Virginia. 

A meeting to review and approve minutes of the last meeting, review regulations, and plan for the 2003 seed season. Other business items that may come before the board will be discussed. 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 J. W. Nottingham at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. W. Nottingham, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973, e-mail onleyva@shore.intercom.net.


Virginia Soybean Board

† **December 17, 2002 - 8 a.m.** -- Open Meeting
Tidewater Agricultural Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. 

The board will discuss checkoff revenues resulting from the sale of the 2002 Virginia soybean crop and approve previous meeting minutes. Drought conditions coupled with fairly low prices will be major topics of discussion. In addition, reports will be heard from the Chairman, Program Director, United Soybean Board representative, and the Virginia Soybean Association. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.


Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phickman@vdacs.state.va.us.

STATE AIR POLLUTION CONTROL BOARD


† **January 10, 2003 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia. 

A public meeting to receive comments on the notice of intended regulatory action to amend the regulations for the

control and abatement of air pollution to enlarge the scope of the Hampton Roads Emissions Control Area in order to include four previously exempt jurisdictions subject to the VOC emission standards for existing sources.

Contact: Kathleen R. Sands, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, (804) 698-4021/TTY , e-mail krsands@deq.state.va.us.


ALCOHOLIC BEVERAGE CONTROL BOARD

December 9, 2002 - 9 a.m. -- Open Meeting
December 23, 2002 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting to discuss reports and activities from staff members and other board business.

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.


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

December 11, 2002 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 


A meeting to conduct board business.

Contact: Mark N. Courtney, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail apels@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

December 6, 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 

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **December 11, 2002 - 9:30 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia.

January 31, 2003 - 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 Audiology and Speech-Language Pathology intends to amend regulations entitled: **18 VAC 30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology.** The purpose of the amended regulation is to revise certain prerequisites for licensure that may be unnecessarily restrictive and adopt requirements that are reasonable and essential to protect the public health, safety and welfare. The intent of the changes is to eliminate barriers to licensure, such as the requirement that an applicant who passed the qualifying examination more than three years ago be engaged in active practice for the 24 months immediately preceding application. The amendments will also update the unprofessional conduct section to ensure that a practitioner can use electronic communication in the follow-up with a patient or another practitioner.

Statutory Authority: § 54.1-2400 and Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until January 31, 2003, to Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 W. Broad St., Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Statewide Rehabilitation Council for the Blind

December 7, 2002 - 10 a.m. -- Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting to advise the department for the blind and vision impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation 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.

BOARD FOR BRANCH PILOTS

† **December 9, 2002 - 9 a.m.** -- Open Meeting
Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia.

A meeting to conduct examinations renewals.

Contact: Mark N. Courtney, Assistant Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY, e-mail courtney@dpor.state.va.us.

† **December 16, 2002 - 9:30 a.m.** -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

A meeting to conduct board business.

Contact: Mark N. Courtney, Assistant Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY, e-mail courtney@dpor.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 9, 2002 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Conference Room C, Main Level, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. The board will consider approval of required amendments to their Public Participation Guidelines, 9 VAC 10-10, approval of the guidance document entitled "Agriculture: Soil and Water Quality Conservation Assessment," and will discuss other policy related issues. Public comment will be received.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY, e-mail celliott@cblad.state.va.us.

COMPENSATION BOARD


† **December 17, 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.


Calendar of Events

DEPARTMENT OF CONSERVATION AND RECREATION

† **December 10, 2002 - 7 p.m.** -- Open Meeting
10 West First Street, North Big Stone Gap, Virginia.  (Interpreter for the deaf provided upon request)

The state park master planning process will be explained, and public input will be received on the draft museum purpose statement and draft goals and objectives. Also public input will be sought on potential future development, improvements and programming for the museum.


Contact: Janet H. Blevins, Park Manager, Department of Conservation and Recreation, 10 W. 1st St., North Big Stone Gap, VA 24219, telephone (276) 523-1322, FAX (276) 523-6616, e-mail jblevins@dcr.state.va.us.

† **December 11, 2002 - 9:30 a.m.** -- Open Meeting
10 West First Street, North Big Stone Gap, Virginia.  (Interpreter for the deaf provided upon request)

The third meeting of the Southwest Virginia Museum Historical State Park Master Plan Advisory Committee. The purpose of the meeting will be to discuss potential park developments and improvements to be included in the park master plan.

Contact: Janet H. Blevins, Park Manager, Department of Conservation and Recreation, 10 W. 1st St., North Big Stone Gap, VA 23219, telephone (276) 523-1322, FAX (276) 523-6616, e-mail jblevins@dcr.state.va.us.


Falls of the James Scenic River Advisory Board

December 5, 2002 - Noon -- Open Meeting
Richmond City Hall, 900 East Broad Street, 5th Floor Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A discussion of river issues.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, e-mail rgibbons@dcr.state.va.us.


Virginia Soil and Water Conservation Board

December 11, 2002 - 9:30 a.m. -- Open Meeting
Hotel Roanoke, Roanoke, Virginia.  (Interpreter for the deaf provided upon request)

A general business meeting and joint meeting with the Virginia Association of Soil and Water Conservation Districts Board of Directors.

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.


Virginia State Parks Foundation Board of Trustees

† **December 16, 2002 - 10 a.m.** -- Open Meeting
Department of Conservation and Recreation, 203 Governor Street, Suite 302, 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.


BOARD FOR CONTRACTORS

December 4, 2002 - 9 a.m. -- Open Meeting
January 22, 2003 - 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 regularly scheduled meeting to address policy and procedural issues; review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session.

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 olsone@dpor.state.va.us.


BOARD OF CORRECTIONS

December 3, 2002 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

The following committees will meet:

10 a.m. - Liaison Committee
1 p.m. - Correctional Services Committee

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.

† **December 4, 2002 - 10 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. 

A meeting to discuss correctional matters that may be brought before the board. The Administration Committee will meet at 8:30 a.m.

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.

BOARD OF COUNSELING

December 6, 2002 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

The Special Conference Committee will convene for an informal conference to hear possible violations of the laws and regulations governing the practice of counseling. No public comment will be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7328, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail coun@dhp.state.va.us.

† **January 24, 2003 - 10 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 1, Richmond, Virginia.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to amend regulations entitled: **18 VAC 115-30. Regulations Governing the Certification of Substance Abuse Counselors and Assistants.** The purpose of the proposed action is to comply with House Bill 2095 (Chapter 460 of the 2001 Acts of the Assembly) to promulgate regulations for certification of substance abuse counselors and assistants. Two new sections of the Code of Virginia (§§ 54.1-3507.1 and 54.1-3507.2) require the board to establish in regulation a specific number of hours of substance abuse education and supervised experience for both levels of certification.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public comments may be submitted until January 31, 2003, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

CRIMINAL JUSTICE SERVICES BOARD

† **December 12, 2002 - 11 a.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House
Room D, Richmond, Virginia.

A general business meeting.

Contact: Christine Wiedemer, Administrative Staff Assistant to the Director, Department of Criminal Justice Services, Eighth St. Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8718, FAX (804) 371-8981, e-mail cwiedemer@dcjs.state.va.us.

Private Security Services Advisory Board.

† **December 3, 2002 - 10 a.m.** -- Open Meeting
Virginia State Police Training Academy, 7700 Midlothian
Turnpike, Room 317 Richmond, Virginia.

A general business meeting

Contact: Judith Kirkendall, Regulatory 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.

BOARD OF DENTISTRY

NOTE: CHANGE IN MEETING TIME

December 4, 2002 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

The board will adopt proposed regulations for anesthesia and other items pursuant to its periodic review, final regulations for a fee increase and for oral and maxillofacial surgeons. Other regulatory and disciplinary matters may be considered as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., 5th 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.

December 6, 2002 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

A panel of the board will meet to hold formal hearings. The meeting is open to the public, however, there will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail CEmma-Leigh@dhp.state.va.us.


December 6, 2002 - 2 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. ☎

The Special Conference Committee will meet to hold informal hearings. There will not be a public comment period.


Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail CEmma-Leigh@dhp.state.va.us.

Calendar of Events


DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

December 19, 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.


VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP


December 3, 2002 - 10:30 a.m. -- Open Meeting
Virginia Economic Development Partnership, 901 East Byrd Street, West Tower, 19th Floor, Richmond, Virginia. 


A meeting of the Board of Directors to focus on issues pertaining to the Virginia Economic Development Partnership.


Contact: Kimberly M. Ellett, Senior Executive Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218, telephone (804) 371-8108, FAX (804) 371-8112, e-mail kellett@yesvirginia.org.

BOARD OF EDUCATION

December 2, 2002 - 7 p.m. -- Public Hearing
Brosville Middle School, 195 Bulldog Lane, Auditorium, Danville, Virginia.  (Interpreter for the deaf provided upon request)


December 2, 2002 - 7 p.m. -- Public Hearing
Fairfax High School, 3500 Old Lee Highway, Auditorium, Fairfax, Virginia.  (Interpreter for the deaf provided upon request)

December 2, 2002 - 7 p.m. -- Public Hearing
Lafayette High School, 4460 Longhill Road, Lecture Hall, Williamsburg, Virginia.  (Interpreter for the deaf provided upon request)

December 2, 2002 - 7 p.m. -- Public Hearing
Marion High School, 848 Stage Street, Auditorium, Marion, Virginia.  (Interpreter for the deaf provided upon request)


A public hearing to receive comment on the proposed revisions to the Science SOL. Speakers will be limited to three minutes each. Persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

December 4, 2002 - 9 a.m. -- Open Meeting
NOTE: CHANGE IN MEETING LOCATION
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A working session of the Committee to Implement NCLB. Public comment will not be received. Persons requesting services of an interpreter for the deaf are asked to do so in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

† December 4, 2002 - 2 p.m. -- Open Meeting
Video Conference, General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia; Southwest Virginia Higher Education Center, 15856 Porterfield Highway, Abingdon, Virginia.  (Interpreter for the deaf provided upon request)


To discuss the First Review of Measurement of Academic Progress Under the No Child Left Behind Act Provisions for Adequate Yearly Progress. The public is welcome at each site. Public comment will be received. Persons requesting the services of an interpreter for the deaf should do so at least 72 hours in advance.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.

January 6, 2003 - 9 a.m. -- Open Meeting
† February 26, 2003 - 9 a.m. -- Open Meeting
Location to be announced.

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.

January 9, 2003 - 8:30 a.m. -- Open Meeting
January 10, 2003 - 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.

January 27, 2003 - 9 a.m. -- Open Meeting
Hilton Garden Inn, Richmond Innsbrook, 4050 Cox Road, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Advisory Board for Teacher Education and Licensure. Persons requesting the services of an interpreter for the deaf should do so at least 72 hours in advance. This will be a work session and public comment will not be received.

Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail mroberts@mail.vak12ed.edu.


LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

December 4, 2002 - 3 p.m. -- Open Meeting
Timbrook Public Safety Center, 231 East Piccadilly Street, Winchester, Virginia.

A regular meeting.

Contact: L. A. Miller, Fire and Rescue Chief, Local Emergency Planning Committee, Winchester Fire and Rescue Department, 231 E. Piccadilly St., Winchester, VA 22601, telephone (540) 662-2298.


DEPARTMENT OF ENVIRONMENTAL QUALITY

† **December 19, 2002 - 7 p.m.** -- Public Hearing
Department of Environmental Quality, South Central Regional Office, 7705 Timberlake Road, Lynchburg, Virginia. 

A public hearing to receive comments on the draft permit amendment that will establish a ground water monitoring plan and a variance for alternate concentration limits for the Falwell Industrial Landfill located south of Route 460 and north and east of the Falwell Airport. The comment period ends on January 20, 2003.


Contact: Larry Syverson, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4271, e-mail lwsyverson@deq.state.va.us.

VIRGINIA FIRE SERVICES BOARD

December 5, 2002 - 9 a.m. -- Open Meeting
Roanoke Valley Fire/EMS Training Center, 1220 Kessler Mill Road, Salem, Virginia.  (Interpreter for the deaf provided upon request)

Meetings of the following committees:
Fire Education and Training - 9 a.m.
Fire Prevention and Control - 9 a.m.
Administration and Policy - 10 minutes after conclusion of Fire Education and Training Committee
Finance - 10 minutes after conclusion of Fire Prevention and Control Committee and Administration and Policy Committees
The Fire Prevention and Control Committee will have a VFIRS and mini-grant work session.

Contact: Christy L. King, Clerk, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.

December 6, 2002 - 9 a.m. -- Open Meeting
Roanoke Valley Fire/EMS Training Center, 1220 Kessler Mill Road, Salem, Virginia.  (Interpreter for the deaf provided upon request)


Contact Christy King for details.

Contact: Christy L. King, Clerk, Virginia Fire Services Board, 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.


BOARD OF FUNERAL DIRECTORS AND EMBALMERS

December 3, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A general business meeting, including disciplinary and regulatory matters as may be presented 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, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.


CHARITABLE GAMING COMMISSION

December 4, 2002 - 10 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, First Floor, Conference Room E, Richmond, Virginia. 

A meeting to discuss standard agenda items.

Contact: Frances C. Jones, Administrative Staff Assistant, Charitable Gaming Commission, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-3014, FAX (804) 786-1079, e-mail jones@cgc.state.va.us.

GEORGE MASON UNIVERSITY


January 30, 2003 - 9 a.m. -- Open Meeting
George Mason University, Mason Hall, Lower Level, Fairfax, Virginia. 

Calendar of Events

A meeting of the Board of Visitors. Agenda to be announced.

Contact: Mary Roper, Secretary Pro Tem, George Mason University, MSN 3A1, 4400 University Dr., Fairfax, VA 22030, telephone (703) 993-8703, FAX (703) 993-8707, e-mail mroper@gmu.edu.

GOVERNOR'S COMMISSION ON EFFICIENCY AND EFFECTIVENESS

December 5, 2002 - 2 p.m. -- Public Hearing
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. 

A public hearing of the Governor's Commission on Efficiency and Effectiveness.

Contact: Kelly Dalch, Office of the Governor, State Capitol, 3rd Floor, Richmond, VA 23219, telephone (804) 786-2211.

STATE BOARD OF HEALTH

January 6, 2003 - 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 Health intends to amend regulations entitled: **12 VAC 5-585. Biosolids Use Regulations.** The purpose of the proposed action is to adopt regulations requiring the payment of fees for the land application of biosolids within local jurisdictions with adopted ordinances providing for such monitoring to ensure compliance with applicable laws and regulations.

Statutory Authority: §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia.

Contact: C.M. Sawyer, Division Director, Division of Wastewater Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755 or FAX (804) 786-5567.


February 3, 2003 - 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 Health intends to amend regulations entitled: **12 VAC 5-550. Regulations Governing Vital Records.** The purpose of the proposed action is to amend the regulations to ensure the accurate, uniform, efficient and confidential administration of Virginia's system for maintaining vital records.

Statutory Authority: §§ 32.1-12 and 32.1-250 of the Code of Virginia.

Contact: Deborah Little-Bowser, State Registrar of Regulations, Department of Health, 1601 Willow Lawn Dr., Richmond, VA 23220, telephone (804) 662-6600, FAX (804) 786-0648, or e-mail dlittle@vdh.state.va.us.


DEPARTMENT OF HEALTH

† **January 31, 2003 - 9 a.m.** -- Open Meeting
February 6, 2003 - 9 a.m. -- Open Meeting
Department of Health, Main Street Station, 1500 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. 

A general business and working meeting.

Contact: Rene Cabral-Daniels, Director, Office of Health Policy, Department of Health, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-3561.


DEPARTMENT OF HEALTH PROFESSIONS

December 12, 2002 - 9 a.m. -- Canceled
December 13, 2002 - 9 a.m. -- Open Meeting
† **February 21, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. 


A bimonthly meeting of the Intervention Program Committee for the Health Practitioners' Intervention Program.

Contact: Donna P. Whitney, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9424, FAX (804) 662-7358, e-mail donna.whitney@dhp.state.va.us.

BOARD FOR HEARING AID SPECIALISTS


† **December 9, 2002 - 8:30 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A general business meeting including adoption of Board for Hearing Aid Specialists Regulations as final regulations.


Contact: William H. Ferguson, II, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8575, FAX (804) 367-2474, (804) 367-9753/TTY , e-mail hearingaidspec@dpor.state.va.us.

DEPARTMENT OF HISTORIC RESOURCES

State Review Board and Historic Resources Board

December 4, 2002 - 10 a.m. -- Open Meeting
Lee School Lofts (formerly Robert E. Lee Elementary School), 3101 Kensington Avenue, Richmond, Virginia. 

A quarterly meeting to consider proposed nominations to the Virginia Landmarks Register and the National Register of Historic Places and to consider Register preliminary applications, state highway markers, and historic preservation easements.

Contact: Marc Wagner, Register Manager, Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, telephone (804) 367-2323, FAX (804) 367-2391, (804) 367-2386/TTY , e-mail mwagner@dhr.state.va.us.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† **December 10, 2002 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

January 31, 2003 - 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 Housing and Community Development intends to amend regulations entitled: **13 VAC 5-21. Virginia Certification Standards.** The purpose of the proposed action is to (i) add the following definitions: "certificate," "guidance document," "and "training"; (ii) delete the list of categories of BHCD certificates and the list of approved testing agencies and examinations; (iii) require the Department of Housing and Community Development to develop a training and certification guidance document that lists the approved testing agencies and examinations that meet nationally accepted standards for each type of certificate and the categories of board certificates; and (iv) establish circumstances and conditions under which a person may be issued a board provisional certificate.

Statutory Authority: § 36-137 of the Code of Virginia.

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) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

† **December 10, 2002 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

January 31, 2003 - 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 Housing and Community Development intends to amend regulations entitled: **13 VAC 5-31. Virginia Amusement Device Regulations.** The purpose of the proposed action is to (i) clarify that the provisions of the Uniform Statewide Building Code, including but not limited to all administrative procedures, shall apply in the administration and enforcement of this chapter and to amusement devices to the extent such provisions are not superseded by the provisions of this regulation and § 36-98.3 of the Code of Virginia; (ii) update the incorporated-by-reference standards to the latest editions of the American National Standards Institute (ANSI) for the regulation of passenger tramways and the American Society for Testing and Materials (ASTM) for the regulation of amusement devices; (iii) to regulate "go-karts" by the adoption of the new referenced standards; (iv) limit the permit fee charged by the local building and department to operate an amusement device to a "maximum of \$150 for one site" when the inspection for obtaining a certificate of inspection for that device is conducted by a private inspector; and (v) allow appeals to the State Building Code

Technical Review Board following a final determination by the local board of building code appeals.

Statutory Authority: § 36-98.3 of the Code of Virginia.

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) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

† **December 10, 2002 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

January 31, 2003 - 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 Housing and Community Development intends to amend regulations entitled: **13 VAC 5-51. Virginia Statewide Fire Prevention Code Regulations.** The major substantive amendments to this regulation proposed by the Board of Housing and Community Development are to: (1) update the referenced model codes and standards; (2) add that the official must notify the Department of Housing and Community Development (department) of the employment of assistants; (3) change from three years to one and a half years the time allowed for enforcement personnel to become certified; (4) add that officials and assistants may be held responsible for failure to discharge any duty required by law; (5) add that fire apparatus access roads be identified to the owner prior to the issuance of the building permit and (6) amend the permit fees of the State Fire Marshal's office for the storage, use, sale or manufacture of explosives or blasting agents, and for the display of fireworks on state-owned property; (7) add a fee for obtaining or renewing a background clearance card from the department; and (8) amend the fee for obtaining or renewing a blaster certificate from the department.

Statutory Authority: § 37-97 of the Code of Virginia.

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) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

† **December 10, 2002 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

January 31, 2003 - 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 Housing and Community Development intends to repeal regulations entitled: **13 VAC 5-61. Virginia Uniform Statewide Building Code Regulations** and adopt regulations entitled: **13 VAC 5-62. Virginia Uniform Statewide Building Code Regulations.**

Calendar of Events

The major substantive amendments to this regulation proposed by the Board of Housing and Community Development are to: (i) update the referenced model codes and standards; (ii) add that the USBC applies to amusement devices; (iii) add that officials and assistants may be held responsible for failure to discharge any duty required by law; (iv) add that the official must notify the Department of Housing and Community Development (department) of the employment of assistants; (v) change from three years to one and a half years the time allowed for a person to become certified; (vi) add that fire apparatus access road requirements be identified to the owner prior to the issuance of a building permit; (vii) add that when the fuel source is changed the chimney be certified safe; (viii) amend the time limits for certain reviews and issuance of building permits; and (ix) add annual testing of certain plumbing devices.

Statutory Authority: § 36-98 of the Code of Virginia.

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) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

† **December 10, 2002 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

January 31, 2003 - 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 Housing and Community Development intends to amend regulations entitled: **13 VAC 5-80. Virginia Standards for Individual and Regional Code Academies.** The purpose of the proposed action is to bring the Virginia Standards for Individual and Regional Code Academies into line with the other building- and fire-related regulations promulgated by the board. The only substantive change is the deletion of the maximum amount of levy funds that may be carried over to the next fiscal year for operation of the individual or regional, training academies.

Statutory Authority: § 36-137 of the Code of Virginia.

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) 371-7091, or e-mail scalhoun@dhcd.state.va.us.

† **December 10, 2002 - 10 a.m.** -- Public Hearing
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia.

January 31, 2003 - 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 Housing and Community

Development intends to amend regulations entitled: **13 VAC 5-91. Virginia Industrialized Building Safety Regulations.** The purpose of the proposed action is to update the construction model codes and standards to the same editions of the International Code Council (ICC) and National Fire Protection Association (NFPA) codes and standards being proposed for the Uniform Statewide Building Code (USBC), and to increase the registration seal fee for an industrialized building from \$50 to \$75 per seal.

Statutory Authority: § 36-73 of the Code of Virginia.

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) 371-7091, or e-mail scalhoun@dhcd.state.va.us.


VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

December 12, 2002 - Noon -- Open Meeting
The Library of Virginia, 800 East Broad Street, Conference Room A, Richmond, Virginia. 


Agenda will be determined by early December.

Contact: Will Prible, Assistant to the Director, Virginia Information Providers Network Authority, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-4583, FAX (804) 371-2795, e-mail wprible@vipnetboard.state.va.us.

JAMESTOWN-YORKTOWN FOUNDATION

December 12, 2002 - Noon -- Open Meeting
The Library of Virginia, 800 East Broad Street, Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A Jamestown 2007 Steering Committee meeting. Public comment will not be heard.

Contact: Laura W. Bailey, Executive Assistant to the Board, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4840, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-7236/TTY , e-mail lwbailey@jyf.state.va.us.

STATE BOARD OF JUVENILE JUSTICE

December 27, 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 Juvenile Justice intends to amend regulations entitled: **6 VAC 35-20. Regulations Governing the Certification Process.** The purpose of the proposed action is to govern the process for monitoring compliance with substantive standards by programs in Virginia's juvenile justice system. The process includes audits and unscheduled visits; administrative review of findings; an appeals process; and the issuance of a variance when a particular standard is inappropriate for a

given program. Revisions are sought to simplify the procedural steps in the process.

Statutory Authority: §§ 16.1-233, 16.1-234, 16.1-311, 16.1-312 and 66-10 of the Code of Virginia.

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 or e-mail carigndr@djj.state.va.us.

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

December 19, 2002 - 10 a.m. -- Open Meeting
Confederate Hills Recreation Building, 302 Lee Avenue, Highland Springs, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting of the council.

Contact: Beverly Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY, e-mail bgd@doli.state.va.us.

Safety and Health Codes Board

December 2, 2002 - 10 a.m. -- Open Meeting
State Corporation Commission, Tyler Building, 1300 East Main Street, Courtroom B, Second Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board.

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, (804) 786-2376/TTY, e-mail rlc@doli.state.va.us.

STATE LIBRARY BOARD

January 17, 2003 - 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

† **December 13, 2002 - 9 a.m.** -- Open Meeting
Longwood University, 201 High Street, The Stallard Board Room, Lancaster 215, Farmville, Virginia.

The following committees will meet:

9 a.m. - Audit Committee

9:30 a.m. - Academic and Student Affairs Committee

11:15 a.m. - University Advancement Committee

1:30 p.m. - Administration, Finance and Facilities Committee

Contact: Jeanne Hayden, Administrative Staff Assistant, Office of the President, Longwood University, 201 High St., Farmville, VA 23909, telephone (434) 395-2004.

† **December 14, 2002 - 9 a.m.** -- Open Meeting
Longwood University, 201 High Street, The Stallard Board Room, Lancaster 215, Farmville, Virginia.

A meeting of the Board of Visitors to conduct routine business.

Contact: Jeanne Hayden, Administrative Staff Assistant, Office of the President, Longwood University, 201 High St., Farmville, VA 23909, telephone (434) 395-2004.

MARINE RESOURCES COMMISSION

December 17, 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

December 10, 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.

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.

Calendar of Events

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

December 9, 2002 - 1 p.m. -- Open Meeting
Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Board Room, Richmond, Virginia. ☎

A routine business of the Pharmacy Liaison Committee.

Contact: David Shepherd, R.Ph., Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2772, FAX (804) 225-4393, (800) 343-0634/TTY ☎, e-mail dshepherd@dmas.state.va.us.

BOARD OF MEDICINE

December 4, 2002 - 9:15 a.m. -- Open Meeting
December 5, 2002 - 9:15 a.m. -- Open Meeting
† **December 13, 2002 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

A panel of the board will convene a formal hearing 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, Department of Health Professions, 6603 W. Broad St., Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail peggy.sadler@dhp.state.va.us.

December 6, 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 Medicine intends to amend regulations entitled: **18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners.** The purpose of the proposed action is to establish requirements for 20 hours of continuing education per biennium from an approved sponsor or organization, provide for exemptions or extensions of time for compliance, maintenance and provision of documentation upon request, and evidence of continuing education for reinstatement or reactivation of a license. Other amendments are recommended for greater clarity for the regulated entities or for adaptability to computerized testing.

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

Public comments may be submitted until December 6, 2002, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

December 13, 2002 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A meeting of the Executive Committee will be held in open and closed session to review disciplinary files requiring administrative action, adopt amendments and approve for promulgation regulations as presented, interview applicants, and act on other issues that come before the board. The chairman will entertain public comments on agenda items for 15 minutes following adoption of the agenda.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail wharp@dhp.state.va.us.

† **December 13, 2002 - 8:15 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic.** The purpose of the proposed action is to clarify the board policies on (i) payment of late fees for failure to renew a license; (ii) advertising ethics; and (iii) utilization of acupuncture as a treatment modality. Amendments will also reduce the regulatory burden for applicants discharged from the military, for foreign medical graduates seeking a limited license, and for practitioners seeking to return to reinstate or reactive a license.

Statutory Authority: Chapter 29 of Title 54.1 of the Code of Virginia..

Public comments may be submitted until January 31, 2003, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

† **January 8, 2003 - 1:15 p.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

January 31, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited.** The purpose of the proposed action is to require persons training as a

radiologic technologist-limited to gain practical experience in the radiologic procedures for which they are seeking licensure, and provisions that are established for a traineeship similar to that currently in effect for the radiologic technologists. In addition, the scope of practice for the limited licensee is further specified to exclude certain procedures for which they are not trained or tested. Regulations for endorsement are eliminated since the grandfathering provisions expired in 1999; persons licensed in other states who are seeking licensure in Virginia are licensed based on passage of the national examination. Finally, the provisions for the implementation of continuing education requirements are added.

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

Public comments may be submitted until January 31, 2003, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

December 13, 2002 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room, Richmond, Virginia. 📍

A meeting of the Credentials Committee will be held in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items that may come before the committee. The credentials committee will receive public comments of those persons appearing on behalf of candidates.

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

December 11, 2002 - 9:30 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

† **December 12, 2002 - 9 a.m.** -- Open Meeting
2801 Plank Road, Fredericksburg, Virginia.

† **January 29, 2003 - 9:30 a.m.** -- Open Meeting
3315 Ordway Drive, Roanoke, 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, 6603 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 MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

December 20, 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 Mental Health, Mental Retardation, and Substance Abuse Services Board intends to repeal regulations entitled: **12 VAC 35-40. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children**, and adopt regulations entitled: **12 VAC 35-45. Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children**. The purpose of the proposed action is to repeal the existing regulation and promulgate a replacement regulation to eliminate provisions that are duplicative of Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10). The provisions will be updated to reflect current treatment practices in residential treatment facilities for children.

Statutory Authority: §§ 37.1-10, 37.1-179.1 and 37.1-182 of the Code of Virginia.

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) 786-1747, FAX (804) 692-0066 or e-mail dmhmrsas.state.va.us.

January 17, 2003 - 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 Mental Health, Mental Retardation and Substance Abuse Services Board intends to amend regulations entitled: **12 VAC 35-11. Public Participation Guidelines**. The purpose of the proposed action is to update and revise the regulations to be consistent with the current law.

Statutory Authority: §§ 2.2-4007 and 37.1-10 of the Code of Virginia.

Contact: Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 371-0092 or e-mail wbrown@dmhmrsas.state.va.us.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **December 3, 2002 - 10 a.m.** -- Open Meeting
Independence Resource Center, 815 Cherry Avenue, Charlottesville, Virginia. 📍 (Interpreter for the deaf provided upon request)

Calendar of Events

The fourth meeting of the Qualified Providers Issues Team of the Olmstead Task Force will meet in Charlottesville at the Independence Resource Center.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

December 10, 2002 - 2 p.m. -- Open Meeting
Virginia Department for the Deaf and Hard-of-Hearing, Ratcliffe Building, 1602 Rolling Hills Drive, 2nd Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Steering Committee of the Olmstead Task Force will hold its third meeting.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8977/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

† **December 12, 2002 - 10 a.m.** -- Open Meeting
Virginia Office for Protection and Advocacy, 202 North Ninth Street, 9th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The fourth meeting of the Accountability Issues Team of the Olmstead Task Force.

Contact: Fran M. Sadler, Administrative Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-8019, FAX (804) 786-9248, (804) 371-8944/TTY ☎, e-mail fsadler@dmhmrsas.state.va.us.

† **December 12, 2002 - 10:30 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, The Williamsburg Room, Room 133, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider adoption of proposed regulations for publication and public comment.

Contact: Marlene Butler, Executive Secretary to the State Board, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-7945, FAX (804) 371-2308, e-mail mbutler@dmhmrsas.state.va.us.

† **December 17, 2002 - 10 a.m.** -- Public Hearing
Jefferson Building, 1220 Bank Street, 8th Floor, Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Synar Annual Report for the Virginia Substance Abuse Prevention and Treatment Block Grant Application for federal fiscal year 2003. Copies of the report are available for review at the Office of Substance Abuse Services, Jefferson Building, 1220 Bank Street, Room 818, Richmond, Virginia, and at each community services board office. Comments may be made at the hearing or in writing no later than December 17, 2002, to the Office of the Commissioner, Department of

Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218. Any person wishing to make a presentation at the hearing should contact Sterling Deal. Copies of oral presentations should be filed at the time of the hearing.

Contact: Sterling Deal, Ph.D., Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 371-2148, FAX (804) 786-4320, (804) 371-8977/TTY ☎

STATE MILK COMMISSION

NOTE: CHANGE IN MEETING TIME AND LOCATION

December 11, 2002 - 10 a.m. -- Open Meeting
Compensation Board, 9th Street Office Building, 200 North 9th Street, 10th Floor, Conference Room, Richmond, 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. Anyone 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, Ninth 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 MOTOR VEHICLES

December 12, 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 dmvmrc@dmv.state.va.us.


VIRGINIA MUSEUM OF FINE ARTS

† **December 3, 2002 - 8 a.m.** -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Main Lobby Conference Room, Richmond, Virginia. ♿


A monthly meeting for staff to update 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.

VIRGINIA MUSEUM OF NATURAL HISTORY


† **December 3, 2002 - 10 a.m.** -- Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue,
Martinsville, Virginia. 


A meeting to discuss museum strategic plan issues.

Contact: Cindy Rorrer, Administrative Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY , e-mail crorrer@vmnh.org.


December 6, 2002 - 10 a.m. -- Open Meeting
NOTE: CHANGE IN MEETING LOCATION
Virginia Museum of Natural History, 1001 Douglas Avenue,
Martinsville, Virginia. 


A meeting of the Executive Committee to discuss the management and direction of the museum.

Contact: Cindy Rorrer, Administrative Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY , e-mail crorrer@vmnh.org.


† **December 7, 2002 - 9 a.m.** -- Open Meeting
Dutch Inn Restaurant, 2360 Virginia Avenue, Collinsville,
Virginia. 

A meeting to discuss Science and Learning Division issues.


Contact: Cindy Rorrer, Administrative Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY , e-mail crorrer@vmnh.org.

† **December 7, 2002 - 10 a.m.** -- Open Meeting
Henry County Administration Building, 3300 Kings Mountain
Road, Conference Room 2, Martinsville, Virginia. 


The meeting will include reports from all standing board committees.

Contact: Cindy Rorrer, Administrative Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY , e-mail crorrer@vmnh.org.

BOARD OF NURSING

January 27, 2003 - 9 a.m. -- Open Meeting
January 29, 2003 - 9 a.m. -- Open Meeting
January 30, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 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, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.state.va.us.

Special Conference Committee

December 4, 2002 - 9 a.m. -- Open Meeting
December 9, 2002 - 9 a.m. -- Open Meeting
December 10, 2002 - 9 a.m. -- Open Meeting
December 16, 2002 - 9 a.m. -- Open Meeting
December 18, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, 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, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail nursebd@dhp.state.va.us.

BOARD OF NURSING HOME ADMINISTRATORS

† **January 15, 2003 - 9:30 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
Richmond, Virginia.

January 31, 2003 - 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 allow additional hours of credit in an administrator in training program for persons with certain educational or professional credentials, to clarify certain sections and to enable a trainee to work in a practicum or administrator-in-training program outside of Virginia in a licensed nursing care facility under the supervision of a nursing home administrator licensed in that jurisdiction.

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

Public comments may be submitted until January 31, 2003, to Sandra K. Reen, Executive Director, Board of Nursing Home Administrators, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

OLD DOMINION UNIVERSITY

December 13, 2002 - 1:15 p.m. -- Open Meeting
Old Dominion University, Webb University Center, 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.

Calendar of Events

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.

VIRGINIA OUTDOORS FOUNDATION

December 5, 2002 - 9:30 a.m. -- Open Meeting
Monticello, 1329 Kenwood Farm, State Route 53, Jefferson Library, Charlottesville, Virginia. ☎

A regularly scheduled meeting of the Board of Trustees to accept conservation easements and to discuss the business of the foundation.

Contact: Tamara Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Richmond, VA 23219, telephone (804) 225-2147.

BOARD OF PHARMACY

December 3, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A general business meeting, including consideration of regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received during the first 15 minutes of the meeting.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY ☎, e-mail erussell@dhp.state.va.us.

December 12, 2002 - 9 a.m. -- Open Meeting

December 19, 2002 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

The Special Conference Committee will discuss disciplinary matter. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

POLYGRAPH EXAMINERS ADVISORY BOARD

† **December 10, 2002 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business.

Contact: Eric Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail polygraph@dpor.state.va.us.

BOARD OF PSYCHOLOGY

December 10, 2002 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☎

The Regulatory Committee will continue discussion regarding a petition for rulemaking on licensure of clinical psychologists. Other regulatory issues may be discussed as presented on the agenda. Public comment will be received at the beginning of the meeting. The full board will meet at 2 p.m. to consider disciplinary and regulatory matters as presented on the agenda. Public comment will be received at the beginning of the meeting.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.state.va.us.

REAL ESTATE BOARD

† **December 4, 2002 - 4 p.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting of the Education Committee.

Contact: Werner Versch, II, Education Administrator, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

December 5, 2002 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting of the board. The Fair Housing Committee will meet at 8:30 a.m.

Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail reboard@dpor.state.va.us.

December 19, 2002 - 9 a.m. -- Open Meeting

December 20, 2002 - 9 a.m. -- Open Meeting

† **February 19, 2003 - 9 a.m.** -- Open Meeting

† **February 20, 2003 - 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 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: Debbie Amaker, Legal Assistant, Real Estate Board, 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.

BOARD OF REHABILITATIVE SERVICES

January 23, 2003 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct quarterly business of the board.

Contact: Barbara G. Tyson, Administrative Staff Specialist, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA, telephone (804) 662-7010, FAX (804) 662-7644, toll-free (800) 552-5019, (804) 464-9950/TTY, e-mail tysonbg@drs.state.va.us.

Commonwealth Neurotrauma Initiative Advisory Board

† **December 11, 2002 - 9:30 a.m.** -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A quarterly business meeting of the CNI Advisory Board. At this meeting, the CNI Advisory Board will review and approve for funding grant proposals submitted under the Option B: Community-Based Rehabilitative Programs of the RFP issued August 1, 2002.

Contact: Sandra Prince, CNI 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) 662-9950/TTY, e-mail princesw@drs.state.va.us.

VIRGINIA RESOURCES AUTHORITY

December 10, 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., Richmond, VA 23219, telephone (804) 644-3100, FAX (804) 644-3109, e-mail bmcrac@vra.state.va.us.

STATE BOARD OF SOCIAL SERVICES

December 18, 2002 - 9 a.m. -- Open Meeting
December 19, 2002 - 9 a.m. -- Open Meeting
Ramada Inn 1776, 725 Bypass Road, Williamsburg, Virginia.

A formal business meeting of the board.

Contact: Pat Rengnerth, Board Liaison, State Board of Social Services, 730 E. Broad St., Suite 812, Richmond, VA 23219-1849, telephone (804) 692-1826, FAX (804) 692-1962, (800) 828-1120/TTY, e-mail pvr2@email1.dss.state.va.us.

January 31, 2003 - 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 consider repealing regulations entitled: **22 VAC 40-220. Agency Placement Adoptions-Guiding Principles.** The purpose of the proposed action is to repeal the regulation as the state and federal laws reflected in the regulation are no longer in effect.

Statutory Authority: §§ 63.1-25 and 63.1-56 of the Code of Virginia.

Contact: Karin Clark, Adoption Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1251, FAX (804) 692-1284, or e-mail kac900@dss.state.va.us.

DEPARTMENT OF SOCIAL SERVICES

December 6, 2002 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, 8th Floor, Conference Room, Richmond, Virginia.

A regular business meeting of the Family and Children's Trust Fund Board of Trustees.

Contact: Nan McKenney, Executive Director, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1823, FAX (804) 692-1869.

BOARD OF SOCIAL WORK

December 13, 2002 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Board Street, 5th Floor, Conference Room 4, Richmond, Virginia.

The Special Conference Committee will convene for an informal conference to hear possible violations of the laws and regulations governing the practice of social work. No public comment will be heard.

Contact: Rai Minor, Administrative Assistant, Board of Social Work, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY, e-mail bsw@dhp.state.va.us.

Calendar of Events

DEPARTMENT OF TECHNOLOGY PLANNING

Virginia Research and Technology Advisory Commission

December 12, 2002 - 1:30 p.m. -- Open Meeting
Jefferson Labs, 12000 Jefferson Avenue, Newport News, Virginia.

A quarterly meeting to coincide with the Virginia Biotechnology Summit.

Contact: K. C. Das, Department of Technology Planning, 110 S. 7th Street, Suite 135, Richmond, VA 23219, telephone (804) 371-5599, FAX (804) 371-2795, e-mail kcdas@dit.state.va.us.

Virginia Geographic Information Network Advisory Board

January 2, 2003 - 1:30 p.m. -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 3rd Floor Training Room, Richmond, Virginia. ♿

A regular meeting.

Contact: Bill Shinar, VGIN Coordinator, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-8175, FAX (804) 371-2795, e-mail bshinar@vgin.state.va.us.

VIRGINIA TOBACCO SETTLEMENT FOUNDATION

December 3, 2002 - 1:30 p.m. -- Open Meeting
The Hilton Garden Inn, Richmond Innsbrook, 4050 Cox Road, Glen Allen, Virginia. ♿

A meeting of the Board of Trustees to discuss the initial evaluation results of our marketing campaign.

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

December 16, 2002 - 7 p.m. -- Public Hearing
Department of Transportation, 1221 East Broad Street, 1st Floor, Auditorium, Richmond, Virginia.

January 17, 2003 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Commonwealth Transportation Board intends to amend regulations entitled: **24 VAC 30-71. Minimum Standards of Entrances to State Highways.** The purpose of the proposed action is to update regulatory content and documents referenced, and incorporate suggested changes pursuant to the most recent periodic review.

Statutory Authority: §§ 33.1-12, 33.1-197 and 33.1-198 of the Code of Virginia.

Contact: Steve D. Edwards, Transportation Engineer Senior, Mobility Engineer Senior, Department of Transportation, 1100 Bank St., Richmond, VA 23219, telephone (804) 786-0121, FAX (804) 225-2448 or e-mail Steve.Edwards@VirginiaDOT.org.

December 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 Liaison, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail Sandee.Mills@VirginiaDOT.org.

December 19, 2002 - 10 a.m. -- Open Meeting
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ♿

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions. Separate committee meetings may be held on call of the chairman. Contact VDOT Public Affairs at (804) 786-2715 for schedule.

Contact: Sandra M. Mills, Assistant Legislative Liaison, 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

† **December 5, 2002 - 12:30 p.m.** -- Open Meeting
University of Virginia, Medical Center Dining Conference Rooms 1, 2 and 3, Charlottesville, Virginia.

A meeting of the Medical Center Operating Board.

Contact: Penney Catlett, Assistant to the Assistant Vice President for University Relations, University of Virginia, P.O. Box 400229, Charlottesville, VA 22904, telephone (434) 924-7620, FAX (434) 924-0938, e-mail pdc@virginia.edu.

BOARD OF VETERINARY MEDICINE

† **December 11, 2002 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

Informal conferences (disciplinary hearings). These are public meetings, but no public comment will be received.

Contact: Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6603 W. Broad St., 5th Floor, Richmond,

VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail terri.behr@dhp.state.va.us.

VIRGINIA WAR MEMORIAL FOUNDATION

January 7, 2003 - Noon -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees. Public comments will be heard.

Contact: Sandra H. Williams, Associate Director, Virginia War Memorial Foundation, 621 S. Belvidere St., Richmond, VA 23220, telephone (804) 786-2060, FAX (804) 786-6652, (804) 786-6152/TTY ☎, e-mail swilliams@vawarmemorial.state.va.us.

VIRGINIA WASTE MANAGEMENT BOARD

December 6, 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 Waste Management Board intends to amend regulations entitled: **9 VAC 20-80. Solid Waste Management Regulations**. The purpose of the proposed action is to address the remaining statutory changes passed during recent General Assembly sessions that are not addressed in Amendment 2.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Contact: Michael J. Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238, e-mail mjdieter@deq.state.va.us.

STATE WATER CONTROL BOARD

December 11, 2002 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A regular meeting.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.state.va.us.

VIRGINIA BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

December 12, 2002 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5W, Richmond, Virginia. ♿

The board will 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.

VIRGINIA WORKFORCE COUNCIL

December 5, 2002 - 10 a.m. -- Open Meeting
Holiday Inn SunSpree Resort, 3900 Atlantic Avenue, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)

Agenda items include: Incentive Award presentations; performance reports for WIA and VCCS regional workforce centers; existing workforce strategy policy; rapid response statewide 25% grants.

Contact: Gail Robinson, Virginia Workforce Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 225-2190, (800) 828-1120/TTY ☎, e-mail grobinson@vec.state.va.us.

INDEPENDENT

STATE LOTTERY BOARD

† **December 11, 2002 - 9:30 a.m.** -- Open Meeting
Pocahontas Building, 900 East Main Street, Richmond, Virginia. ♿

A regular meeting of the board.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7903, FAX (804) 692-7775, e-mail brobertson@valottery.state.va.us.

† **February 14, 2003** - 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 Lottery Board intends to amend regulations entitled: **11 VAC 5-10. Guidelines for Public Participation in Regulation Development and Promulgation**. The purpose of the proposed action is to delete nonessential language, to simplify the regulation, and to add a section regarding the periodic review of the regulations.

Statutory Authority: §§ 2.2-4007 and 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

Calendar of Events

† **February 14, 2003** - 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 Lottery Board intends to amend regulations entitled: **11 VAC 5-20. Administration Regulations**. The purpose of the proposed action is to simplify and clarify the regulations and eliminate redundant and unnecessary language. Amendments under consideration include, but are not limited to (i) clarifying definitions; (ii) providing for winner participation in press conferences; (iii) clarifying licensing appeal procedures; (iv) transferring specific, detailed procurement procedures from regulations to department manuals which will be incorporated by reference; and (v) reducing unnecessary or duplicative regulations regarding board and department operations, specifically, committee membership, election of officers, percentage allocation of lottery revenue, audit schedules and depositories for ticket transfer.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

† **February 14, 2003** - 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 Lottery Board intends to repeal regulations entitled: **11 VAC 5-30. Instant Game Regulations**. The purpose of the proposed action is to reorganize current lottery regulations by combining instant licensing and game provisions with those for on-line games and incorporate all in new licensing and lottery game regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

† **March 5, 2003 - 9:30 a.m.** -- Public Hearing
Lottery Headquarters, 900 East Main Street, Richmond, Virginia.

February 14, 2003 - 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 Lottery Board intends to adopt regulations entitled: **11 VAC 5-31. Licensing Regulations**. The purpose of the proposed action is to create a chapter containing lottery retailer licensing requirements, including eligibility requirements, application procedure, bonding and bank account requirements, licensing terms and fees, retailer compensation, retailer standards of conduct, license denial or revocation, and audit of records.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

† **February 14, 2003** - 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 Lottery Board intends to repeal regulations entitled: **11 VAC 5-40. On-Line Game Regulations**. The purpose of the proposed action is to reorganize current lottery regulations by combining on-line licensing and game provisions with those for instant games and incorporate all in new licensing and lottery game regulations.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

† **February 14, 2003** - 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 Lottery Board intends to adopt regulations entitled: **11 VAC 5-41. Lottery Game Regulations**. The purpose of the proposed action is to create a new chapter containing procedures specifically related to all types of lottery games, including operational parameters for the conduct of games, validation requirements and payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia

Public comments may be submitted until 5 p.m. on February 14, 2003.

Contact: Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7105, FAX (804) 692-7775, or e-mail: brobertson@valottery.state.va.us.

The following committees will meet:
2:30 p.m. - Administration and Personnel Committee
3 p.m. - Benefits and Actuarial Committee
4 p.m. - Audit and Compliance

VIRGINIA RETIREMENT SYSTEM

December 18, 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.

December 18, 2002 - 3 p.m. -- Open Meeting
† **February 19, 2003 - 11 a.m.** -- Open Meeting
Bank of America Building, 1111 East Main Street, 4th Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

Contact: Phyllis Henderson, Virginia Retirement System, 1111 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 phenderson@vrs.state.va.us.

December 19, 2002 - 9 a.m. -- Open Meeting
† **February 20, 2003 - 9 a.m.** -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received.

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.

December 19, 2002 - 12:15 p.m. -- Open Meeting
January 23, 2003 - 12:15 p.m. -- Open Meeting
† **February 20, 2003 - 12:15 p.m.** -- Open Meeting
VRS Investment Department, Bank of America Building, 1111 East Main Street, 4th Floor, Richmond, Virginia. ♿

A regular meeting of the Corporate Governance Task Force.

Contact: Phyllis Henderson, Investment Department Administrative Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888) 827-3847, e-mail phenderson@vrs.state.va.us.

† **February 19, 2003 - 1 p.m.** -- Open Meeting
VRS Headquarters, 1200 East Main Street, Richmond, Virginia. ♿

LEGISLATIVE

VIRGINIA CODE COMMISSION

December 3, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Street, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

A meeting to continue with the recodification of Title 25, Eminent Domain. Public comments will be received at the end of the meeting.

Contact: Jane D. Chaffin, Registrar of Regulations, Virginia Code Commission, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

DR. MARTIN LUTHER KING JR. MEMORIAL COMMISSION

December 17, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A regular meeting. Questions about the agenda should be addressed to Brenda Edwards or Norma Szakal, 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

† **December 3, 2002 - 1 p.m.** -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A meeting of the Privacy Advisory Committee.

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, 910 Capitol Street, General Assembly Bldg., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail mgoldstein@leg.state.va.us.

December 10, 2002 - 10 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, 9th Floor, House Appropriations Committee Room, Richmond, Virginia. ♿

A meeting to receive updates on biotechnology and nanotechnology and to adopt a legislative agenda for the 2003 Session.

Calendar of Events

Contact: Mitchell Goldstein, Director, Joint Commission on Technology and Science, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, e-mail jcots@leg.state.va.us.

CHRONOLOGICAL LIST

OPEN MEETINGS

December 2

Labor and Industry, Department of
- Safety and Health Codes Board

December 3

Code Commission, Virginia
† Corrections, Board of
- Correctional Services Committee
- Liaison Committee
† Criminal Justice Services Board
- Private Security Services Advisory Board
Economic Development Partnership, Virginia
Funeral Directors and Embalmers, Board of
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
† Museum of Fine Arts, Virginia
- Executive Committee
† Museum of Natural History, Virginia
- Strategic Planning Committee
Pharmacy, Board of
† Technology and Science, Joint Commission on
- Privacy Advisory Committee
Tobacco Settlement Foundation, Virginia
- Board of Trustees

December 4

Contractors, Board for
† Corrections, Board of
- Administration Committee
Dentistry, Board of
† Education, Board of
- Committee to Implement NCLB
Emergency Planning Committee, Local - Winchester
Gaming Commission, Charitable
Historic Resources, Department of
- State Review Board and Historic Resources Board
Medicine, Board of
Nursing, Board of
- Special Conference Committee
† Real Estate Board
- Education Committee

December 5

† Aging, Commonwealth Council on
- Public Relations Committee
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Fire Services Board, Virginia
- Administration and Policy Committee
- Finance Committee
- Fire Education and Training Committee
- Fire Prevention and Control Committee
† Governor's Commission on Efficiency and Effectiveness
Medicine, Board of
Outdoors Foundation, Virginia

- Board of Trustees
† Real Estate Board
- Fair Housing Committee
† University of Virginia
- Medical Center Operating Board
Workforce Council, Virginia

December 6

Art and Architectural Review Board
Counseling, Board of
- Special Conference Committee
Dentistry, Board of
Fire Services Board, Virginia
Health, Department of
Museum of Natural History, Virginia
- Board of Trustees Executive Committee
Social Services, State Board of
- Family and Children's Trust Fund Board

December 7

Blind and Vision Impaired, Department for the
- Statewide Rehabilitation Council for the Blind
† Museum of Natural History, Virginia
- Science and Learning Committee

December 9

Alcoholic Beverage Control Board
† Branch Pilots, Board for
Chesapeake Bay Local Assistance Board
† Hearing Aid Specialists, Board for
Medical Assistance Services, Department of
- Pharmacy Liaison Committee
Nursing, Board of
- Special Conference Committee

December 10

† Agriculture and Consumer Services, Department of
- Virginia Seed Potato Board
† Conservation and Recreation, Department of
Medical Assistance Services, Board of
Mental Health, Mental Retardation and Substance Abuse Services, Department of
Nursing, Board of
- Special Conference Committee
† Polygraph Examiners Advisory Board
Psychology, Board of
- Regulatory Committee
Resources Authority, Virginia
Technology and Science, Joint Commission on

December 11

† Accountancy, Board of
† Agriculture and Consumer Services, Department of
- Virginia Corn Board
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
† Conservation and Recreation, Department of
- Virginia Soil and Water Conservation Board
† Lottery Board, State
Medicine, Board of
- Informal Conference Committee
Milk Commission, State
† Rehabilitative Services, Department of
- Commonwealth Neurotrauma Initiative Advisory Board
† Veterinary Medicine, Board of
- Special Conference Committee

Water Control Board, State

December 12

† Criminal Justice Services Board
Information Providers Network Authority, Virginia
Jamestown-Yorktown Foundation
- Jamestown 2007 Steering Committee
† Medicine, Board of
- Informal Conference Committee
† Mental Health, Mental Retardation and Substance Abuse Services, Department of
Motor Vehicles, Department of
- Digital Signature Implementation Workgroup
Pharmacy, Board of
- Special Conference Committee
Technology Planning, Department of
- Virginia Research and Technology Advisory Commission
Waterworks and Wastewater Works Operators, Virginia Board for

December 13

Health Professions, Department of
- Intervention Program Committee
† Longwood University
- Academic and Student Affairs Committee
- Administration, Finance and Facilities Committee
- Audit Committee
- University Advancement Committee
† Medicine, Board of
- Credentials Committee
- Executive Committee
- Informal Conference Committee
Old Dominion University
- Executive Committee
Social Work, Board of
- Special Conference Committee

December 14

† Longwood University
- Board of Visitors

December 16

† Branch Pilots, Board for
† Conservation and Recreation, Department of
- Virginia State Parks Foundation
Nursing, Board of
- Special Conference Committee

December 17

† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
† Compensation Board
Dr. Martin Luther King, Jr. Memorial Commission
Marine Resources Commission
† Mental Health, Mental Retardation and Substance Abuse Services, Department of

December 18

Nursing, Board of
- Special Conference Committee
Retirement System, Virginia
- Investment Advisory Committee
- Optional Retirement Plan Advisory Committee
Social Services, State Board of
Transportation Board, Commonwealth

December 19

Design-Build/Construction Management Review Board

Labor and Industry, Department of
- Virginia Apprenticeship Council
Pharmacy, Board of
- Special Conference Committee
Real Estate Board
Retirement System, Virginia
- Board of Trustees
- Corporate Governance Task Force
Social Services, State Board of
Transportation Board, Commonwealth

December 20

Real Estate Board

December 23

Alcoholic Beverage Control Board0

January 2, 2003

Technology Planning, Department of
- Virginia Geographical Information Network Advisory Board

January 6

Education, Board of

January 7

War Memorial Foundation, Virginia

January 9

Education, Board of
- State Special Education Advisory Committee

January 10

† Air Pollution Board, State
Education, Board of
- State Special Education Advisory Committee

January 17

Library Board
- Archival and Information Services Committee
- Collection Management Services Committee
- Legislative and Finance Committee
- Publications and Education Services Committee
- Public Library Development Committee
- Records Management Committee

January 22

Contractors, Board for

January 23

Rehabilitative Services, Board of
Retirement System, Virginia
- Corporate Governance Task Force

January 27

Education, Board of
- Advisory Board for Teacher Education and Licensure
Nursing, Board of

January 29

† Medicine, Board of
- Informal Conference Committee
Nursing, Board of

January 30

George Mason University
- Board of Visitors
Nursing, Board of

January 31

† Health, Department of

February 6

Health, Department of

February 19

† Real Estate Board
† Retirement System, Virginia

Calendar of Events

- Administration and Personnel Committee
- Audit and Compliance Committee
- Benefits and Actuarial Committee
- Investment Advisory Committee

February 20

- † Real Estate Board
- † Retirement System, Virginia
 - Board of Trustees
 - Corporate Governance Task Force

February 21

- † Health Professions, Department of
 - Intervention Program Committee

February 26

- † Education, Board of

PUBLIC HEARINGS

December 2

- Education, Board of

December 5

- Governor's Commission on Efficiency and Effectiveness

December 10

- † Housing and Community Development, Department of

December 11

- † Audiology and Speech-Language Pathology, Board of

December 13

- † Medicine, Board of

December 16

- Transportation Board, Commonwealth

December 17

- † Mental Health, Mental Retardation and Substance Abuse Services, Department of

December 19

- † Environmental Quality, Department of

January 8, 2003

- † Medicine, Board of

January 15

- † Nursing Home Administrators, Board of

January 24

- † Counseling, Board of

March 5

- † Lottery Board, State

March 13

- Agriculture and Consumer Services, State Board of