
TABLE OF CONTENTS

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

Cumulative Table.....1395

NOTICES OF INTENDED REGULATORY ACTION

TITLE 1. ADMINISTRATION

Department of the Treasury.....1405

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

Criminal Justice Services Board1405

TITLE 9. ENVIRONMENT

State Air Pollution Control Board1405

State Water Control Board1406

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Real Estate Board.....1406

TITLE 22. SOCIAL SERVICES

Child Day-Care Council.....1407

PROPOSED REGULATIONS

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-17, 9 VAC 20-60-40, 9 VAC 20-60-70, 9 VAC 20-60-124, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-270, 9 VAC 20-60-305, 9 VAC 20-60-315, 9 VAC 20-60-328, 9 VAC 20-60-420, 9 VAC 20-60-440, 9 VAC 20-60-450, 9 VAC 20-60-490, 9 VAC 20-60-1280, 9 VAC 20-60-1285, 9 VAC 20-60-1370, 9 VAC 20-60-1380, 9 VAC 20-60-1390, and 9 VAC 20-60-1420).1408

Solid Waste Management Permit Action Fees (amending 9 VAC 20-90-10 and 9 VAC 20-90-30 through 9 VAC 20-90-100; adding 9 VAC 20-90-110 and 9 VAC 20-90-120; repealing 9 VAC 20-90-20).1430

STATE WATER CONTROL BOARD

Fees for Permits and Certificates (amending 9 VAC 25-20-10, 9 VAC 25-20-110, 9 VAC 25-20-120, and 9 VAC 25-20-130).1442

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Rules and Regulations Governing Outpatient Health Data Reporting (adding 12 VAC 5-218-10 through 12 VAC 5-218-70)..... 1449

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (amending 12 VAC 30-70-221, 12 VAC 30-70-281, and 12 VAC 30-70-351). 1455

Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-20). 1455

Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30). 1464

Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-40). 1468

Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-41; adding 12 VAC 30-90-257)..... 1472

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Bureau of Insurance

Rules Governing Claims-Made Liability Insurance Policies (adding 14 VAC 5-335-10 through 14 VAC 5-335-60)..... 1478

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic (amending 18 VAC 85-20-280, 18 VAC 85-20-290, and 18 VAC 85-20-300; adding 18 VAC 85-20-285)..... 1480

FINAL REGULATIONS

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-20, 4 VAC 20-252-130, 4 VAC 20-252-140, 4 VAC 20-252-150, and 4 VAC 20-252-160). 1485

Pertaining to Speckled Trout and Red Drum (amending 4 VAC 20-280-30 and 4 VAC 20-280-40). 1487

Pertaining to American Shad (amending 4 VAC 20-530-10 and 4 VAC 20-530-20; adding 4 VAC 20-530-23, 4 VAC 20-530-26, and 4 VAC 20-530-29)..... 1488

Table of Contents

Pertaining to Black Sea Bass (amending 4 VAC 20-950-10, 4 VAC 20-950-40, and 4 VAC 20-950-45; adding 4 VAC 20-950-46, 4 VAC 20-950-47, 4 VAC 20-950-48, and 4 VAC 20-950-49)..... 1489

TITLE 8. EDUCATION

BOARD OF EDUCATION

Regulation Governing the Determination of Critical Teacher Shortage Areas (adding 8 VAC 20-650-10, 8 VAC 20-650-20, and 8 VAC 20-650-30)..... 1491

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges From Petroleum Contaminated Sites and Hydrostatic Tests (amending 9 VAC 25-120-10, 9 VAC 25-120-20, 9 VAC 25-120-50 through 9 VAC 25-120-80; repealing 9 VAC 25-120-31)..... 1493

General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concentrated Aquatic Animal Production Facilities (REPEALED). (9 VAC 25-195) 1494

General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges (amending 9 VAC 25-196-40 through 9 VAC 25-196-70; repealing 9 VAC 25-196-80)..... 1495

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Virginia Emergency Medical Services Regulations (withdrawing 12 VAC 5-31-970; suspending 12 VAC 5-31-610, 12 VAC 5-31-620, 12 VAC 5-31-730, 12 VAC 5-31-940, 12 VAC 5-31-1030, and 12 VAC 5-31-1140). 1495

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Public Participation Guidelines (amending 16 VAC 25-10-10, 16 VAC 25-10-20, 16 VAC 25-10-40, 16 VAC 25-10-50, 16 VAC 25-10-80, 16 VAC 25-10-90, 16 VAC 25-10-100, and 16 VAC 25-10-120). 1496

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Board of Accountancy Regulations (amending 18 VAC 5-21-20)..... 1496

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

Public Participation Guidelines (amending 18 VAC 10-10-10 through 18 VAC 10-10-90)..... 1497

BOARD FOR BARBERS AND COSMETOLOGY

Public Participation Guidelines (adding 18 VAC 41-10-10 through 18 VAC 41-10-90)..... 1497

BOARD OF DENTISTRY

Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-10; adding 18 VAC 60-20-250 through 18 VAC 60-20-331). 1498

Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-20 and 18 VAC 60-20-30). 1499

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Regulations for Preneed Funeral Planning (amending 18 VAC 65-30-10 and 18 VAC 65-30-80). 1500

Resident Trainee Program for Funeral Service (amending 18 VAC 65-40-340). 1500

BOARD OF MEDICINE

Regulations Governing the Practice of Licensed Acupuncturists (amending 18 VAC 85-110-10, 18 VAC 85-110-50, 18 VAC 85-110-60, 18 VAC 85-110-80, 18 VAC 85-110-150, 18 VAC 85-110-155, and 18 VAC 85-110-160; repealing 18 VAC 85-110-30 and 18 VAC 85-110-70)..... 1501

BOARD OF PHARMACY

Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20 and 18 VAC 110-20-270; adding 18 VAC 110-20-101 through 18 VAC 110-20-106, and 18 VAC 110-20-111). 1502

BOARD OF COUNSELING

Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (adding 18 VAC 115-60-55). 1505

BOARD OF PSYCHOLOGY

Regulations Governing the Practice of Psychology (amending 18 VAC 125-20-30, 18 VAC 125-20-120, 18 VAC 125-20-121, and 18 VAC 125-20-130)..... 1506

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Motor Carrier Safety Regulations (amending 19 VAC 30-20-10, 19 VAC 30-20-50, and 19 VAC 30-20-80)..... 1507

TITLE 22. SOCIAL SERVICES

Public Hearings..... 1542

STATE BOARD OF SOCIAL SERVICES

Virginia Energy Assistance Program -- Low Income Home Energy Assistance Program (LIHEAP) (amending 22 VAC 40-680-20; adding 22 VAC 40-680-63 and 22 VAC 40-680-67).
.....1508

Child Protective Services Central Registry Information (amending 22 VAC 40-700-10 and 22 VAC 40-700-30)...1509

EMERGENCY REGULATIONS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries (adding 6 VAC 20-210-10 through 6 VAC 20-210-110).....1511

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

ORDER ESTABLISHING INVESTIGATION

In the Matter Concerning the Provision of Default Service to Retail Customers under the Provisions of the Virginia Electric Utility Restructuring Act. (PUE-2002-00645)1513

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Quail Run1514

VIRGINIA CODE COMMISSION

Notice to State Agencies1514

Forms for Filing Material for Publication in *The Virginia Register of Regulations*.....1514

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings.....1515

INDEPENDENT

Open Meetings and Public Hearings.....1538

LEGISLATIVE

Notice to Subscribers.....1540

CHRONOLOGICAL LIST

Open Meetings1540

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

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 5-30-200	Amended	19:9 VA.R. 1338	2/12/03
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 15-30-40	Amended	19:7 VA.R. 1074	11/25/02
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
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 20-720-10 emer	Amended	19:8 VA.R. 1256	11/27/02-12/26/02
4 VAC 20-720-20	Amended	19:3 VA.R. 432	10/1/02
4 VAC 20-720-20 emer	Amended	19:8 VA.R. 1256	11/27/02-12/26/02
4 VAC 20-720-20	Amended	19:9 VA.R. 1339	12/27/02
4 VAC 20-720-40	Amended	19:3 VA.R. 433	10/1/02
4 VAC 20-720-40 emer	Amended	19:8 VA.R. 1257	11/27/02-12/26/02
4 VAC 20-720-40 through 4 VAC 20-720-80	Amended	19:9 VA.R. 1339-1342	12/27/02
4 VAC 20-720-50 through 4 VAC 20-720-80	Amended	19:3 VA.R. 434-436	10/1/02
4 VAC 20-720-50 emer	Amended	19:8 VA.R. 1257	11/27/02-12/26/02
4 VAC 20-720-70 emer	Amended	19:8 VA.R. 1258	11/27/02-12/26/02
4 VAC 20-720-80	Amended	19:5 VA.R. 809	11/1/02
4 VAC 20-720-110 emer	Amended	19:8 VA.R. 1258	11/27/02-12/26/02
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
4 VAC 20-754-30	Amended	19:8 VA.R. 1193	11/27/02
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 5-40-90	Amended	19:6 VA.R. 996	2/1/03
9 VAC 5-40-120	Amended	19:6 VA.R. 996	2/1/03
9 VAC 5-50-90	Amended	19:6 VA.R. 997	2/1/03
9 VAC 5-50-120	Amended	19:6 VA.R. 997	2/1/03
9 VAC 5-50-400	Amended	19:6 VA.R. 998	2/1/03
9 VAC 5-50-410	Amended	19:6 VA.R. 998	2/1/03
9 VAC 5-50-420	Amended	19:6 VA.R. 1003	2/1/03
9 VAC 5-60-60	Amended	19:6 VA.R. 1003	2/1/03
9 VAC 5-60-90	Amended	19:6 VA.R. 1003	2/1/03
9 VAC 5-60-100	Amended	19:6 VA.R. 1003	2/1/03
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 5-510-170	Erratum	19:7 VA.R. 1119	--
9 VAC 10-10-10	Amended	19:8 VA.R. 1194	1/29/03
9 VAC 10-10-20	Amended	19:8 VA.R. 1195	1/29/03
9 VAC 10-10-30	Amended	19:8 VA.R. 1195	1/29/03
9 VAC 10-10-40	Repealed	19:8 VA.R. 1197	1/29/03
9 VAC 20-60-1285	Erratum	18:25 VA.R. 3607	--
9 VAC 20-150-30	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-40	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-80	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-100	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-110	Amended	19:6 VA.R. 1008	11/13/02
9 VAC 20-150-130	Amended	19:6 VA.R. 1008	11/13/02
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
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	1/15/03*
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	1/15/03*
9 VAC 25-260-170	Amended	18:20 VA.R. 2658	1/15/03*
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	***

* Notice of effective date published in 19:7 VA.R. 1074.

** 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
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
9 VAC 25-770-10 through 9 VAC 25-770-190 emer	Added	19:8 VA.R. 1260-1267	12/5/02-12/4/03
Title 10. Finance and Financial Institutions			
10 VAC 5-200-75	Added	19:9 VA.R. 1344	1/1/03
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	1/15/03****
12 VAC 5-31-10 through 12 VAC 5-31-1040	Added	19:3 VA.R. 479-504	1/15/03****
12 VAC 5-31-1050	Withdrawn	19:8 VA.R. 1197	--
12 VAC 5-31-1060 through 12 VAC 5-31-2260	Added	19:3 VA.R. 504-529	1/15/03****
12 VAC 5-31-2090	Erratum	19:7 VA.R. 1119	--
12 VAC 5-220-10	Amended	19:8 VA.R. 1198	2/3/03
12 VAC 5-220-90	Amended	19:8 VA.R. 1202	2/3/03
12 VAC 5-220-105	Amended	19:8 VA.R. 1202	2/3/03
12 VAC 5-220-150	Repealed	19:8 VA.R. 1202	2/3/03
12 VAC 5-220-160	Amended	19:8 VA.R. 1202	2/3/03
12 VAC 5-220-180	Amended	19:8 VA.R. 1202	2/3/03
12 VAC 5-220-200	Amended	19:8 VA.R. 1202	2/3/03
12 VAC 5-220-230	Amended	19:8 VA.R. 1205	2/3/03
12 VAC 5-220-270	Amended	19:8 VA.R. 1206	2/3/03
12 VAC 5-220-280	Amended	19:8 VA.R. 1207	2/3/03
12 VAC 5-220-355	Amended	19:8 VA.R. 1207	2/3/03
12 VAC 5-220-385	Amended	19:8 VA.R. 1207	2/3/03
12 VAC 5-220-420	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-220-470	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-230-10	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-230-20	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-240-10	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-240-20	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-240-30	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-250-30	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-260-30	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-260-40	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-260-80	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-260-100	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-270-30	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-270-40	Amended	19:8 VA.R. 1209	2/3/03
12 VAC 5-280-10	Amended	19:8 VA.R. 1209	2/3/03

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

**** Notice of change of effective date published in 19:9 VA.R. 1345.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-280-30	Amended	19:8 VA.R. 1210	2/3/03
12 VAC 5-280-70	Amended	19:8 VA.R. 1210	2/3/03
12 VAC 5-290-10	Amended	19:8 VA.R. 1210	2/3/03
12 VAC 5-290-30	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-300-30	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-310-30	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-320-50	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-320-150	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-320-430	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-340-30	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-360-30	Amended	19:8 VA.R. 1211	2/3/03
12 VAC 5-360-40	Amended	19:8 VA.R. 1212	2/3/03
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
12 VAC 30-90-19 emer	Amended	18:25 VA.R. 3575	8/1/02-7/31/03
12 VAC 30-120-10 through 12 VAC 30-120-50	Amended	19:8 VA.R. 1212-1223	2/1/03
12 VAC 30-120-55	Added	19:8 VA.R. 1223	2/1/03
12 VAC 30-120-60	Amended	19:8 VA.R. 1224	2/1/03
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 30-135-10 through 12 VAC 30-135-80 emer	Added	19:8 VA.R. 1268-1269	12/4/02-9/30/03
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 35-190-10	Amended	19:7 VA.R. 1075	1/15/03
12 VAC 35-190-20	Repealed	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-21	Added	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-30	Amended	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-40	Repealed	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-41	Added	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-50	Repealed	19:7 VA.R. 1076	1/15/03
12 VAC 35-190-51	Added	19:7 VA.R. 1076	1/15/03
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 5-200-20	Amended	19:8 VA.R. 1232	*****
14 VAC 5-200-30	Amended	19:8 VA.R. 1232	*****
14 VAC 5-200-40	Amended	19:8 VA.R. 1232	*****
14 VAC 5-200-60	Amended	19:8 VA.R. 1233	*****
14 VAC 5-200-75	Amended	19:8 VA.R. 1235	*****
14 VAC 5-200-77	Added	19:8 VA.R. 1235	*****
14 VAC 5-200-150	Amended	19:8 VA.R. 1235	*****
14 VAC 5-200-153	Added	19:8 VA.R. 1236	*****
14 VAC 5-200-200	Amended	19:8 VA.R. 1238	*****
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
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

***** Effective date suspended in 19:9 VA.R. 1345.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
16 VAC 20-10-10	Amended	19:8 VA.R. 1239	2/1/03
16 VAC 20-10-20	Amended	19:8 VA.R. 1239	2/1/03
16 VAC 20-10-40	Amended	19:8 VA.R. 1239	2/1/03
16 VAC 20-10-50	Amended	19:8 VA.R. 1239	2/1/03
16 VAC 20-10-80	Amended	19:8 VA.R. 1239	2/1/03
16 VAC 20-10-90	Amended	19:8 VA.R. 1239	2/1/03
16 VAC 20-10-100	Amended	19:8 VA.R. 1239	2/1/03
16 VAC 25-60-190	Amended	19:9 VA.R. 1346	3/1/03
16 VAC 25-60-290	Amended	19:9 VA.R. 1348	3/1/03
16 VAC 25-60-320	Amended	19:9 VA.R. 1348	3/1/03
16 VAC 25-85-1904.10	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.33	Added	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.34	Added	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.35 through 16 VAC 25-90-1910.38	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.39	Added	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.119	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.120	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.157	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.268	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.272	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.1047	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.1050	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-90-1910.1051	Amended	19:9 VA.R. 1349	3/1/03
16 VAC 25-100-1915.4	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.5	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.14	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.15	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.35	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.51	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.53	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.71 through 16 VAC 25-100-1915.75	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.77	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.92	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.97	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.112	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.115	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.116	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.118	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.131	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.134	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.152	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.158	Amended	19:9 VA.R. 1350	3/1/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-100-1915.159	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.160	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.163	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.165	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.172	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.181	Added	19:9 VA.R. 1350	3/1/03
16 VAC 25-100-1915.1001	Amended	19:9 VA.R. 1350	3/1/03
16 VAC 25-175-1926.200 through 16 VAC 25-175-1926.203	Amended	19:9 VA.R. 1351	3/1/03
Title 18. Professional and Occupational Licensing			
18 VAC 50-22-100	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-22-140	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-22-170	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-22-250	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-30-90 through 18 VAC 50-30-130	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 50-30-150	Amended	19:6 VA.R. 1011	1/1/03
18 VAC 85-20-310 through 18 VAC 85-20-390 emer	Added	19:7 VA.R. 1114-1117	11/18/02-11/17/03
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 90-40-100	Amended	19:7 VA.R. 1076	1/15/03
18 VAC 90-40-110	Amended	19:7 VA.R. 1076	1/15/03
18 VAC 90-40-120	Amended	19:7 VA.R. 1076	1/15/03
18 VAC 90-50	Erratum	19:8 VA.R. 1273	--
18 VAC 90-50-10	Amended	19:7 VA.R. 1084	1/15/03
18 VAC 90-50-40	Amended	19:7 VA.R. 1084	1/15/03
18 VAC 90-50-50	Amended	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-60	Amended	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-70	Amended	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-75	Added	19:7 VA.R. 1085	1/15/03
18 VAC 90-50-80	Amended	19:7 VA.R. 1086	1/15/03
18 VAC 90-50-90	Amended	19:7 VA.R. 1086	1/15/03
18 VAC 95-20-80	Amended	19:7 VA.R. 1094	1/15/03
18 VAC 105-20-10	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-20-15	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-20-20	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-20-40 through 18 VAC 105-20-70	Amended	19:7 VA.R. 1106	1/15/03
18 VAC 105-30-90	Amended	19:7 VA.R. 1108	1/15/03
18 VAC 105-30-100	Amended	19:7 VA.R. 1108	1/15/03
18 VAC 105-30-120	Amended	19:7 VA.R. 1108	1/15/03
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 115-60-130	Amended	19:1 VA.R. 111	10/23/02
18 VAC 150-20-10	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-30	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-70	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-75	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-100	Amended	19:7 VA.R. 1113	1/15/03
18 VAC 150-20-100	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-110	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-120 through 18 VAC 150-20-140	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-171	Added	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-172	Added	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-180 through 18 VAC 150-20-200	Amended	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-181	Added	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-205	Repealed	19:9 VA.R. 1351	3/1/03
18 VAC 150-20-210	Amended	19:9 VA.R. 1351	3/1/03
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
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 30-50-10 through 22 VAC 30-50-110	Added	19:9 VA.R. 1352-1354	2/13/03
22 VAC 40-60 (Forms)	Amended	19:4 VA.R. 695	--
22 VAC 40-71-10	Amended	19:8 VA.R. 1240	3/28/03
22 VAC 40-71-20	Amended	19:8 VA.R. 1244	3/28/03
22 VAC 40-71-30	Amended	19:8 VA.R. 1244	3/28/03
22 VAC 40-71-45	Added	19:8 VA.R. 1244	3/28/03
22 VAC 40-71-50	Amended	19:8 VA.R. 1244	3/28/03
22 VAC 40-71-60	Amended	19:8 VA.R. 1245	3/28/03

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-71-80	Amended	19:8 VA.R. 1245	3/28/03
22 VAC 40-71-90	Amended	19:8 VA.R. 1245	3/28/03
22 VAC 40-71-110	Amended	19:8 VA.R. 1245	3/28/03
22 VAC 40-71-130	Amended	19:8 VA.R. 1245	3/28/03
22 VAC 40-71-150	Amended	19:8 VA.R. 1245	3/28/03
22 VAC 40-71-160	Amended	19:8 VA.R. 1248	3/28/03
22 VAC 40-71-170	Amended	19:8 VA.R. 1248	3/28/03
22 VAC 40-71-180	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-210	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-270	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-275	Added	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-280	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-290	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-310	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-330	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-360	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-410	Amended	19:8 VA.R. 1249	3/28/03
22 VAC 40-71-440	Amended	19:8 VA.R. 1250	3/28/03
22 VAC 40-71-450	Amended	19:8 VA.R. 1250	3/28/03
22 VAC 40-71-460	Amended	19:8 VA.R. 1250	3/28/03
22 VAC 40-71-480	Amended	19:8 VA.R. 1250	3/28/03
22 VAC 40-71-490	Amended	19:8 VA.R. 1250	3/28/03
22 VAC 40-71-530	Amended	19:8 VA.R. 1250	3/28/03
22 VAC 40-71-540	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-550	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-560	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-570	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-580	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-590	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-600	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-630	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-640	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-650	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-660	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-670	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-680	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-690	Amended	19:8 VA.R. 1251	3/28/03
22 VAC 40-71-700	Amended	19:8 VA.R. 1251	3/28/03
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 40-705-10	Amended	19:6 VA.R. 1011	1/1/03
22 VAC 40-705-30 through 22 VAC 40-705-160	Amended	19:6 VA.R. 1014-1023	1/1/03
22 VAC 40-705-180	Amended	19:6 VA.R. 1023	1/1/03
22 VAC 40-705-190	Amended	19:6 VA.R. 1023	1/1/03
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 1. ADMINISTRATION

DEPARTMENT OF THE TREASURY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of the Treasury intends to consider amending regulations entitled: **1 VAC 75-40. Unclaimed Property Administrative Review Process**. The purpose of the proposed action is to allow any person asserting ownership of unclaimed property or any holder of unclaimed property who is aggrieved by a decision of the Administrator of the Uniform Disposition of Unclaimed Property Act the opportunity to file an application for an administrative review of the administrator's decision, all in compliance with § 55-210.27 of the Code of Virginia.

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

Statutory Authority: § 55-210.27 of the Code of Virginia.

Public comments may be submitted until February 12, 2003.

Contact: Vicki D. Bridgeman, Director of Unclaimed Property, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., 4th Floor, Richmond, VA 23219, telephone (804) 225-3156, FAX (804) 786-4653, or e-mail vicki.bridgeman@trs.state.va.us.

VA.R. Doc. No. R03-98; Filed December 20, 2002, 2:34 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to consider promulgating regulations entitled: **6 VAC 20-210. Regulations for the Implementation of the Law Permitting DNA Analysis upon Arrest for All Violent Felonies and Certain Burglaries**. The purpose of the proposed action is to comply with §§ 19.2-310.2:1 and 19.2-310.3:1 of the Code of Virginia, effective January 1, 2003, permitting DNA analysis upon arrest for all violent felonies and certain burglaries.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public comments may be submitted until February 27, 2003.

Contact: Katya Newton, Counsel for Division of Forensic Science, 700 N. Fifth Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail knewton@dfs.state.va.us.

VA.R. Doc. No. R03-111; Filed January 8, 2003, 10:52 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. C03)**. The purpose of the proposed action is to enlarge the scope of volatile organic compound (VOC) emissions control areas in order to include potential new ozone nonattainment areas. This action is being taken to implement a program established by the U.S. Environmental Protection Agency (EPA) for areas potentially designated as nonattainment under the eight-hour ozone standard. This program enables such areas to avoid the nonattainment designation through early reduction credits. By avoiding the nonattainment designation, these areas will thus avoid new source review for major sources, including the requirement to make offsets, and conformity review. (See 19:9 VA.R. 1308-1311 January 13, 2003, for more detailed information.)

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 5 p.m. on February 12, 2003.

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

VA.R. Doc. No. R03-101; Filed December 23, 2002, 12:03 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **9 VAC 5-140. Regulation for Emissions Trading (Rev. H02)**. The purpose of the proposed action is to correct an EPA identified deficiency in the banking provisions of the NO_x Budget Trading Program regulation with regard to the start date for flow control.

Notices of Intended Regulatory Action

The regulation creates an enforceable mechanism to assure that collectively all affected sources will not exceed the total NO_x emissions budget established by EPA for the Commonwealth for the year 2007 ozone season and to provide the regulatory basis for a program under which the creation, trading (buying and selling) and registering of emission credits can occur. (See 19:9 VA.R. 1311-1314 January 13, 2003, for more detailed information.)

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 5 p.m. on February 12, 2003.

Contact: Mary E. Major, Environmental Program Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, or e-mail mlmajor@deq.state.va.us.

VA.R. Doc. No. R03-102; Filed December 23, 2002, 12:03 p.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-151. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Storm Water Associated with Industrial Activity.** The purpose of the proposed action is to reissue the existing industrial activity storm water general permit, which expires on June 30, 2004. This general permit regulation governs the discharge of storm water from facilities with regulated industrial activities to surface waters. (See 19:9 VA.R. 1314 January 13, 2003, for more detailed information.)

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

Statutory Authority: § 62.1-44 15 (10) of the Code of Virginia.

Public comments may be submitted until 4 p.m. on February 12, 2003.

Contact: Burt Tuxford, Storm Water Coordinator, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4086, FAX (804) 698-4032, or e-mail brtuxford@deq.state.va.us.

VA.R. Doc. No. R03-96; Filed December 20, 2002, 12:46 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled: **9 VAC 25-180. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Storm Water from Construction Activities.** The purpose of the proposed action is to reissue the existing storm water construction general permit, which expires on June 30, 2004. This general

permit regulation governs the discharge of storm water from construction sites to surface waters. (See 19:9 VA.R. 1315 January 13, 2003, for more detailed information.)

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

Statutory Authority: § 62.1-44 15 (10) of the Code of Virginia.

Public comments may be submitted until 4 p.m. on February 12, 2003.

Contact: Burt Tuxford, Storm Water Coordinator, Department of Environmental Quality, 629 E. Main St., Richmond, VA 23219, telephone (804) 698-4086, FAX (804) 698-4032, or e-mail brtuxford@deq.state.va.us.

VA.R. Doc. No. R03-97; Filed December 20, 2002, 12:45 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **9 VAC 25-770. Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects.** The purpose of the proposed regulation is to specify the mechanisms by which the State Water Control Board may require demonstration of financial responsibility for the completion of compensatory mitigation requirements for dredging projects in tidal waters permitted under the Virginia Water Protection Permit (VWPP) Program. Financial responsibility may be demonstrated by letter of credit, certificate of deposit, or performance bond. When the U.S. Army Corps of Engineers requires demonstration of financial responsibility, then the mechanism and amount approved by the Corps shall be used to meet this requirement. (See 19:7 VA.R. 1063 December 16, 2002, for more detailed information.)

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

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

Public comments may be submitted until 5 p.m. January 31, 2003.

Contact: Ellen Gilinsky, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4375, FAX (804) 698-4032, or e-mail egilinsky@deq.state.va.us.

VA.R. Doc. No. R03-74; Filed November 25, 2002, 10:22 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Real Estate Board intends to

Notices of Intended Regulatory Action

consider amending regulations entitled: **18 VAC 135-20. Virginia Real Estate Board Licensing Regulations**. The purpose of the proposed action is to increase licensing fees for regulants of the Real Estate Board in order to provide adequate revenue to support the costs of board operations and a proportionate share of the department's operations.

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

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

Public comments may be submitted until January 30, 2003.

Contact: Christine Martine, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, or e-mail reboard@dpor.state.va.us.

VA.R. Doc. No. R03-84; Filed December 9, 2002, 1:36 p.m.

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

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public comments may be submitted until January 29, 2003.

Contact: Wenda Singer, Program Development Consultant, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-2201, FAX (804) 692-2370, or e-mail wxs2@dss.state.va.us.

VA.R. Doc. No. R03-86; Filed December 10, 2002, 11:29 a.m.

TITLE 22. SOCIAL SERVICES

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to consider repealing regulations entitled: **22 VAC 15-50. Regulation for Criminal Record Checks for Child Welfare Agencies**. The purpose of the proposed action is to repeal the existing regulation that was jointly promulgated with the State Board of Social Services. A new regulation applicable only to child day centers will be promulgated.

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

Statutory Authority: §§ 63.2-1734 and 63.2-1735 of the Code of Virginia.

Public comments may be submitted until January 29, 2003.

Contact: Wenda Singer, Program Development Consultant, Department of Social Services, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-2201, FAX (804) 692-2370, or e-mail wxs2@dss.state.va.us.

VA.R. Doc. No. R03-85; Filed December 10, 2002, 11:29 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Child Day-Care Council intends to consider promulgating regulations entitled: **22 VAC 15-51. Minimum Standards for Background Checks for Licensed Child Day Centers**. The purpose of the proposed action is to promulgate a new regulation that applies only to licensed child day centers, conforms to the Code of Virginia, provides more protection for children in care, is less intrusive and burdensome for providers, and clarifies the language.

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 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **9 VAC 20-60. Virginia Hazardous Waste Management Regulations (amending 9 VAC 20-60-17, 9 VAC 20-60-40, 9 VAC 20-60-70, 9 VAC 20-60-124, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-270, 9 VAC 20-60-305, 9 VAC 20-60-315, 9 VAC 20-60-328, 9 VAC 20-60-420, 9 VAC 20-60-440, 9 VAC 20-60-450, 9 VAC 20-60-490, 9 VAC 20-60-1280, 9 VAC 20-60-1285, 9 VAC 20-60-1370, 9 VAC 20-60-1380, 9 VAC 20-60-1390, and 9 VAC 20-60-1420).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6921 et seq.; 40 CFR Parts 260 through 272.

Public Hearing Date: March 6, 2003 - 10 a.m.

Public comments may be submitted until March 28, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Robert G. Wickline, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213 or e-mail rgwickline@deq.state.va.us.

Basis: Section 10.1-1402(11) of the Virginia Waste Management Act authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations. The changes in this amendment regarding permit fees and responsibility for publishing and broadcasting of notices are not a part of the federal rules and are more restrictive than the federal requirements. The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the facility owner/operator, which is more restrictive than the federal requirements.

Purpose: The regulations establish requirements for the permitting of transportation, treatment, storage, and disposal of hazardous waste in the Commonwealth. The changes in this amendment regarding permit fees are designed to adjust the existing permit fee schedule to account for inflation and program changes since the original adoption. Other changes in this amendment reassign the responsibility for publishing and broadcasting of notices. These changes are designed to transfer these costs from the general taxpayer to the applicant or petitioner who will receive the permit or variance.

The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the facility's owner/operator. These changes are believed necessary to properly protect the Commonwealth and local government from financial loss in

the event the site must be closed and the owner is unavailable or insolvent.

The proposed amendments will protect the health, safety and welfare of the citizens of the Commonwealth by providing resources at the state level to administer hazardous waste management programs. In addition, this action will replace emergency regulations required by the 2002 General Assembly.

Substance: This action adjusts the permit fee system in order to insure that regulations continue to be appropriate in structure and fee amounts. Fees were last adjusted in 1984. The 2002 General Assembly provided for tripling of the fees by emergency regulations in 2002-2003 and by permanent regulations in 2003-2004. The legislation expires in 2004; therefore, the proposed amendment returns the fee structure at that time to the original level (as it was before 2002, adjusting it only for inflation). The schedules are shown in a table with one column for the fees appropriate in 2003-2004 and a second column for the fees appropriate after 2004.

The changes in this amendment regarding responsibility for publishing and broadcasting of notices are intended to transfer the cost of such notices from the general taxpayer to the applicant or petitioner, who receives the permit or variance. The department will provide the content of text and acceptable publication/broadcast venues. The department may issue the notice and require the applicant to remit the costs incurred (the department expects this to occur rarely and does not expect to use this procedure unless necessary to prevent scheduling failures or a similar problem).

The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the owner/operator. These changes are believed necessary to properly protect the Commonwealth and local host community from financial loss in the event the site must be closed and the owner is unavailable or insolvent.

Other changes proposed are to clarify the language of the regulations, to reinstate provisions inadvertently removed by Amendment 15 A, or to better align the regulations with federal requirements.

Issues: This action adjusts the fee system in order to insure that regulations continue to be appropriate in structure and fee amounts. Fees were last adjusted in 1984. The 2002 General Assembly provided for tripling of the fees by emergency regulations in 2002-2003 and by permanent regulations in 2003-2004. The legislation expires in 2004; therefore, the proposed amendment returns the fee structure then to the original level (as it was before 2002, adjusting it only for inflation). The schedule reflects an increase of fees in both cases. This is a disadvantage to the permit applicant; however, it is in keeping with the statutes and insures that the applicant who receives the permit bears a portion of the cost

of the permit effort and relieves the general taxpayer of that burden.

The changes in this amendment regarding responsibility for publishing and broadcasting of notices are designed to transfer the cost of such notices from the general taxpayer to the applicant or petitioner who will receive the permit or variance. This is a disadvantage to the applicants and petitioners since they will have responsibility and cost previously borne by the general taxpayer via the department. This is an advantage to the general public since they receive notice of events but do not bear the costs of publishing or broadcast.

The changes to financial assurance requirements include additional and more specific documentation of the financial assurance provided by the owner/operator. These changes are believed necessary to properly protect the Commonwealth and local government from financial loss in the event the site must be closed and the owner is unavailable or insolvent. The additional requirements are mostly in the form of documentation rather than changes to financial requirements themselves; nevertheless, they will require some minor additional effort and expense by the permit holder. The financial interests of the Commonwealth, local governments, and their respective citizens are better protected by the improved documentation. The safeguarding of these entities from potentially massive financial loss in the event of the failure of a permittee to adequately close a facility is an advantage.

Locality Particularly Affected: All communities that are hosts or may become hosts to hazardous waste facilities are affected in a similar manner by this action, and no locality is particularly affected by the proposed regulations.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the impacts of the regulations on farm or forest lands. The board intends to adjust fees listed in 9 VAC 20-60-1285 using the most recently available inflation factor using the consumer price index for urban consumers (CPI-U) prior to finalizing the regulations and is seeking comments on these fees.

Anyone wishing to submit written comments for the public comment file may do at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact: Since hazardous waste permit fee regulations have been in place since 1984, the department has had experience with the collection of permit fees and does not anticipate any new costs associated with the implementation or enforcement of the proposed changes to regulations. Since facilities will be paying for the cost of advertisements, the department will not be expending as much revenue on the advertising costs associated with permit actions.

Localities and corporations that choose to operate a permitted hazardous waste facility will be subject to higher fees, however these fees have not previously increased since 1984.

The fee schedule included in the regulations retains the tripled fees through June 30, 2004. On July 1, 2004, the permit fees are adjusted to current dollars using the consumer price index for urban consumers. The fees effective July 1, 2004 (the fee schedule in effect before 2002 with adjustment for inflation to 2002) will be lesser than the tripled fees in effect July 1, 2002 through June 30, 2004. Some facilities seeking permit actions may delay submitting requests for permit actions to the department until the tripled fee schedule expires. Former projections were a total of \$65,000 for all permit fees to be collected per year; however, the total fees projected under the proposal could be \$195,000 in 2003-2004 and approximately \$117,000 per year after 2004.

The regulations now contain requirements for the facility to arrange for and bear the cost for the newspaper advertisement and the radio announcement related to permits and variances. The fees associated with the newspaper advertisements and radio broadcasts will vary, depending on the location of the facility requesting the permit action. In the past the department has expended from \$75 to \$680 per newspaper advertisement and the fees associated with radio broadcasts have ranged from no charge (as a public service announcement) to \$350. These fees would now be paid by the facility requesting the permit action, and the fees for these advertisements would be dependent upon the location of the facility. In the fiscal year 2003, there were five such publications/broadcasts.

Additional time and copying costs related to proposed improvements in the financial assurance documentation are not expected to be extensive. If twenty facilities experience additional costs of \$100, the total effect of the proposed changes would be only \$2,000; however, reliable estimates are not available.

The department does not believe small businesses would be adversely affected by these regulatory changes.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 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 §10.1-1402 of the Code of Virginia that the Virginia Waste Management Board promulgate regulations establishing a fee assessment and collection system to recover a portion of the Virginia Waste Management Board's costs associated with the processing of an application to issue, reissue, amend, or modify any permit which the Virginia Waste Management Board has authority to issue. Section 10.1-1402.1 of the Code of Virginia requires that fees reflect

Proposed Regulations

the average time and complexity of processing a permit in each of the various categories of permits and permit actions.

The regulation proposes the following changes: (1) Chapter 822 of the Acts of Assembly for 2002 allowed the maximum individual permit fees to be raised by 300% for all applications received between July 1, 2002 and June 30, 2004, subject to the condition that the fee schedule cover no more than 20% of the direct cost of the hazardous waste management programs (based on allocations made to these programs in the 2002 Appropriation Act). While the Act of Assembly allows fees to be increased by 300% or quadrupled, the Department of Environmental Quality (DEQ) chose raise fees by 200%, tripling them from their pre-2002 level. The proposed regulation is intended to replace the emergency regulation to this effect passed earlier this year and to reflect the new fee schedule in effect between July 1, 2002 and June 30, 2004. (2) Following the expiration of the provisions of the Act of Assembly on June 30, 2004, the regulation proposes to introduce a new fee schedule that will adjust all pre-2002 fees for inflation since 1984, when fees were last updated. (3) The costs of advertising permit actions and variances, part of public notification requirements related to the processing of permits and variances, will be transferred from DEQ to the applicant. (4) Financial assurance requirements are made more restrictive for hazardous waste management facilities applying for a permit. According to DEQ, this was done in order to better protect the state and localities from financial losses incurred in implementing closure and post-closure plans in the event that a site needs to be closed and the owner is unavailable or insolvent. (5) The requirement that all hazardous waste permits be subject to public hearings is removed, making the regulation more consistent with federal regulations. The proposed change allows public hearings to be held in cases when there is significant public interest or in cases when the permit is being opposed.

The regulation reinstates provisions inadvertently removed by Amendment 15 A that dealt with temporary extensions to state hazardous waste permits. It also adds clarifying language and additional language that makes the regulation more consistent with federal requirements.

Estimated economic impact. (1) In Chapter 822 of the Acts of Assembly for 2002, the general assembly increased the maximum allowable fees for new permits and for modifications to existing permits issued by the Virginia Waste Management Board to hazardous waste management facilities. The Act of Assembly allowed individual permit fees to be raised up to 300%, subject to the condition that the fees cover no more than 20% of the direct costs of running the program. The Virginia Hazardous Waste Management regulations establish permitting requirements for the transportation, treatment, storage, and disposal of hazardous waste in Virginia. The new maximum fee schedule is to apply to all applications for new permits and for modifications to existing permits received between July 1, 2002 and June 30, 2004. Even though the Act of Assembly allowed for a 300% increase in fees, DEQ chose to raise existing fees by 200%. The proposed regulation reflects this change. It triples fees for all permits and modifications to existing permits over the next two years. Despite a tripling of the fees, projected permit fee revenues remain well below the 20% limit.

According to DEQ, the direct costs associated with running the permitting program averaged a little over \$2.2 million in fiscal 2000, 2001, and 2002 and permit fee revenues ranged from \$34,680 in fiscal 1999 to \$216,620 in fiscal 2002 (the 2002 figure was boosted by the rush to get permits and permit amendments before the new tripled fee schedule came in to affect on July 1, 2002). Permit fee revenues covered 1.6% of direct costs in 1999 and 8.6% of direct costs in 2002. Apart from the shortfall in revenues, DEQ's budget for the next two years has been cut by approximately \$3 million per year. The higher permit fees are intended to make up for the budget cut and cover some of the costs of running the permitting program.

The fee increases will affect all localities, businesses, and individuals seeking to obtain or modify a hazardous waste permit issued by the Virginia Waste Management Board. Hazardous waste permits are issued for period of 10 years, after which time the permittee has to apply for a new permit. DEQ estimates that tripling the fees will impose a \$130,000 additional cost. Permit fee revenues are likely to be in the vicinity of \$195,000 per year, approximately 7.7% of direct costs.

The improper operation of facilities that deal with the transportation, treatment, storage, and disposal of hazardous waste could create serious public health and environmental hazards. The aim of the permitting mechanism is to ensure that these activities are conducted in a manner that is protective of both public health and the environment. The cost of a permit can be viewed as the cost of ensuring the safe use of an environmental resource. In this case, the cost of the permit is the cost to DEQ of ensuring that the management and disposal of hazardous wastes is done in a manner that is protective of the air, water, and soil quality and of public health in Virginia. As mentioned above, current permit fees fall well short of the cost incurred by DEQ in ensuring adequate protection to the environment and mitigating some of the risk posed by hazardous waste management activities. Increasing the fees will transfer some or all of this cost to facilities that are engaged in these activities.

Transferring the cost will have a positive economic impact and result in the more efficient use of resources. With some of the cost being subsidized by taxpayers, localities, businesses, and individuals operating these facilities are not paying costs commensurate with the risk posed to the environment from their activities. This could potentially result in the overuse of environmental resources. For example, the lower costs may result in a larger number of such facilities operating in the state than if permit costs were higher and reflected the actual cost to DEQ in ensuring that some of the risk to the environment from these activities is mitigated. Permit fees that better reflect costs will reduce the potential for overuse, leading to the more efficient use of Virginia's resources. On the other hand, raising permit fees could have a negative economic impact by causing some localities, businesses, or individuals to postpone or abandon voluntary new projects and modifications to existing projects that could be beneficial to the Commonwealth. For example, the higher permit costs could discourage some facilities from undertaking modifications (such as upgrading to a safer and more reliable technology) that would benefit the state as a whole.

(2) The proposed regulation also establishes a new fee schedule following the expiration of the provisions of the 2002 Act of Assembly. Fees have not been updated since they were introduced in October 1984. The fee schedule being proposed adjusts the fees established in 1984 to account for inflation in the intervening years. The consumer price index for all urban consumers (CPI-U), issued monthly by the U.S. Bureau of Labor Statistics, is used to update the fees. The CPI-U was 105.3 in October 1984 and 180.1 in July 2002, reflecting inflation in the intervening 18 years. The old fees are adjusted for inflation using the following formula:

$$^{180.1}/_{105.3} * \text{old fee}$$

The value so calculated is then rounded up or down to the nearest \$10.

The new fee schedule being proposed is significantly lower than the fee schedule due to expire on June 30, 2004. Under the inflation-adjusted fee schedule and assuming no significant change in direct costs, DEQ projects that the new permit fees will generate revenues of \$117,000 per year and cover less than 5.0% of the direct costs of running the program. Without the inflation adjusted fees, DEQ had projected that permit fee revenues would average \$65,000 per year and cover 2.6% of direct costs. The new fee schedule will affect all applications for new permits and for modifications (major and minor) to existing permits received after June 30, 2004. Between fiscal 1999 and fiscal 2001, an average 40 permits were issued each year, mostly in the form of re-issuances and modifications.

In order to induce the most efficient use of resources, permit fees should reflect the actual cost to DEQ of ensuring that a resource is used in a safe manner. The higher fees are simply transferring part of the cost of safely operating hazardous waste management facilities from DEQ and hence the taxpayer to the facilities themselves. To the extent the higher fees better reflect the cost of ensuring that these activities are conducted in a safe manner, the proposed change will have a positive economic impact and result in the more efficient use of resources. On the other hand, the proposed change could have a negative economic impact by discouraging certain new waste management projects and upgrades to existing projects that might have been beneficial to the state.

(3) The proposed regulation transfers the costs of advertising permit actions and variances to the applicant receiving the permit action or making the variance request. Under current policy, DEQ incurs the cost of giving public notice through newspapers advertisements and radio broadcasts when a draft permit has been prepared, when a public hearing will be held on the draft permit, or when action has been taken on a request for variance. Under the proposed regulation, DEQ will send notification to the applicant when publication and broadcast are required. The notification will include the text of the notice, acceptable newspapers and radio stations, and the dates of publication and broadcast. DEQ could also arrange for the publication and broadcast of the notice, but the cost of doing so would be charged to the applicant.

According to DEQ, the department published and broadcast five public notices related to hazardous waste permit actions in fiscal 2002. Newspaper advertisements cost between \$75

and \$680 and radio broadcasts cost between \$0 and \$350. Assuming the same number of public notices, the proposed regulation could save DEQ between \$375 and \$5,150.

As discussed in (1) and (2), transferring more of the permitting cost (i.e., cost incurred in managing the permitting program) to hazardous waste management facilities would result in efficiency gains in the use of resources, but could also result in some beneficial projects being abandoned or postponed. However, given that the proposed change imposes a relatively small additional cost on these facilities, the net economic impact of this change is not likely to be significant.

(4) The proposed regulation imposes additional financial assurance requirements that make the regulation more restrictive than federal requirements. The proposed regulation requires the owners and operators of hazardous waste management facilities to submit more detailed documentation of financial assurance than required under current policy. All hazardous waste management facilities are currently required to provide financial assurance in the form of a surety bond or certificate of insurance in order to meet closure and/or post-closure costs in the event of insolvency and closure. The proposed change lays down additional and more specific documentation that has to be provided along with currently required documents. The recommendations are based on DEQ's experience in dealing with and evaluating these documents. While the proposed change is expected to improve efficiency by reducing the time expended in evaluating the soundness of financial assurance being provided by hazardous waste management facilities, DEQ believes that the additional time and copying costs related to the changes are not likely to be extensive.

The regulation incorporates a statutory change requiring that any surety issuing surety bonds to guarantee payment or performance must be licensed under the relevant chapter of the Code of Virginia. The regulation also requires hazardous waste management facilities to update post-closure cost estimates on a regular basis – within 30 to 60 days of establishment of the financial instrument or the end of the firm's fiscal year for existing post-closure plans and within 30 days when post-closure plans are modified. The change is being made in order to make the regulation more consistent with current practice.

As most of the additional requirements are in the form of documentation aimed at improving the operation of the permitting process, the net economic impact of the proposed change will depend on whether the extent of efficiency improvement in the permitting process is greater than or less than the additional cost of compliance.

(5) The proposed regulation removes the requirement that all hazardous waste permits be subject to public hearings. Public hearing will continue to be held in cases when there is significant public interest or in cases when the permit is being opposed by DEQ. The change makes current policy more consistent with federal regulations.

The proposed change is likely to have a small positive net economic impact. While still allowing public hearings to be held under certain circumstances, the change eliminates the requirement that a public hearing be held for every permit

Proposed Regulations

action regardless of how big or small its potential impact might be. The change is likely to save DEQ the cost of travel and time spent by its staff in organizing and conducting public hearings in cases when there is no significant public interest or when the permit is not being opposed. The cost saving is achieved at no significant additional cost to the public as the regulation will continue to require that public hearings be held when there is public interest or when the permit is being opposed by DEQ.

Businesses and entities affected. The proposed regulation will increase costs for all individuals and businesses seeking to get permits or modify existing permits issued by the Virginia Waste Management Board to facilities that transport, treat, store, and dispose hazardous waste in Virginia. Fees have tripled for all permits issued between July 1, 2002 and June 30, 2004. The fee schedule effective July 1, 2004, adjusts the pre-2002 fees, established in 1984, for inflation. Applicants, rather than DEQ, are now required to bear the costs of publication and broadcast of public notices related to permit applications and requests for variance. The regulation also requires more specific, additional documentation to be submitted as part of the financial assurance requirements.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth. Localities that have a large number of projects requiring permits from the Virginia Waste Management Board are likely to be especially affected.

Projected impact on employment. The proposed regulation is not expected to have a significant impact on employment.

Effects on the use and value of private property. The proposed regulation triples the cost of obtaining a hazardous waste permit between July 1, 2002 and June 30, 2004 from the Virginia Waste Management Board. Effective July 1, 2004, the regulation proposes a fee schedule that adjusts pre-2002 fees for inflation since the time they were established in 1984. The regulation also proposes to transfer the cost of meeting public notification requirements to businesses applying for the permit or requesting the variance. The proposed changes are likely to increase the cost of operation for individuals and businesses required to obtain a new permit or modify an existing permit.

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

Summary:

The proposed amendments:

1. Remove a requirement that all permits be the subject of a hearing. Hearings will be held upon request representing a significant degree of public interest or if the permit is contested as required by incorporated federal rules (40 CFR 124.12).

2. Transfer the responsibility and cost of publishing and broadcasting notices related to the processing of draft permits and petitions for variances to the applicant or petitioner. The department will provide the content of text and acceptable publication/broadcast venues. The

department may issue the notice and require the applicant to remit the costs incurred.

3. Clarify the nonapplicability of transporter requirements to universal wastes. Procedures and terms for extending permits inadvertently left out in Amendment 15A have been reinstated.

4. Increase the fee schedule as authorized by Chapter 822 of the 2002 Acts of Assembly. This action will replace emergency regulations currently in place.

9 VAC 20-60-17. Definitions created by these regulations.

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

"*Administrator*" means the Administrator of the United States Environmental Protection Agency or his designee. See 9 VAC 20-60-14 B 1.

"*Another regulation of the Virginia Administrative Code*" means any regulation that is not in 9 VAC 20-60-12 ~~et seq.~~, the Virginia Hazardous Waste Management Regulations.

"*Application, Part A*" means that part of the application that a permit applicant shall complete to qualify for interim status under § 3005(e) of RCRA or this chapter and for consideration for a permit.

"*Application, Part B*" means that part of the application that a permit applicant shall complete to be considered for a permit as required by 9 VAC 20-60-1010.

"*Approved program*" means a state program that has been approved by the U.S. EPA. An "approved state" is one administering an "approved program" under the hazardous waste management provisions of RCRA.

"*Authorization (authorized program)*" means a state hazardous waste program that has been approved under the authorities of RCRA.

"*Authorized representative*" means the manager, superintendent, or person of equivalent responsibility responsible for the overall operation of a facility or an operational unit (i.e., part of a facility).

"*Board*" means the Virginia Waste Management Board.

"*Commonwealth*" means the Commonwealth of Virginia.

"*Department*" means the Virginia Department of Environmental Quality.

"*Director*" means the Director of the Department of Environmental Quality.

"*Emergency permit*" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the director.

"*EPA*" means the U.S. Environmental Protection Agency. See 9 VAC 20-60-14 B 2.

"*EPA identification number*" means the number assigned by EPA or the ~~director~~ department to each hazardous waste

generator, hazardous waste transporter, or hazardous waste facility.

"EPA hazardous waste number" means the number assigned by EPA to each waste listed in Subpart D of 40 CFR Part 261 and to each waste exhibiting a characteristic identified in Subpart C of 40 CFR Part 261.

"Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR Parts 171 and 173.

"HSWA" means the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616).

"HSWA drip pad" means a drip pad where F032 wastes are handled.

"HSWA tank" means a tank owned or operated by a small quantity generator or an underground tank for which construction commenced after July 14, 1986, or an underground tank that cannot be entered for inspection.

"HWM" means hazardous waste management.

"Non-HSWA tank" means any tank that is not a HSWA tank.

"Non-HSWA drip pad" means a drip pad where F034 or F035 wastes are handled.

"Permit" means a control document issued by the Commonwealth pursuant to this chapter, or by the EPA administrator pursuant to applicable federal regulations. The term "permit" includes any functional equivalent such as an authorization, license, emergency permit, or permit by rule. It does not include interim status under RCRA or this chapter, nor does it include draft permits.

"Permitted hazardous waste management facility" or "permitted facility" means a hazardous waste treatment, storage, or disposal facility that has received an EPA or Commonwealth permit in accordance with the requirements of this chapter or a permit from an authorized state program.

"Qualified engineer" or "engineer" means a professional engineer certified to practice in the Commonwealth of Virginia.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.).

"Regulation" means the control, direction and governance of solid and hazardous waste activities by means of the adoption and enforcement of laws, ordinances, rules and regulations.

"Responsible individual" means an individual authorized to sign official documents for and act on behalf of a company or organization. See also "authorized representative."

"Signature" means the name of a person written with his own hand.

"These regulations" means 9 VAC 20-60, the Virginia Hazardous Waste Management Regulations.

"VHWMR" means 9 VAC 20-60, the Virginia Hazardous Waste Management Regulations.

B. Terms used in liability insurance requirements. In the liability insurance requirements, the terms "bodily injury" and "property damage" shall have the meanings given these terms by the case law of the Virginia court system. However, these terms do not include those liabilities which, consistent with standard industry practices, are excluded from coverage in liability policies for bodily injury and property damage. The department intends the meanings of other terms used in the liability insurance requirements to be consistent with their common meanings within the insurance industry.

9 VAC 20-60-40. Administration of chapter.

A. The director is ~~designed~~ *designated* by the Act with the responsibility to carry out programs, consistent with board approval, that will comply with the requirements of the Act.

B. The board, acting on the advice of the director, will promulgate regulations to meet the requirements of the Act.

9 VAC 20-60-70. Public participation.

A. All regulations developed under the provisions of Title 10.1 of the Code of Virginia for hazardous waste management shall be developed in accordance with the provisions of the Commonwealth of Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the Virginia Waste Management Board Public Participation Guidelines, 9 VAC 20-10.

~~B. All permits for hazardous waste management facilities, including permits by rule, will be the subject of a public hearing, as specified in 9 VAC 20-60-270.~~

~~C. B. Modifications and revisions to all hazardous waste management facility permits, except changes to interim status, shall be subject to public participation in accordance with 9 VAC 20-60-270.~~

~~D. C. Modifications and revisions to this chapter shall be the subject of public participation as specified by the Virginia Administrative Process Act and the public participation guidelines of the board.~~

~~E. D. Dockets of all permitting actions, enforcement actions, and administrative actions relative to this chapter shall be available to the public for review, consistent with the Commonwealth of Virginia Administrative Process Act, Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), and the provisions of this chapter.~~

~~F. E. All reports and related materials received from hazardous waste generators, transporters and facilities, as required by this chapter, shall be open to the public for review.~~

~~G. F. Public participation in the compliance evaluation and enforcement programs is encouraged. The department will:~~

1. Investigate and provide written responses to all citizen complaints addressed to the department;
2. Not oppose intervention by any citizen in a suit brought before a court by the department as a result of the enforcement action; and
3. Publish a notice in major daily or weekly newspaper of general circulation in the area and provide at least 30 days of public comment on proposed settlements of civil

Proposed Regulations

enforcement actions except where the settlement requires some immediate action.

9 VAC 20-60-124. Adoption of 40 CFR Part 124 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in Subparts A and B of 40 CFR Part 124, wherein they relate to RCRA programs, are hereby incorporated as part of the VHWMR. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 124 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where text from 40 CFR Part 124 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Other sections of these regulations, particularly in 9 VAC 20-60-270 and Part XIV (9 VAC 20-60-1370 et seq.) of this chapter, describe processes or procedures wherein items from 40 CFR Part 124 are applied as a part of more complete and detailed requirements. The incorporations of portions of 40 CFR Part 124 in this part shall not be construed so as to contradict or interfere with the operations of other parts of these regulations.

2. In addition to the citations in 40 CFR 124.5(a), permits may be modified, revoked and reissued, or terminated for reasons stated in 9 VAC 20-60-270 B and Part XIV (9 VAC 20-60-1370 et seq.) of this chapter.

3. Text of 40 CFR 124.5(b) is not incorporated into these regulations. Administrative appeal shall be conducted in accordance the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

4. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 124.5(d), 40 CFR 124.6(e), and 40 CFR 124.10(b), the term "EPA" shall mean the United States Environmental Protection Agency.

6. In 40 CFR 124.10(c)(1)(ii), the term "EPA" shall mean the United States Environmental Protection Agency.

7. *In 40 CFR 124.10 procedures are described for giving public notice in newspapers and radio broadcast when a draft permit has been prepared (40 CFR 124.10(a)(1)(ii)) or when a public hearing will be held on the draft permit (40 CFR 124.10(b)(2)). The applicant for a permit shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require*

the applicant to remit the cost of such publication and broadcast.

7. 8. In 40 CFR 124.19 an appeal process is established that includes certain appeals procedures that apply to the federal hazardous waste program, including the establishment of an EPA Environmental Appeals Board. These Virginia regulations do not incorporate this federal process. Appeals under these regulations will be in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia. All federal regulatory references to the appeal process or the EPA Environmental Appeals Board, such as in 40 CFR 124.5, shall be construed to mean the administrative processes and appeals processes as specified by Virginia's Administrative Process Act.

9. *The petitioner for a variance from any regulation shall arrange for any newspaper publication and radio broadcast required under this chapter and to bear the cost of such publication and broadcast. The department shall send notification to the applicant that the publication and broadcast are required and the notification shall include the text of the notice, dates of publication and broadcast, and acceptable newspapers and radio stations wherein the notice may be published. The department may arrange for the newspaper publication and radio broadcast and require the applicant to remit the cost of such publication and broadcast.*

9 VAC 20-60-261. Adoption of 40 CFR Part 261 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 261 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 261 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 261 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Any agreements required by 40 CFR 261.4(b)(11)(ii) shall be sent to the United States Environmental Protection Agency at the address shown and to the ~~director~~ {Department of Environmental Quality, Post Office Box 10009, Richmond, Virginia 23240-0009}.

2. In 40 CFR 261.4(e)(3)(iii), the text "in the Region where the sample is collected" shall be deleted.

3. In 40 CFR 261.4(f)(1), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. In 40 CFR 261.6(a)(2), recyclable materials shall be subject to the requirements of 9 VAC 20-60-270 and Part XII (9 VAC 20-60-1260 et seq.) of this chapter.

5. No hazardous waste from a conditionally exempt small quantity generator shall be managed as described in 40 CFR 261.5(g)(3)(iv) or 40 CFR 261.5(g)(3)(v) unless such waste management is in full compliance with all requirements of the Solid Waste Management Regulations (9 VAC 20-80-40 ~~et seq.~~).

6. In 40 CFR 261.9 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

7. In Subparts B and D of 40 CFR Part 261, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency, and the term "Director" shall not supplant "Administrator" throughout Subparts B and D.

9 VAC 20-60-262. Adoption of 40 CFR Part 262 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 262 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 262 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 262 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR 262.42(a)(2), the words "for the Region in which the generator is located" is deleted from the incorporated text and is not a part of these regulations.

2. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 262.12, 40 CFR 262.53, 40 CFR 262.54, 40 CFR 262.55, 40 CFR 262.56 and 40 CFR 262.57, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. For accumulation areas established before March 1, 1988, a generator who is not otherwise exempted by 40 CFR 261.5 shall notify the ~~director~~ *department* of each location where he accumulates hazardous waste in accordance with 40 CFR 262.34 by March 1, 1988. For accumulation areas established after March 1, 1988, he shall notify the ~~director~~ *department* and document in the operating record that he intends to accumulate hazardous

waste in accordance with 40 CFR 262.34 prior to or immediately upon the establishment of each accumulation area. In the case of a new generator who creates such accumulation areas after March 1, 1988, he shall notify the ~~director~~ *department* at the time the generator files the Notification of Hazardous Waste Activity that he intends to accumulate hazardous waste in accordance with 40 CFR 262.34. This notification shall specify the exact location of the accumulation area at the site.

5. In addition to the requirements in 40 CFR Part 262, management of hazardous wastes is required to comply with the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-40 ~~et seq.~~), including packaging and labeling for transport.

6. A generator shall not offer his hazardous waste to a transporter or to a facility that has not received a permit and an EPA identification number.

7. In 40 CFR *Part* 262, Subpart H, the terms "EPA" and "Environmental Protection Agency" shall mean the United States Environmental Protection Agency.

9 VAC 20-60-264. Adoption of 40 CFR Part 264 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 264 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 264 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 264 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 264.1(d), 40 CFR 264.1(f), 40 CFR 264.149, 40 CFR 264.150, 40 CFR 264.301(l), and Appendix VI are not included in the incorporation of 40 CFR Part 264 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 264.1(g)(11) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

3. In 40 CFR 264.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

Proposed Regulations

4. In 40 CFR 264.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

5. In addition to the notifications required by 40 CFR 264.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 264.56(j), the owner or operator shall include such other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

~~6. In 40 CFR 264.143(h), 40 CFR 264.145(h), and 40 CFR 264.151, an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.~~

6. In 40 CFR 264.93, "hazardous constituents" shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 261 Appendix VIII.

7. The federal text at 40 CFR 264.94(a)(2) is not incorporated by reference. The following text shall be substituted for 40 CFR 264.94(a)(2): "For any of the constituents for which the USEPA has established a Maximum Contaminant Level (MCL) under the National Primary Drinking Water Regulation, 40 CFR Part 141 (regulations under the Safe Drinking Water Act), the concentration must not exceed the value of the MCL; or if the background level of the constituent is below the MCL; or."

8. The owner or operator must submit the detailed, written closure cost estimate described in 40 CFR 264.142 upon the written request of the director.

9. In 40 CFR 264.143 (b)(1), 40 CFR 264.143(c)(1), 40 CFR 264.145(b)(1), and 40 CFR 264.145(c)(1), any surety issuing surety bonds to guarantee payment or performance must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia.

10. In 40 CFR 264.143(b), 40 CFR 264.143(c), 40 CFR 264.145(b) and 40 CFR 264.145(c), any owner or operator demonstrating financial assurance for closure or post-closure care using a surety bond shall submit with the surety bond a copy of the deed book page documenting that the power of attorney of the attorney-in-fact executing the bond has been recorded pursuant to § 38.2-2416 of the Code of Virginia.

11. The following text shall be substituted for 40 CFR 264.143(c)(5): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or

other permit requirements when required to do so, under the terms of the bond, the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund."

12. The following text shall be substituted for 40 CFR 264.143(d)(8): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform final closure in accordance with the approved closure plan, the applicable regulations or other permit requirements when required to do so, the director may draw on the letter of credit."

13. The following text shall be substituted for 40 CFR 264.143(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance, along with a complete copy of the insurance policy, to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

14. The following text shall be substituted for 40 CFR 264.143(f)(3)(ii), 40 CFR 264.145(f)(3)(ii) and 40 CFR 264.147(f)(3)(ii): "A copy of the owner's or operator's audited financial statements for the latest completed fiscal year; including a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and"

15. In addition to the other requirements in 40 CFR 264.143(f)(3), 40 CFR 264.145(f)(3) and 40 CFR 264.147(f)(3), an owner or operator must submit confirmation from the rating service that the owner or operator has a current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's if the owner or operator passes the financial test with a bond rating as provided in subsection 1(ii)(A).

16. The following text shall be substituted for 40 CFR 264.143(h) and 40 CFR 264.145(h): "An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility in Virginia. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the EPA Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure or post-closure care of any of the facilities covered by the mechanism, the director may direct only the amount of

funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism."

17. In 40 CFR 264.144, "the owner or operator must submit a detailed, written post-closure cost estimate upon the written request of the director."

18. The following text shall be substituted for 40 CFR 264.144(b): "During the active life of the facility and the post-closure period, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with 40 CFR 265.145. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before the submission of updated information to the department as specified in 40 CFR 265.145(f)(5). The adjustment may be made by recalculating the post-closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business as specified in 40 CFR 264.142(b)(1) and (2). The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

a. The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.

b. Subsequent adjustments are made by multiplying the latest adjusted post-closure cost estimate by the latest inflation factor."

19. The following text shall be substituted for 40 CFR 264.144(c): "During the active life of the facility and the post-closure period, the owner or operator must revise the post-closure cost estimate within 30 days after the director has approved the request to modify the post-closure plan, if the change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate must be adjusted for inflation as specified in 264.144(b)."

20. The following text shall be substituted for 40 CFR 264.145(c)(5): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan, the applicable regulations or other permit requirements, under the terms of the bond the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund."

21. The following text shall be substituted for 40 CFR 264.145(d)(9): "Following a final administrative determination pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia that the owner or operator has failed to perform post-closure in accordance with the approved post-closure plan, the applicable regulations, or other permit requirements when required to do so, the director may draw on the letter of credit."

22. The following text shall be substituted for 40 CFR 264.145(e)(1): "An owner or operator may satisfy the requirements of this section by obtaining post-closure insurance which confirms to the requirements of this paragraph and submitting a certificate of such insurance to the department. An owner or operator of a new facility must submit the certificate of insurance along with a complete copy of the insurance policy to the department at least 60 days before the date on which the hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2 of the Code of Virginia."

7- 23. In 40 CFR 264.147(a)(1)(ii), 40 CFR 264.147(b)(1)(ii), 40 CFR 264.147(g)(2), and 40 CFR 264.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

8- 24. In 40 CFR 264.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1997, instead of January 12, 1997.

9- 25. In 40 CFR 264.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987, instead of July 14, 1986.

40- 26. In 40 CFR 264.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1997, instead of January 12, 1997.

44- 27. A copy of all reports made in accordance with 40 CFR 264.196(d) shall be sent to the director and to the chief administrative officer of the local government of the jurisdiction in which the event occurs. The sentence in 40 CFR 264.196(d)(1), "If the release has been reported pursuant to 40 CFR Part 302, that report will satisfy this requirement." is not incorporated by reference into these regulations and is not a part of the Virginia Hazardous Waste Management Regulations.

42- 28. The following text shall be substituted for 40 CFR 264.570(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreements for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to

Proposed Regulations

December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to September 8, 1993."

~~13.~~ 29. In 40 CFR 264.1030(c), the reference to 40 CFR 124.15 shall be replaced by a reference to 40 CFR 124.5.

14. 30. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

~~15.~~ 31. In addition to the notices required in Subpart B and others parts of 40 CFR Part 264, the following notices are also required:

a. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source (a source located outside of the United States of America) shall notify the ~~director~~ *department* and administrator in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

b. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator of the facility is also the generator of this waste) shall inform the generator in writing that he has appropriate permits for, and will accept, the waste that the generator is shipping. The owner or operator shall keep a copy of this written notice as part of the operating record.

c. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator shall notify the new owner or operator in writing of the requirements contained in 9 VAC 20-60-264 and 9 VAC 20-60-270. An owner or operator's failure to notify the new owner or operator of the above requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

d. Any person responsible for the release of a hazardous substance from the facility which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the ~~director~~ *department* and the chief administrative officer of the local government of the jurisdiction in which the release occurs or their designees. In cases when the released hazardous substances are hazardous wastes or hazardous waste constituents additional requirements are prescribed by Subpart D of 40 CFR Part 264.

~~16. In 40 CFR 264.93, "hazardous constituents" shall include constituents identified in 40 CFR Part 264 Appendix IX in addition to those in 40 CFR Part 264 Appendix VIII.~~

~~17. The federal text at 40 CFR 264.94(a)(2) is not incorporated by reference. The following text shall be substituted for 40 CFR 264.94(a)(2): "For any of the~~

~~constituents for which the USEPA has established a Maximum Contaminant Level (MCL) under the National Primary Drinking Water Regulation, 40 CFR Part 141 (regulations under the Safe Drinking Water Act), the concentration must not exceed the value of the MCL; or if the background level of the constituent is below the MCL; or."~~

9 VAC 20-60-265. Adoption of 40 CFR Part 265 by reference.

A. Except as otherwise provided, the regulations of the United States Environmental Protection Agency set forth in 40 CFR Part 265 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 40 CFR Part 265 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 265 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. Sections 40 CFR 265.1(c)(4), 40 CFR 265.149 and 40 CFR 265.150 and Subpart R of 40 CFR Part 265 are not included in the incorporation of 40 CFR Part 265 by reference and are not a part of the Virginia Hazardous Waste Management Regulations.

2. In 40 CFR 265.1(c)(14) and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provision of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

3. A copy of all reports and notices made in accordance with 40 CFR 265.12 shall be sent to the ~~director~~ *department*, the administrator and to chief administrative officer of the local government of the jurisdiction in which the event occurs.

4. In 40 CFR 265.12(a), the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

5. In 40 CFR 265.33, the following sentence shall be added to the end of the paragraph: "A record of tests or inspections will be maintained on a log at that facility or other reasonably accessible and convenient location."

6. In addition to the notifications required by 40 CFR 265.56(d)(2), notification shall be made to the on-scene coordinator, the National Response Center and the Virginia Department of Emergency Management, Emergency Operations Center. In the associated report filed under 40 CFR 265.56(j), the owner or operator shall include such

other information specifically requested by the director, which is reasonably necessary and relevant to the purpose of an operating record.

7. In addition to the requirements of 40 CFR 265.91, a log shall be made of each ground water monitoring well describing the soils or rock encountered, the permeability of formations, and the cation exchange capacity of soils encountered. A copy of the logs with appropriate maps shall be sent to the ~~director or his designee~~ department.

8. In 40 CFR 265.143(g) and 40 CFR 265.145(g), an owner or operator may use the same financial mechanism for multiple facilities. If the facilities covered by the mechanism are located in more than one state, identical evidence of financial assurance must be submitted to and maintained with all RCRA authorized state agencies where facilities covered by the financial mechanism are located or with the regional administrators where facilities are located in states without RCRA authorization.

9. In 40 CFR 265.147(a)(1)(ii), 40 CFR 265.147(g)(2), and 40 CFR 265.147(i)(4), the term "Virginia" shall not be substituted for the term "State" or "States."

10. In 40 CFR 265.191(a), the compliance date of January 12, 1988, applies only for HSWA tanks. For non-HSWA tanks, the compliance date is November 2, 1986.

11. In 40 CFR 265.191(c), the reference to July 14, 1986, applies only to HSWA tanks. For non-HSWA tanks, the applicable date is November 2, 1987.

12. In 40 CFR 265.193, the federal effective dates apply only to HSWA tanks. For non-HSWA tanks, the applicable date is January 12, 1987 is replaced with November 2, 1997.

13. The following text shall be substituted for 40 CFR 265.440(a): "The requirements of this subpart apply to owners and operators of facilities that use new or existing drip pads to convey wood drippage, precipitation and/or surface water run-off to an associated collection system. Existing HSWA drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 6, 1990. Existing non-HSWA drip pads are those constructed before January 14, 1993, and those for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to January 14, 1993. All other drip pads are new drip pads. The requirement at 40 CFR 265.443(b)(3) to install a leak collection system applies only to those HSWA drip pads that are constructed after December 24, 1992, except for those constructed after December 24, 1992, for which the owner or operator has a design and has entered into a binding financial or other agreement for construction prior to December 24, 1992. For non-HSWA drip pads, the requirement at 40 CFR 264.573(b)(3) to install a leak collection system applies only to those non-HSWA drip pads that are constructed after September 8, 1993, except for those constructed after September 8, 1993, for which the owner or operator has a design and has entered into a

binding financial or other agreement for construction prior to September 8, 1993."

14. In 40 CFR 265.1083(c)(4)(ii), the second occurrence of the term "EPA" shall mean the United States Environmental Protection Agency.

15. In addition to the requirements of 40 CFR 265.310, the owner or operator shall consider at least the following factors in addressing the closure and post-closure care objectives of this part:

- a. Type and amount of hazardous waste and hazardous waste constituents in the landfill;
- b. The mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;
- c. Site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration;
- d. Climate, including amount, frequency and pH of precipitation;
- e. Characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover; and
- f. Geological and soil profiles and surface and subsurface hydrology of the site.

16. Additionally, during the post-closure care period, the owner or operator of a hazardous waste landfill shall comply with the requirements of 40 CFR 265.116 and the following items:

- a. Maintain the function and integrity of the final cover as specified in the approved closure plan;
- b. Maintain and monitor the leachate collection, removal, and treatment system, if present, to prevent excess accumulation of the leachate in the system;
- c. Maintain and monitor the landfill gas collection and control system, if present, to control the vertical and horizontal escape of gases;
- d. Protect and maintain, if present, surveyed benchmarks; and
- e. Restrict access to the landfill as appropriate for its post-closure use.

17. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia.

18. Regulated units of the facility are those units used for storage treatment or disposal of hazardous waste in surface impoundments, waste piles, land treatment units, or landfills that received hazardous waste after July 26, 1982. In addition to the requirements of Subpart G of 40 CFR Part 265, owners or operators of regulated units who manage hazardous wastes in regulated units shall comply with the closure and post-closure requirements contained in Subpart G of 40 CFR Part 264, Subpart H of 40 CFR Part 264, and Subpart K of 40 CFR Part 264 through Subpart N of 40 CFR

Proposed Regulations

Part 264, as applicable, and shall comply with the requirements in Subpart F of 40 CFR Part 264 during any post-closure care period and for the extended ground water monitoring period, rather than the equivalent requirements contained in 40 CFR Part 265. The following provisions shall also apply:

a. For owners or operators of surface impoundments or waste piles included above who intend to remove all hazardous wastes at closure in accordance with 40 CFR 264.228(a)(1) or 40 CFR 264.258(a), as applicable, submittal of contingent closure and contingent post-closure plans is not required. However, if the facility is subsequently required to close as a landfill in accordance with Subpart N of 40 CFR Part 264, a modified closure plan shall be submitted no more than 30 days after such determination. These plans will be processed as closure plan amendments. For such facilities, the corresponding post-closure plan shall be submitted within 90 days of the determination that the unit shall be closed as a landfill.

b. A permit application as required under 9 VAC 20-60-270 to address the post-closure care requirements of 40 CFR 264.117 and for ground water monitoring requirements of 40 CFR 264.98, 40 CFR 264.99, or 40 CFR 264.100, as applicable, shall be submitted for all regulated units which fail to satisfy the requirements of closure by removal or decontamination in 40 CFR 264.228(a)(1), 40 CFR 264.258(a), or 40 CFR 264.280(d) and 40 CFR 264.280(e), as applicable. The permit application shall be submitted at the same time as the closure plan for those units closing with wastes in place and six months following the determination that closure by removal or decontamination is unachievable for those units attempting such closure. The permit application shall address the post-closure care maintenance of both the final cover and the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program whenever contaminated soils, subsoils, liners, etc., are left in place. When all contaminated soils, subsoils, liners, etc., have been removed yet ground water contamination remains, the permit application shall address the post-closure care maintenance of the ground water monitoring wells as well as the implementation of the applicable ground water monitoring program.

c. In addition to the requirements of 40 CFR 264.112(d)(2)(i) for requesting an extension to the one year limit, the owner or operator shall demonstrate that he will continue to take all steps to prevent threats to human health and the environment.

d. In addition to the requirements of 40 CFR 264.119(c), the owner or operator shall also request a modification to the post-closure permit if he wishes to remove contaminated structures and equipment.

9 VAC 20-60-270. Adoption of 40 CFR Part 270 by reference.

A. Except as otherwise provided, those regulations of the United States Environmental Protection Agency set forth in 40

CFR Part 270 are hereby incorporated as part of the Virginia Hazardous Waste Management Regulations. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of incorporated sections of 40 CFR Part 270 are also hereby incorporated as part of the Virginia Hazardous Waste Management Regulations.

B. In all locations in these regulations where 40 CFR Part 270 is incorporated by reference, the following additions, modifications and exceptions shall amend the incorporated text for the purpose of its incorporation into these regulations:

1. In 40 CFR Part 270 and wherever elsewhere in Title 40 of the Code of Federal Regulations there is a listing of universal wastes or a listing of hazardous wastes that are the subject of provisions set out in 40 CFR Part 273 as universal wastes, it shall be amended by addition of the following sentence: "In addition to the hazardous wastes listed herein, the term "universal waste" and all lists of universal waste or waste subject to provisions of 40 CFR Part 273 shall include those hazardous wastes listed in Part XVI (9 VAC 20-60-1495 et seq.) of the Virginia Hazardous Waste Management Regulations as universal wastes, under such terms and requirements as shall therein be ascribed."

2. In 40 CFR 270.5, the term "Administrator" shall mean the administrator of the United States Environmental Protection Agency or his designee.

3. In 40 CFR 270.5, the term "Regional Administrator" shall mean the regional administrator of Region III of the United States Environmental Protection Agency or his designee.

4. The underground injection of hazardous waste for treatment, storage or disposal shall be prohibited throughout the Commonwealth of Virginia, and no permits shall be issued for underground injection facilities.

5. Validity of the federal HWM permits. This section replaces 40 CFR 270.51, which is not included in the incorporation of 40 CFR Part 270 by reference and is not a part of the Virginia Hazardous Waste Management Regulations.

a. Hazardous waste management facilities located in Virginia which possess an effective final RCRA permit issued by the United States Environmental Protection Agency will be considered to possess a valid Virginia hazardous waste management permit for the duration of the unexpired term of the federal permit, provided that:

(1) The facility remains in compliance with all of the conditions specified in the federal permit;

(2) The operator submits a complete copy of the federal permit to the ~~director~~ *department* no later than the effective date of the federal permit; and

(3) The owner and operator of the facility submit a request to continue the federal permit addressed to the ~~director~~ *department*.

b. Federal permits issued to hazardous waste management facilities located in Virginia by the United States Environmental Protection Agency pursuant to

HSWA requirements which constitute the federal portion of the combined Virginia--United States Environmental Protection Agency RCRA permits are considered, for the purposes of this chapter, as addenda to the Virginia permits and will remain in effect during the unexpired term of the Virginia permit.

6. All permit applications and reapplications required by these regulations shall be accompanied by an appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter. Applications or reapplications not accompanied by such fees will not be considered complete. The director shall not issue a permit before receiving a complete application except permits by rule, emergency permits, or continued federal permits. In addition, an application for a permit is not complete until the ~~director~~ department receives an application form and any supplemental information, which are completed to ~~his~~ the department's satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. In cases where Part A of the application was first submitted to the United States Environmental Protection Agency Administrator, a copy of such submission shall also be sent to the ~~director~~ department.

7. Interim status.

a. The director may deny interim status to any owner or operator if, at the time the Part A application is submitted, the facility is in violation of any regulation of the board so as to pose a substantial present or potential hazard to human health or environment.

b. Unless subject of an exception specified in 40 CFR 270.73, interim status terminates when final disposition of a permit application is made or when interim status is terminated by the director. Interim status may be terminated for any of the following reasons:

- (1) Failure to submit a completed Part B application on time;
- (2) Failure to furnish any information required by this chapter;
- (3) Falsification, misrepresentation or failure to fully disclose any information submitted or required to be kept under this chapter;
- (4) Violation of this chapter; and
- (5) A determination that the facility poses a significant threat to public health or the environment.

c. The director may terminate the interim status upon receiving a voluntary request for such an action from the owner and the operator of the facility.

- (1) To be considered for voluntary termination such request shall:
 - (a) Be received by the ~~director~~ department prior to the issuance of the request to submit Part B of the permit application in accordance with this section; and

- (b) Be accompanied by a waiver of procedures contained in this section.

- (2) Termination under this part will not be granted to the owner and operator of the facility:

- (a) Which is not in compliance with the standards contained in 9 VAC 20-60-265; or
 - (b) When termination proceedings have been instituted under this section.

- d. The effective date of the termination of the interim status will be determined by the director to allow for proper closure of the facility in accordance with Subpart G of 40 CFR Part 264 and Subpart G of 40 CFR Part 265, as applicable.

8. Each permit shall include permit conditions necessary to achieve compliance with the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia) and regulations, including each of the applicable requirements specified in this part (Part III) of these regulations. In satisfying this provision, the director may incorporate applicable requirements of Part III directly into the permit or establish other permit conditions that are based on these requirements.

9. In addition to the other general information requirements to be part of the contents of any Part B in 40 CFR 270.14(b), the following information is required for all hazardous waste management facilities, except as provided otherwise:

- a. A copy of the general inspection schedule required by 40 CFR 264.15(b). Include, where applicable, as part of the inspection schedule, specific requirements in 40 CFR 264.174, 40 CFR 264.193(i), 40 CFR 264.195, 40 CFR 264.226, 40 CFR 264.254, 40 CFR 264.273, 40 CFR 264.303, 40 CFR 264.573, 40 CFR 264.574, 40 CFR 264.602, 40 CFR 264.1033, 40 CFR 264.1052, 40 CFR 264.1053, and 40 CFR 264.1058.

- b. Traffic pattern, estimated volume (number, types of vehicles) and control; describe access road surfacing and load bearing capacity; show traffic control signals.

10. A period of 30 days shall elapse between the date of public notice and the date of a public hearing under 40 CFR 270.42(b)(4) and 40 CFR 270.42(c)(4).

11. Notices given under 40 CFR 270.30(l)(1) shall be written.

12. The following additional information is required from owners or operators of facilities that store or treat hazardous waste in waste piles if an exemption is sought to Subpart F of 40 CFR Part 264 and 40 CFR 264.251 as provided in 40 CFR 264.250(c) and 40 CFR 264.90(b)(2):

- a. An explanation of how the standards of 40 CFR 264.250(c) will be complied with; and
- b. Detailed plans and an engineering report describing how the requirements of 40 CFR 264.90(b)(2) will be met.

13. The agencies of the Commonwealth publish notices of regulatory activity, permit hearings and other official notices

Proposed Regulations

in the Virginia Register. Any references in incorporated federal text that indicate a publication is to be made in the Federal Register shall be construed to mean the Virginia Register when such publication is to be made by an agency of the Commonwealth.

14. Appeal rights and procedures related to a remedial action plan (RAP) included in 40 CFR 270.155, especially appeals to the EPA Environmental Appeals Board, are not incorporated into these regulations. Appeals of actions related to the content or process of developing a RAP will be governed by the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

15. *The conditions of an expired permit continue in force until the effective date of the new permit if the permittee has submitted a timely reapplication that is a complete application for a new permit; and the director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. Permits that are continued remain fully effective and enforceable.*

When the permittee is not in compliance with the conditions of the expiring or expired permit, the director may choose to do any or all of the following:

- a. Initiate enforcement action based on the permit which has been continued;*
- b. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease activities authorized by the continued permit or be subject to enforcement action for operating without a permit;*
- c. Issue a new permit with appropriate conditions; or*
- d. Take other actions authorized by this chapter.*

9 VAC 20-60-305. General.

A. Any person that manages a hazardous waste in the Commonwealth of Virginia shall notify the ~~director~~ department of these activities.

B. Any person as described in 9 VAC 20-60-305 A that has notified the EPA or is subject to the requirements to notify the EPA as specified in Vol. 45, No. 39 of the Federal Register, dated February 26, 1980, pages 12746 through 12754, is subject to the provisions of this chapter.

C. The purpose of this chapter is to provide a means for the Commonwealth of Virginia to utilize the information provided by all who complied with the notification requirements of the EPA as described in 9 VAC 20-60-305 B and to assure that all persons who did not notify the EPA as described in 9 VAC 20-60-305 B or all who initiated hazardous waste management activities subsequent to the requirements of the EPA as referenced in 9 VAC 20-60-305 B shall notify the ~~director~~ department of their hazardous waste management activities.

9 VAC 20-60-315. Notification.

A. Any person that notified the EPA of hazardous waste management activities as referenced in 9 VAC 20-60-305 B

shall provide a copy of that notification to the ~~director~~ department.

B. Any person involved in hazardous waste management activities that did not comply with the notification requirements of the EPA as referenced in 9 VAC 20-60-305 B but is subject to those requirements shall notify the ~~director~~ department in writing of their hazardous waste management activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

C. Any person who initiated a hazardous waste management activity subsequent to the preliminary notification period of 42 USC § 6930 but prior to the effective date of this chapter shall notify the ~~director~~ department of the initiation of such activities by the effective date of this chapter. Notification shall be accomplished by the use of EPA Form 8700-12.

D. (Reserved.)

E. Transporters shall provide only one notification form for all transportation activities.

F. One notification form is required for each generator site.

G. A notification form is required for each storage, treatment, disposal, or other facility. However, if one geographic site includes more than one storage, treatment or disposal activity, only one notification form for the entire facility site is required.

H. New generators, transporters, treaters, storers, and disposers (those initiating activities subsequent to the assumption of the hazardous waste management program by the Commonwealth) shall comply with the requirements of 9 VAC 20-60-262, 9 VAC 20-60-263, and 9 VAC 20-60-264, as applicable, to obtain an identification number from the administrator or the ~~director~~ department.

9 VAC 20-60-328. EPA identification number.

A. A generator shall not treat, store, dispose of, transport, or offer for transportation hazardous waste without having received an EPA identification number from the administrator or the ~~director~~ department.

B. A generator who has not received an EPA identification number may obtain one by applying to the ~~director~~ department using EPA Form 8700-12. Upon receiving a request, the ~~director~~ department will assign an EPA identification number to the generator.

C. A generator shall not offer his hazardous waste to transporters or to facilities that have not received an EPA identification number.

D. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized hazardous waste management facility, the generator involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12 that shall be completed and returned to the Department of Environmental Quality regional office within 10 calendar days. (Note: The department's website, <http://www.deq.state.va.us>, or the receptionist at

804-698-4000, will provide information on how to contact the appropriate regional office.)

9 VAC 20-60-420. General.

A. This chapter applies to all persons who transport a hazardous waste as defined in this chapter and applies to all shipments of hazardous waste that originate within the Commonwealth or that terminate in the Commonwealth but originate in another state or foreign country. However, this chapter does not apply to the shipment of a hazardous waste on the site of a hazardous waste generator, nor on the site of a permitted hazardous waste management facility. *Nothing in this part (9 VAC 20-60-420 et seq.) shall be construed as imposing any requirement on transporters of or the transportation of universal waste not otherwise imposed in 9 VAC 20-60-273.*

B. Transporters of hazardous waste shipments originating outside the Commonwealth and terminating in another state shall comply with 9 VAC 20-60-490 and applicable requirements of 9 VAC 20-60-263 while in transit through the Commonwealth.

C. All transporters of hazardous waste shall comply with the applicable portions of the Regulations Governing the Transportation of Hazardous Materials (9 VAC 20-110-10 ~~et seq.~~) and Parts III (9 VAC 20-60-124 et seq.), IV (9 VAC 20-60-305 et seq.), and VII (9 VAC 20-60-420 et seq.) of this chapter.

D. A transporter is a generator if he:

1. Transports hazardous waste into the Commonwealth from a foreign country; or
2. Mixes hazardous wastes of different shipping descriptions specified in Regulations Governing the Transportation of Hazardous Materials by placing them into a single container.

E. All transporters of hazardous waste shipments originating or terminating or both in the Commonwealth are required to obtain a permit from the director in accordance with 9 VAC 20-60-450.

F. Transporters of materials that are used in a manner that constitutes disposal are subject to the requirements of Parts III, IV, and VII.

G. Transporters of hazardous waste fuel are subject to the applicable requirements of 9 VAC 20-60-266.

9 VAC 20-60-440. Identification number.

A. All persons who transport hazardous waste within, out of or into the Commonwealth shall apply for and receive from the ~~director~~ department an identification number prior to such transport.

B. An EPA identification number shall be obtained from the ~~director~~ department by submitting an application on EPA Form 8700-12.

C. The identification number issued to the transporter shall be included at all times on:

1. All correspondence related to the transport of hazardous waste and shall be displayed in the format as follows:

Hazardous Waste Transporter ID Number _____

Virginia Hazardous Waste Transporter Permit Number _____;

2. The manifest provided by the generator of a hazardous waste and utilized in the transport of hazardous waste and
3. All documents related to the reporting of a discharge or accident.

D. The identification number and permit number shall remain unique to the applicant as long as the applicant continues to do business as a transporter of hazardous waste in the Commonwealth of Virginia. The identification number may not be transferred without the approval of EPA. The permit number may not be transferred without the approval of the director.

E. Provisional identification number. If an emergency or other unusual incident occurs which causes a necessity for the rapid transport of a hazardous waste to an authorized HWM facility, the transporter involved in such a circumstance can telephone the Department of Environmental Quality (804-698-4000) and obtain a provisional identification number. Applicants receiving such a number will be mailed a blank EPA Form 8700-12, which shall be completed and returned to the ~~director or his designee~~ department within 10 calendar days.

9 VAC 20-60-450. Transporter permit.

A. This chapter applies to all persons who transport a hazardous waste, except as otherwise provided in Part VII (9 VAC 20-60-420 et seq.) of this chapter.

B. The transporter permit required under 9 VAC 20-60-450 applies only to those transporters who transport hazardous waste shipments which originate or terminate or both in the Commonwealth. Transporters who transport hazardous waste only through the Commonwealth are not required to obtain a transporter permit.

C. Permit issuance. Upon receipt of a complete application, Form 7.1, accompanied by the appropriate permit application fee as specified in Part XII (9 VAC 20-60-1260 et seq.) of this chapter, the director shall either:

1. Issue a permit, provided conditions of 9 VAC 20-60-440 are met; or
2. Deny the permit when it can be demonstrated that the transporter has violated regulations of the Commonwealth, another state or the federal government, so as to pose substantial present or potential hazard to health or environment. The procedure for denying a permit shall be consistent with the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. The term of the transporter permit shall be 10 years. A permit shall remain in effect until one or more of the following conditions are met:

1. The transporter ceases business operation;

Proposed Regulations

2. The transporter requests, in writing, that the permit be terminated;
 3. The permit is revoked;
 4. The director determines that an emergency exists and that summary termination of a permit is necessary to prevent the creation or continuance, or both, of an immediate and present threat to human health or critical damage to the environment;
 5. Upon the expiration date of the permit, unless reapplication for a new permit has been received by the ~~director~~ department 30 days prior to such date.
- E. Revocation of permit.
1. Revocation for cause. The director may revoke a transporter's permit when it can be demonstrated that a transporter has violated this chapter so as to pose substantial present or potential hazard to health or environment. The procedure for revoking a permit shall be consistent with the Administrative Process Act of the Commonwealth.
 2. Revocation and reissuance. Whenever the transporter changes his corporate name, ownership or the EPA identification number, he shall notify the director within 30 days of such a change. Upon receiving such a notification the ~~director~~ department will revoke the old permit and reissue it reflecting the appropriate changes. The reissued permit will remain valid for the unexpired duration of the revoked permit.
 3. Within 30 days of the receipt of the notice of revocation, the original copy of the permit shall be returned to the ~~director~~ department .
- F. The transporter permit number shall appear at all times on:
1. All correspondence to the Commonwealth;
 2. All documents related to the reporting of a discharge or accident.
- G. Temporary transporter permit. If a provisional identification number is issued by the ~~director~~ department pursuant to the provisions of 9 VAC 20-60-440 E the applicant may obtain a temporary transporter permit by calling the ~~director or his representative~~ department at 804-698-4000. The permit will be valid only for the duration of the activity that required the provisional EPA identification number. The applicant shall submit a permit application conforming with 9 VAC 20-60-450 C within 10 calendar days.
- H. Emergency transporter permit. In the event of a determination by the Commonwealth that circumstances dictate expedient action to protect human health and environmental quality, provisions of 9 VAC 20-60-260, 9 VAC 20-60-262, and Part VII of this chapter may be waived by the director or his designee. Such waiver will be considered as an emergency transporter permit valid for the duration of an emergency only.
- 9 VAC 20-60-490. Discharges.**
- A. The transporter shall comply with all federal and Commonwealth requirements relative to discharges.
- B. 1. In the event of a discharge or spill of hazardous wastes, the transporter shall take appropriate emergency actions to protect human life, health, and the environment and shall notify appropriate local authorities. Upon arrival on the scene of state or local emergency or law-enforcement personnel, the transporter shall carry out such actions as required of him.
2. The transporter shall clean up any hazardous waste discharge that occurs during transportation and shall take such action as is required by the federal government, the Virginia Department of Emergency Management, the director, or local officials, so that the hazardous waste discharge no longer presents a hazard to human health or the environment.
 3. If the discharge of hazardous waste occurs during transportation and the director or his designee determines that immediate removal of the waste is necessary to protect human health or the environment, an emergency transporter permit may be issued in accordance with 9 VAC 20-60-450 H.
 4. The disposal of the discharged materials shall be done in a manner consistent with this chapter and other applicable Virginia and federal regulations.
- C. Discharges by air, rail, highway, or water (nonbulk transporters).
1. In addition to requirements contained in preceding parts, an air, rail, highway or water (nonbulk) transporter who has discharged hazardous waste shall give notice at the earliest practicable moment to agencies indicated in 9 VAC 20-60-490 C 2 after each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which as a direct result of the discharge of the hazardous wastes:
 - a. A person is killed;
 - b. A person receives injuries requiring his hospitalization;
 - c. Estimated carrier or other property damage exceeds \$50,000;
 - d. Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material;
 - e. Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or
 - f. A situation exists of such a nature that, in the judgment of the transporter, it should be reported in accordance with 9 VAC 20-60-490 C 2 even though it does not meet the above criteria (e.g., continuing danger of life exists at the scene of the incident), or as required by 49 CFR 171.15.
 2. The notice required by 9 VAC 20-60-490 C 1 shall be given to:
 - a. The National Response Center, U.S. Coast Guard, at 800-424-8802 (toll free) or at 202-267-2675 (toll call); and
 - b. The Virginia Department of Emergency Management at 800-468-8892 (toll free) or 804-674-2400 (Richmond local
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area). In a case of discharges affecting state waters, the notice shall also be given to the Pollution Response Program (PreP) Coordinator in the appropriate regional office of the department.

3. When notifying as required in 9 VAC 20-60-490 C 1, the notifier shall provide the following information:

- a. Name of person reporting the discharge and his role in the discharge;
- b. Name, telephone number and address of the transporter;
- c. Name, telephone number and address of the generator;
- d. Telephone number where the notifier can be contacted;
- e. Date, time and location of the discharge;
- f. Type of incident, nature of hazardous waste involvement, and whether a continuing danger to life exists at the scene;
- g. Classification, name and quantity of hazardous waste involved; and
- h. The extent of injuries, if any.

4. Within 15 calendar days of the discharge of any quantity of hazardous waste, the transporter shall send a written report on DOT Form F5800.1 in duplicate to the Chief, Information System Division, Transportation Programs Bureau, Department of Transportation, Washington, D.C. 20590. Two copies of this report will also be filed with the ~~Director~~, Department of Environmental Quality, Post Office Box 10009, 629 East Main Street, Richmond, Virginia 23240-0009.

5. In reporting discharges of hazardous waste as required in 9 VAC 20-60-490 C 4, the following information shall be furnished in Part H of the DOT Form F5800.1 in addition to information normally required:

- a. An estimate of the quantity of the waste removed from the scene;
- b. The name and address of the facility to which it was taken; and
- c. The manner of disposition of any unremoved waste.

A copy of the hazardous waste manifest shall be attached to the report.

D. Discharges by water (bulk) transporters.

1. A water (bulk) transporter shall, as soon as he has knowledge of any discharge of hazardous waste from the vessel, notify, by telephone, radio telecommunication or a similar means of rapid communication, the office designated in 9 VAC 20-60-490 C 2.

2. If notice as required in 9 VAC 20-60-490 D 1 is impractical, the following offices may be notified in the order of priority:

- a. The government official predesignated in the regional contingency plan as the on-scene coordinator. Such

regional contingency plan for Virginia is available at the office of the 5th U.S. Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705;

b. Commanding officer or officer-in-charge of any U.S. Coast Guard unit in the vicinity of the discharge; or

c. Commander of the 5th U.S. Coast Guard District.

3. When notifying the notifier shall provide the following information:

- a. Name of person reporting the discharge and his role in the discharge;
- b. Name, telephone number and address of the transporter;
- c. Name, telephone number and address of the generator;
- d. Telephone number so the notifier can be contacted;
- e. Date, time, location of the discharge;
- f. Type of incident and nature of hazardous waste involvement and whether a continuing danger to life exists at the scene;
- g. Classification, name and quantity of hazardous waste involved; and
- h. The extent of injuries, if any.

E. Discharges at fixed facilities. Any transporter responsible for the release of a hazardous material (as defined in Part I (9 VAC 20-60-12 et seq.) of this chapter) from a fixed facility (e.g., transfer facility) which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officers (or their designees) of the local governments of the jurisdictions in which the release occurs as well as the ~~director or his designee~~ department.

9 VAC 20-60-1280. Payment of fees.

A. Due date.

1. Except as specified in subdivision 2 of this subsection, all permit application fees are due on the day of application and must accompany the application.

2. All holders of a Virginia HWM facility permit issued prior to the effective date of this part shall submit the application fees as required by the conditions specified in that permit.

B. Method of payment. Acceptable payment is cash or check made payable to the Commonwealth of Virginia, Department of Environmental Quality.

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. Late payment. No applications will be deemed to be complete (see 9 VAC 20-60-270) until the ~~director~~ department receives proper payment.

9 VAC 20-60-1285. Permit application fee schedule.

(The effective date of this fee schedule is ~~October 1, 1984~~ July 1, 2003.)

Proposed Regulations

A. TRANSPORTER FEES.

Transporters with terminals or other facilities within the Commonwealth.	\$80
Other transporters.	\$120

B. NEW TSD FACILITY FEES.

Base fee for all facilities, including corrective action for solid waste management units.	\$9,720
Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.	\$22,590
Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).	\$14,490

C. MAJOR (CLASS 3) PERMIT MODIFICATION FEES.

Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit.	\$50
Addition of new wastes.	\$1,330
Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.	\$25,920
Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units.	\$19,430
Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.	\$8,080
Substantive changes (Class 2).	\$1,330

D. MINOR (CLASS 1) PERMIT MODIFICATION FEES.

Minor (Class 1) permit modification fee.	\$50
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E. EMERGENCY PERMIT FEES.

Emergency permit fee.	\$1,330
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A. Transporter fees

Column 2

Column 3

Type of application	July 1, 2003 through June 30, 2004	July 1, 2004 and Thereafter
Transporters with terminals or other facilities within the Commonwealth.	\$240	\$140
Other transporters.	\$360	\$210

B. New TSD facility fees.

Elements of applications	July 1, 2003 through June 30, 2004	July 1, 2004 and Thereafter
Base fee for all facilities, including corrective action for solid waste management units.	\$29,160	\$16,620
Supplementary fee for one or more land-based TSD units, including corrective action for solid waste management units.	\$67,770	\$38,640
Supplementary fee for one or more incineration, boiler, or industrial furnace units (BIF).	\$43,470	\$24,780

C. Major (Class 3) Permit modification fees.

Elements of Applications for Major Permit Modifications	July 1, 2003 through June 30, 2004	July 1, 2004 and Thereafter
Base fee for all major (Class 3) modifications, including major changes related to corrective action for solid waste management unit.	\$150	\$90
Addition of new wastes.	\$3,990	\$2,270
Addition of or major (Class 3) change to one or more land-based TSD units, including major change related to corrective action for land-based solid waste management units.	\$77,760	\$44,330
Addition of or major (Class 3) change to one or more incineration, boiler, or industrial furnace units.	\$58,290	\$33,230
Addition of or major (Class 3) change to other treatment, storage or disposal units, processes or areas and major change related to corrective action for solid waste management units that are not land based.	\$24,240	\$13,820
Substantive changes (Class 2).	\$3,990	\$2,270

D. Minor (Class 1) permit modification fees.

Type of application	July 1, 2003 through June 30, 2004	July 1, 2004 and Thereafter
Minor (Class 1) permit modification fee.	\$150	\$90

E. Emergency Permit fee

Type of application	July 1, 2003 through June 30, 2004	July 1, 2004 and Thereafter
Emergency Permit fee	\$3,990	\$2,270

Illustrative Examples

Example 1.

The applicant is submitting a Part B application for a HWM permit for a facility consisting of several surface impoundments, a land treatment process and an ancillary tank and container storage facility. The required fee is calculated as follows:

Base Fee.	\$9,720 +
Supplementary fee for land-based TSD units.	\$22,590 +
Tank storage facility (see 9 VAC 20-60-1270 C 4).	\$0 =

Total fee.	\$32,310

Example 2.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to change the manufacturing process and apply for a modification to allow for an addition of several new hazardous streams to be treated in two new incinerators. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	\$50 +
Addition of new wastes.	\$1,330 +
Addition of new incineration units.	\$19,430 =

Total modification fee.	\$20,810

The fee for a comparable new permit calculated on the basis of subsection B of this section is as follows:

Base fee.	\$9,720 +
Supplementary fee for land-based units.	\$22,590 +
Supplementary fee for incineration units.	\$14,490 +
Storage facility.	\$0 =

Total fee.	\$46,800

~~which is larger than the required modification fee, so that the provisions of 9 VAC 20-60-1270 D 7 do not apply and the proper fee is \$20,810.~~

Example 3.

After a HWM facility permit has been issued to the facility described in Example 1, the owner and the operator of the facility propose to expand their container storage facility for a storage of additional new waste streams, and apply for a permit modification. The required modification fee is calculated from subsection C of this section as follows:

Base fee.	\$50 +
Addition of a new waste.	\$1,330 +
Fee for nonsubstantive change.	\$1,330 =

Total modification fee.	\$2,710

9 VAC 20-60-1370. General.

A. Any person affected by this chapter may petition the director to exclude a waste at a facility or to change the identification and listing of a solid or hazardous waste, subject to the provisions of this part. Any petition submitted to the director is also subject to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The director will not accept any petition relating to delisting of hazardous wastes, equivalent testing or analytical methods. Such petitions shall be submitted to the administrator in accordance with 40 CFR 260.21.

C. Each petition shall be submitted to the ~~director~~ department by certified mail and shall include, in addition to any other provisions required by this part, at least the following:

1. The petitioner's name and address;
2. A statement of the petitioner's interest in the proposed action;
3. A description of the proposed action;
4. A statement of the need and justification for the proposed action, including any supporting tests, studies or other information.

9 VAC 20-60-1380. Changes to identification and listing of hazardous wastes.

A. General changes.

1. The administrator may from time to time add or delete wastes listed in Subpart D of 40 CFR Part 261.
2. The petitions to exclude wastes listed in Subpart D of 40 CFR Part 261 which are subject to federal jurisdiction shall be addressed directly to the administrator in accordance with the requirements contained in Subpart C of 40 CFR Part 260.

B. A person whose wastes were delisted as a result of a successful petition to the administrator shall provide to the ~~director~~ department:

1. The petitioner's name and address;
2. A copy of the petition to the director; and
3. A copy of the administrator's decision.

Proposed Regulations

A person whose wastes were delisted as a result of a successful petition to the administrator may petition the director for a variance from these regulations to allow the application of the delisting to hazardous waste management within the Commonwealth. The director *or his designee* will process the petition in accordance with 9 VAC 20-60-1420 B. (Note: It is usual that delistings by the administrator are incorporated into the Commonwealth's regulation during the next rulemaking by the board; the variance would allow application of the delisting during the interim period before the regulations are amended.)

9 VAC 20-60-1390. Changes in classifications as a solid waste.

A. Variances.

1. Applicability.

a. A person who recycles waste that is managed entirely within the Commonwealth may petition the director to exclude the waste at a particular site from the classification as the solid waste (Parts I and III). The conditions under which a petition for a variance will be accepted are shown in subdivision 2 of this subsection. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.

b. A person who generated wastes at a generating site in Virginia and whose waste is subject to federal jurisdiction (e.g., the waste is transported across state boundaries) shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before his waste may be considered for a variance by the director.

c. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain a favorable decision from the administrator in accordance with Subpart C, 40 CFR Part 260, before the waste may be considered for a variance by the director.

d. A person who received a favorable decision from the administrator in the response to a petition for variance or a person whose wastes were delisted as a result of a successful petition to the administrator shall provide a notification to the ~~director~~ *department* containing the following information: (i) the petitioner's name and address and (ii) a copy of the administrator's decision.

2. Conditions for a variance. In accordance with the standards and criteria in subsection B of this section and the procedures in 9 VAC 20-60-1420 A, the director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

a. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I).

b. Materials that are reclaimed and then reused within the original primary production process in which they were generated; and

c. Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

B. Standards and criteria for variances.

1. The director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed on an annual basis by filing a new application. The director's decision will be based on the following criteria:

a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);

b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;

c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

d. The extent to which the material is handled to minimize loss; and

e. Other relevant factors.

2. The director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

b. The prevalence of the practice on an industry-wide basis;

c. The extent to which the material is handled before reclamation to minimize loss;

d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

e. The location of the reclamation operation in relation to the production process;

f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

g. Whether the person who generates the material also reclaims it; and

h. Other relevant factors.

3. The director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

- a. The degree of processing the material has undergone and the degree of further processing that is required;
- b. The value of the material after it has been reclaimed;
- c. The degree to which the reclaimed material is like an analogous raw material;
- d. The extent to which an end market for the reclaimed material is guaranteed;
- e. The extent to which the reclaimed material is handled to minimize loss; and
- f. Other relevant factors.

9 VAC 20-60-1420. Administrative procedures.

A. Procedures for variances to be classified as a boiler. The director will use the following procedures in evaluating applications for variances to classify particular enclosed controlled flame combustion devices as boilers:

1. The applicant must apply to the ~~director~~ *department* for the variance. The application must address the relevant criteria contained in 9 VAC 20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any).

B. Variances. The director will use the following procedures in evaluating applications for variances submitted under 9 VAC 20-60-1380 B, 9 VAC 20-60-1390 and 9 VAC 20-60-1400.

1. The applicant shall apply to the ~~director~~ *department*. The application shall address the relevant criteria contained in 9 VAC 20-60-1380 B, 9 VAC 20-60-1390 and 9 VAC 20-60-1400.

2. The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any), and will publish it in the newspaper in the locality where the applicant is located.

C. Changes in management procedures.

1. Recycling activities. In determining whether to regulate recycling activities in a manner differing from procedures described in 40 CFR 261.6(a)(2)(iii), the director will fulfill all the requirements of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. In addition to the process required by the APA, the director will:

a. If a generator is accumulating the waste, issue a notice setting forth the factual basis for the decision and stating that the person shall comply with applicable requirements of 9 VAC 20-60-262. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with 9 VAC 20-60-262 is required. The order becomes effective in 30 days, unless the director specifies a later date or unless review under Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act is requested.

b. If the person is accumulating the recyclable material at a storage facility, issue a notice stating that the person shall obtain a permit in accordance with all applicable provisions of Part III (9 VAC 20-60-124 et seq.), 9 VAC 20-60-270, and Part XII (9 VAC 20-60-1260 et seq.) of this chapter. The owner or operator of the facility shall apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the director's determination. The questions of whether the director's decision was proper will remain open for consideration during the public comment period discussed under 9 VAC 20-60-1210 and in any subsequent hearing.

2. Variance from secondary containment. The following procedures shall be followed in order to request a variance from secondary containment:

a. The ~~director~~ *department* shall be notified in writing by the owner or operator that he intends to conduct and submit a demonstration for a variance from secondary containment as allowed in 40 CFR 265.193(g), (or 40 CFR 264.195(g)), and 9 VAC 20-60-1410 B according to the following schedule:

(1) For existing tank systems, at least 24 months prior to the date that secondary containment shall be provided in accordance with 40 CFR 265.193(a) or 40 CFR 264.193(a); and

(2) For new tank systems, at least 30 days prior to entering into a contract for installation of the tank system.

b. As part of the notification, the owner or operator shall also submit to the ~~director~~ *department* a description of the steps necessary to conduct the demonstration and a

Proposed Regulations

timetable for completing each of the steps. The demonstration shall address each of the factors listed in 9 VAC 20-60-1410 B 4 or 9 VAC 20-60-1410 B 5.

c. The demonstration for a variance shall be completed and submitted to the ~~director~~ *department* within 180 days after notifying the ~~director~~ *department* of intent to conduct the demonstration.

d. In case of facilities regulated under 9 VAC 20-60-265:

(1) The director will inform the public, through a newspaper notice, of the availability of the demonstration for a variance. The notice shall be placed in a daily or weekly major local newspaper of general circulation and shall provide at least 30 days from the date of the notice for the public to review and comment on the demonstration for a variance. The director also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(2) The director will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the ~~director~~ *department* receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in subdivision 2 d (1) of this subsection is extended, the 90-day time period will be similarly extended.

e. In case of facilities regulated under 9 VAC 20-60-264, if a variance is granted to the permittee, the director will require the permittee to construct and operate the tank system in the manner that was demonstrated to meet the requirements for the variance.

VA.R. Doc. No. R02-206; Filed January 8, 2003, 10:43 a.m.

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Title of Regulation: 9 VAC 20-90. Solid Waste Management Permit Action Fees (amending 9 VAC 20-90-10 and 9 VAC 20-90-30 through 9 VAC 20-90-100; adding 9 VAC 20-90-110 and 9 VAC 20-90-120; repealing 9 VAC 20-90-20).

Statutory Authority: §§ 10.1-1402 and 10.1-1402.1 of the Code of Virginia.

Public Hearing Date: March 6, 2003 - 10 a.m.

Public comments may be submitted until March 28, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238 or e-mail mporterfi@deq.state.va.us.

Basis: Section 10.1-1402(11) of the Code of Virginia provides the Waste Management Board the authority to promulgate regulations to carry out its powers and duties.

Section 10.1-1402(16) of the Code of Virginia provides the Waste Management Board the authority to collect permit application fees for nonhazardous facilities sufficient only to defray the costs of issuing permits.

Section 10.1-1402.1 of the Code of Virginia provides governing standards for the development of these regulations.

Federal regulations do not address fees for solid waste permit applications. These regulations have been developed under the authority given the Waste Management Board by Virginia statute.

Purpose: The current permit fee schedule has not been updated since June 8, 1992. The purpose of this action is to replace the emergency regulations currently in effect and update permit fees for inflation. In addition, the proposed regulations transfer the costs of advertising permit actions and variances from the taxpayer to the applicant requesting the permit action. While considering these issues it is appropriate to also consider the clarity of the regulations as a whole, statutory changes, and appropriate improvements wherever possible.

The proposed amendments will protect the health, safety and welfare of the citizens of the Commonwealth by providing resources at the state level to administer solid waste management programs.

Substance: Currently emergency regulations are in effect in response to changes made to § 10.1-1402.1 of the Code of Virginia. These statutory changes are effective for two years and allow the tripling of permit fees. The emergency regulations tripled permit fees in effect on June 30, 2002, and new permit fees became effective July 1, 2002. Since the emergency regulations expire prior to the sunset of the statutory changes, these regulations contain a two-part fee schedule. The fee schedule includes tripling permit fees through June 30, 2004, and then establishes a new fee schedule effective July 1, 2004. The fee schedule effective July 1, 2004, adjusts the fees first established in 1992 for inflation to current dollars. Additional fees have been added for the review of permit-related documents and will become effective July 1, 2004. In addition, the proposed regulations also transfer the costs of advertising permit actions and variances from the taxpayer to the applicant receiving the permit action.

Issues: This regulatory amendment will adjust the fee schedule currently in effect and will contain a two-part fee schedule. The proposed changes to the regulations will retain the tripled permit fees until June 30, 2004, and new permit fees will become effective July 1, 2004. The permit fees that will become effective July 1, 2004, will adjust the fees first established in 1992 for inflation to current dollars and will also include fees for additional reviews the department performs.

The increased fees are a disadvantage to applicants for permit actions, but these changes benefit general taxpayers since applicants will be bearing a greater portion of the costs associated with permit actions.

Applicants for permit actions will be required to pay for publication and broadcast of public notices required to be advertised. This change transfers the costs of advertising permit actions and variances from the taxpayer to the applicant requesting the permit action. Taxpayers receive the benefit of receiving notification of permit actions without bearing the costs associated with the notices. Applicants for permit actions, however, will see this change as disadvantageous since applicants previously were not required to pay for these advertisements.

Locality Particularly Affected: Localities that choose to operate permitted solid waste management facilities or permitted regulated medical waste facilities are affected in a similar manner by this action and no locality is particularly affected by the proposed regulations.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands. The board intends to adjust fees listed in Tables 3.1-1, 3.1-2, 3.1-3, and 3.1-4 using the most recently available inflation factor using the consumer price index for urban consumers (CPI-U) prior to finalizing the regulations and is seeking comments on these fees.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered, the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact: Since solid waste permit fee regulations have been in place since 1992, the department has had many years of experience with the collection of permit fees and does not anticipate any new costs associated with the implementation or enforcement of these regulations. Since facilities will be paying for the cost of advertisements, the department will not be expending as much revenue on advertising costs associated with permit actions.

Localities and corporations that choose to operate a permitted solid waste or regulated medical waste facility will be subject to higher fees; however, these fees have not increased since 1992.—The fees in effect after July 1, 2004, are the result of adjusting fees to current dollars using an inflation factor.

The fee schedule included in the regulations retains the tripled fees through June 30, 2004. On July 1, 2004, the permit fees are adjusted to current dollars using the consumer price index for urban consumers. The fees effective July 1, 2004, (adjusted to current dollars) will be lesser than the tripled fees in effect July 1, 2002, through June 30, 2004. Some facilities seeking permit actions may delay submitting requests for permit actions to the department until the tripled fee schedule expires.

The regulations now contain requirements for the facility to arrange for and bear the burden of the cost for the newspaper advertisement and the radio announcement. However, the department may arrange for the newspaper publication and radio broadcast, and require the applicant to remit the cost of such publication and broadcast. The fees associated with newspaper advertisements and radio broadcasts will vary, depending on the location of the facility requesting the permit action. In the past the department has expended from \$36 to \$526 per newspaper advertisement and the fees associated with radio broadcasts have ranged from no charge (as a public service announcement) to \$350. These fees will now be paid by the facility requesting the permit action, and the fees for these advertisements will be dependent upon the location of the facility.

The department does not believe small businesses will be adversely affected by these regulatory changes.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 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 § 10.1-1402 of the Code of Virginia that the Virginia Waste Management Board promulgate regulations establishing a fee assessment and collection system to recover a portion of the Virginia Waste Management Board's costs associated with the processing of an application to issue, reissue, amend, or modify any permit which the Virginia Waste Management Board has authority to issue. Section 10.1-1402.1 of the Code of Virginia requires that fees reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions.

The regulation proposes the following changes:

1. Chapter 822 of the Acts of Assembly for 2002 allowed the maximum individual permit fees to be increased by 300% for all applications received between July 1, 2002, and June 30, 2004, subject to the condition that the fee schedule cover no more than 20% of the direct cost of the solid waste management program (based on allocations made to these programs in the 2002 Appropriation Act). While the Act of Assembly allows fees to be increased by 300% or quadrupled, the Department of Environmental Quality (DEQ) chose to raise fees by 200%, tripling them from their existing level. The proposed regulation is intended to replace the emergency regulation to this effect passed earlier this year and to reflect the new fee schedule in effect between July 1, 2002, and June 30, 2004.

Proposed Regulations

2. Following the expiration of the provisions of the Act of Assembly on June 30, 2004, the regulation proposes to introduce a new fee schedule that will adjust all pre-2002 fees for inflation since 1992, when fees were last updated.

3. New fees are introduced, starting July 1, 2004, for some permit issuances and permit actions that previously required no fees.

4. The costs of advertising permit actions and variances, part of public notification requirements associated with the processing of some types of permits and permit actions, will be transferred from DEQ to the applicant.

5. Permits for facilities falling under the solid and regulated waste management program consist of a number of modules. While some of the modules deal with general requirements for all solid and regulated medical waste facilities, others are specific to the type of facility. The new regulation proposes to introduce two new modules concerning facilities storing and/or treating regulated medical waste and to charge fees for permit actions related to these modules.

The regulation deletes a number of definitions and incorporates them by reference. It also adds clarifying language, removes redundant language, and updates definitions and terms to reflect current practice.

Estimated economic impact.

1. In Chapter 822 of the Acts of Assembly for 2002, the general assembly increased the maximum allowable fees for new permits and for modifications to existing permits issued by the Virginia Waste Management Board to nonhazardous solid or regulated medical waste management facilities. The Act of Assembly allowed individual permit fees to be raised up to 300%, subject to the condition that the fees cover no more than 20% of the direct costs of running the program. The new maximum fee schedule is to apply to all relevant permit and certificate applications received between July 1, 2002, and June 30, 2004. Even though the Act of Assembly allowed for a 300% increase in fees, DEQ chose to raise existing fees by 200%. The proposed regulation reflects this change. It triples fees for all existing permits and certificates over the next two years. Despite a tripling of the fees, projected permit fee revenues remain well below the 20% limit.

According to DEQ, the direct costs associated with running the permitting program was a little over \$3.8 million and permit fee revenues were a little under \$400,000 in Fiscal Year 1999 (permit fee revenues were approximately 10.5% of direct program costs). Moreover, DEQ's budget for the next two years has been cut by approximately \$3 million per year. The higher fees for permits and certificates are intended to make up for the budget cut and cover some of the costs of running the permitting program.

The fee increases will affect all localities, businesses, and individuals seeking to get a nonhazardous solid or regulated medical waste management permit from the Virginia Waste Management Board. At the beginning of the fiscal year, DEQ estimated that the new fees would generate revenues of \$438,600 in fiscal 2003 and \$463,800 in fiscal 2004. However, the fiscal 2003 figure was revised down to \$165,000 due to a

lower-than-anticipated volume of permit requests being received. A combination of factors appears to have contributed to the sharp drop in applications since the new fee schedule was put in place. First, these permits, unlike those issued by the State Water Control Board, are issued for the life of the facility and do not have to be renewed every few years. Moreover, modifications to existing permits are not required to be made except in the event of a regulatory change. Second, the provisions of the 2002 Act of Assembly expire on June 30, 2004, and the new fee schedule being proposed thereafter is significantly lower than the tripled fee schedule. As a result, plans for setting up new facilities and plans to make modifications to existing facilities are likely to be postponed until after June 30, 2004, causing permit applications to drop sharply in the next two years.

The improper operation of facilities that deal with the disposal, treatment, or storage of nonhazardous solid and regulated medical waste could create serious public health and environmental hazards. The aim of the permitting mechanism is to ensure that these activities are conducted in a manner that is protective of both public health and the environment. The cost of a permit can be viewed as the cost incurred by DEQ in ensuring the safe use of an environmental resource. In this case, the cost of the permit is the cost of ensuring the management and disposal of nonhazardous solid wastes in a manner that is protective of the air, water, and soil quality and of public health in Virginia. As mentioned above, current permit fees fall well short of the cost incurred by DEQ in ensuring adequate protection to the environment and mitigating some of the risk posed by the activities of solid or regulated medical waste management facilities. Increasing the fees will transfer some or all of this cost to facilities that are engaged in these activities.

Transferring the cost will have a positive economic impact and result in the more efficient use of resources. With some of the cost being subsidized by taxpayers, localities, businesses, and individuals operating these facilities are not paying costs commensurate with the risk posed to the environment from their activities. This could potentially result in the overuse of environmental resources. For example, the lower costs may result in a larger number of such facilities operating in the state than if permit costs were higher and reflected the cost to DEQ in ensuring that some of the risk to the environment from these activities is mitigated. Permit fees that better reflect these costs will reduce the potential for overuse, leading to the more efficient use of Virginia's resources. On the other hand, raising permit fees could have a negative economic impact by causing some localities, businesses, or individuals to postpone or abandon voluntary new projects and modifications to existing projects that could be beneficial to the Commonwealth. For example, the higher permit costs could discourage some facilities from undertaking modifications (such as upgrading to a safer and more reliable technology) that would benefit the state as a whole.

2. The proposed regulation also establishes a new fee schedule following the expiration of the provisions of the 2002 Act of Assembly. Fees have not been updated since they were introduced in June 1992. The fee schedule being proposed adjusts the fees established in 1992 to account for inflation in the intervening years. The consumer price index for

all urban consumers (CPI-U), issued monthly by the U.S. Bureau of Labor Statistics, is used to update the fees. The CPI-U was 140.2 in June 1992 and 180.7 in August 2002, reflecting the inflation in the intervening decade. The old fees are adjusted for inflation using the following formula:

$$180.7/140.2 * \text{old fee}$$

The value so calculated is then rounded up or down to the nearest \$10.

The new fee schedule being proposed is significantly lower than the fee schedule due to expire on June 30, 2004. Under the inflation-adjusted fee schedule, DEQ estimates that permit fee revenues are expected to cover well below 10% of the direct costs of running the program. The new fee schedule will affect all applications for new permits and for modifications (major and minor) to existing permits. In 1999, there were five applications for new permits and 50 applications for amendments to existing permits.

In order to induce the most efficient use of resources, permit fees should reflect the actual cost to DEQ of ensuring that a resource is used in a safe manner. The higher fees are simply transferring part of the cost of safely operating solid and regulated medical waste management facilities from DEQ and hence the taxpayer to the facilities themselves. To the extent the higher fees better reflect the cost to DEQ of ensuring that these activities are conducted in a safe manner, the proposed change will have a positive economic impact and result in the more efficient use of resources. On the other hand, the proposed change could have a negative economic impact by discouraging certain new waste management projects and upgrades to existing projects that might have been beneficial to the state.

3. Starting July 1, 2004, the proposed regulation introduces new fees for certain categories of permits and permit actions that previously required no fee. Fees will be assessed for the following: (a) In order to obtain an emergency permit, applicants will now need to submit permit fees within 60 days of submitting an application. (b) Owners and operators of facilities applying for a new permit-by-rule or modifications to an existing permit-by-rule will now be charged a fee for the review and confirmation of the permit-by-rule. Facilities are deemed to be permitted-by-rule when they certify to DEQ that they are constructed and operated in accordance with the appropriate and relevant regulations. (c) All requests for variances from an existing permit or regulation will now be assessed a base fee and a supplemental fee based on the type of variance requested. (d) Fees will now be charged for the review of some permit-related documents such as the review of gas management plans that are submitted with an application for a major or minor modification to an existing permit. (e) Fees will also be assessed for permit modifications such as equipment changes on landfills and compost facilities and for changes in the handling of leachates.

According to DEQ, for some categories of permits and permit actions, the new fees were determined based on the average amount of time and resources expended in reviewing and issuing that permit or permit action. For others, DEQ based the new fees on fees charged for other similar permits and permit actions. In fiscal 1999, 14 emergency permits, 19 new

permits-by-rule, and 7 amendments to existing permits-by-rule were reviewed and/or issued. In the year-to-date, DEQ has issued approximately 34 variances to the solid waste regulations. The number of applications for other categories of permits and permit actions for which fees are being introduced is not available. Based on available data and assuming the same number of permit actions being undertaken, the new fees would generate at least \$73,000 per year in revenues.

As discussed in 1 and 2, transferring more of the permitting costs (i.e., costs incurred in managing the permitting program) to facilities managing and disposing solid and regulated medical waste has positive and negative economic consequences. While it would result in efficiency gains in the use of resources, it could also result in some beneficial projects being abandoned or postponed.

4. The proposed regulation transfers the costs of advertising permit actions and variances to the applicant receiving the permit action or making the variance request. Some categories of permits and permit actions require the publication and broadcast of public notices. Under current policy, DEQ incurs the cost of public notification, but applicants will now be required to bear the cost. DEQ will send notification to the applicant when publication and broadcast are required. The notification will include the text of the notice, acceptable newspapers and radio stations, and the dates of publication and broadcast. DEQ could also arrange for the publication and broadcast of the notice, but the cost of doing so would be charged to the applicant.

According to DEQ, the department published and broadcasted 62 public notices relating to solid waste permit actions in 2001. Newspaper advertisements cost between \$36 and \$526 and radio broadcasts cost between \$0 and \$350. Assuming the same number of public notices, the proposed regulation could save DEQ up to \$54,000 a year.

As discussed in 1, 2, and 3, transferring more of the permitting cost to the solid and regulated medical waste management facilities would result in efficiency gains in the use of resources, but could also result in some beneficial projects being abandoned or postponed. However, given that the proposed change imposes a relatively small additional cost on these facilities, the net economic impact of this change is not likely to be significant.

5. The regulation proposes to introduce two new modules relating to the permitting of facilities storing and/or treating regulated medical waste. Permits falling under the solid or regulated waste management program consist of a number of modules. Some modules address general requirements for all solid or regulated waste facilities and others address requirements specific to the type of facility. DEQ has developed modules that create specific requirements to be met by facilities storing and/or treating regulated medical waste. Moreover, the regulation proposes to charge a fee for permits and permit actions related to these modules.

According to DEQ, the fees were determined based on the average amount of time and resources expended in reviewing and issuing the permit or permit action. In determining the fee, DEQ also took into consideration fees charged for other similar permits and permit actions.

Proposed Regulations

The net economic impact of introducing the additional modules will depend on whether the additional cost of compliance introduced by these modules is greater or less than the additional protection to public health and the environment provided by them. Moreover, as mentioned above, to the extent that the permit fees reflect DEQ's cost of ensuring that these facilities do not create a serious health or environmental hazard, they will result in efficiency gains. However, the additional fees could also reduce the incentive for such facilities to undertake projects that are beneficial to the state.

Businesses and entities affected. The proposed regulation will increase costs for all individuals and businesses seeking to get permits or modify existing permits issued by the Virginia Waste Management Board to facilities that treat, dispose, or store nonhazardous solid or regulated medical waste. Fees have tripled for all permits and permit actions issued between July 1, 2002, and June 30, 2004. The fee schedule effective July 1, 2004, adjusts the pre-2002 fees, established in 1992, for inflation. The regulation introduces additional fees to be charged for permits and permit actions that previously did not require a fee. Applicants, rather than DEQ, are now required to bear the costs of publication and broadcast of public notices. The regulation also introduces additional requirements for facilities storing and/or treating regulated medical waste and establishes fees to be paid for permit or permit actions related to these requirements.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth. Localities that have a large number of projects requiring permits from the Virginia Waste Management Board are likely to be especially affected.

Projected impact on employment. The proposed regulation is not expected to have a significant impact on employment.

Effects on the use and value of private property. The proposed regulation triples the cost of obtaining a solid or regulated waste management permit between July 1, 2002, and June 30, 2004 from the Virginia Waste Management Board. Effective July 1, 2004, the regulation proposes a fee schedule that adjusts pre-2002 fees for inflation since the time they were established in 1992. The regulation also proposes additional fees for certain permits and permit actions that did not previously require a fee and transfers the cost of meeting public notification requirements to businesses applying for the permit. The higher fees are likely to increase the cost of operation for individuals and businesses required to obtain a new permit or modify an existing permit.

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

Summary:

The proposed amendments replace emergency regulations currently in effect and adjust fees to account for inflation and program changes since original adoption. This includes requiring the applicant or petitioner to arrange for and bear the costs of publishing and broadcasting notices relating to the processing of permit actions. The department will retain

the option of issuing the notices and requiring the applicant to remit the costs incurred with providing the notices.

CHAPTER 90. SOLID WASTE MANAGEMENT FACILITY PERMIT APPLICATION ACTION FEES.

9 VAC 20-90-10. Definitions.

Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms that supplement those in this chapter. The Virginia Solid Waste Management Regulations, 9 VAC 20-80, and the Virginia Regulated Medical Waste Management Regulations, 9 VAC 20-120, define additional words and terms that supplement those in the statute and this chapter. When the statute, as cited, and the solid waste management regulations, as cited, define a word or term differently, the definition of the statute is controlling. The following words and terms, when used in this chapter shall have the following meaning, meanings unless the context clearly indicates otherwise:

~~"Act" or "regulations" means the Virginia Waste Management Act or regulation last cited in the context unless otherwise indicated.~~

~~"Applicant" means for the purposes of this chapter any and all persons seeking or holding a permit to manage solid or infectious waste.~~

~~"Board" means the Virginia Waste Management Board.~~

~~"Certification" means, for the purposes of this regulation, a statement from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances.~~

~~"Closure" means the act of securing a waste management facility pursuant to the requirements of applicable regulations.~~

~~"Closure plan" means the plan for closure prepared in accordance with the requirements of applicable regulations.~~

~~"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment. Composted sludge shall be as defined by the Virginia Sewerage Regulations.~~

~~"Compost facility" means, for the purpose of this chapter, a facility that produces compost.~~

~~"Construction/demolition/debris landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, inert waste, or combinations of the above solid wastes.~~

~~"Construction waste" means solid waste which is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents,~~

asbestos, any liquid, compressed gases or semiliquids and garbage are not construction wastes.

"Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a fire, explosion, or release of waste or waste constituents which could threaten human health or the environment.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

"Department" means the Virginia Department of Waste Management *Environmental Quality*.

"Director" means the director of the Department of Waste Management *Environmental Quality*.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Disposal facility" means a facility or part of a facility at which waste is intentionally placed into or on any land or water, and at which the waste will remain after closure.

"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the director.

"Energy recovery facility" means, for the purpose of this chapter, a facility that recovers energy from combustion or other thermal treatment of solid waste.

"Existing facility" means any permitted solid or infectious waste management facility that received waste prior to the effective date of this chapter and has not been closed in accordance with appropriate regulations.

"Facility" means solid or infectious waste management facility unless the context clearly indicates otherwise.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water within the boundaries of the Commonwealth, whatever may be the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Incineration" means, for the purposes of this chapter, the controlled combustion of solid or infectious waste as defined in the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or Infectious Waste Management Regulations as applicable.

"Incinerator" means, for the purposes of this regulation, a facility or device designed for the treatment of solid or infectious waste by combustion as defined in the Virginia Solid Waste Management Regulations (9 VAC 20-80-10 et seq.) or Infectious Waste Management Regulations.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste which is a byproduct of a production process.

"Infectious waste" means solid wastes defined to be infectious wastes in Part III of the Virginia Infectious Waste Management Regulations.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble or suspended degradation products of waste. Leachate and any material with which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an off-site facility is regulated as septage, and leachate discharged into a waste water collection system is regulated as industrial waste water.

"Liner" means a layer of emplaced materials beneath or on the sides of a surface impoundment, landfill, or landfill cell which restricts the downward or lateral escape of solid waste, waste constituents or leachate.

"Materials recovery facility" means a solid waste management facility for the collection, processing and recovery of material such as metals from solid waste or for the production of a fuel from solid waste.

"Monitoring" means all methods, procedures and techniques used to systematically analyze, inspect and collect data on operational parameters of the facility or on the quality of air, groundwater, surface water, and soils.

"Monitoring wells" means a well point below the ground surface for the purpose of obtaining periodic water samples from groundwater for quantitative and qualitative analysis.

"New waste management facility" or "new facility" means, for the purposes of this chapter, a facility for which a permit was issued, or revoked and reissued, after the effective date of this chapter. (See also, existing waste management facility.)

"Notice of intent" means a statement from the applicant proposing to establish a new solid waste management facility, to modify an existing facility, or to amend an existing permit. The notice of intent shall include local government certification, any forms required by the Virginia Solid Waste Management Regulations, disclosure statement and all pertinent fees required by this chapter.

Proposed Regulations

~~"Operator" means the person responsible for the overall operation and site management of a solid or infectious waste management facility.~~

~~"Owner" means the person who owns a solid waste management facility or part of a solid or infectious waste management facility.~~

~~"Permit" means the written permission of the director to own, operate or construct a solid or infectious waste management facility.~~

~~"Permit by rule Permit-by-rule" means provisions of the chapter stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.~~

~~"Permitted waste management facility (or permitted facility)" means a waste treatment, storage, or disposal facility that has received a permit in accordance with the requirements of appropriate regulations.~~

~~"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.~~

~~"Post closure care" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.~~

~~"Post closure plan" means the plan for post closure care prepared in accordance with the requirements of Part V of the Virginia Solid Waste Management Regulations.~~

~~"Resource recovery" means the recovery of material or energy from solid waste.~~

~~"Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.~~

~~"Sanitary landfill" means an engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.~~

~~"Site" means all land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of solid waste. This term includes adjacent land within the property boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid or infectious waste. (Note: This term includes all sites whether they are planned and managed facilities or are open dumps.)~~

~~"Solid waste" means any of those materials defined as "solid waste" in Part III of Virginia Solid Waste Management Regulations.~~

~~"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.~~

~~"Solid waste management facility" ("SWMF") means a site used for planned treating, storing, and disposing of solid~~

~~waste. A facility may consist of several treatment, storage, or disposal units.~~

~~"Storage" means the holding of waste, at the end of which the waste is treated, recycled, disposed, or stored elsewhere.~~

~~"Storage facility" means any facility which stores waste.~~

~~"Training" means formal instruction, supplementing an employee's existing job knowledge, designed to protect human health and the environment via attendance and successful completion of a course of instruction in waste management procedures, including contingency plan implementation, relevant to those operations connected with the employee's position at the facility.~~

~~"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or infectious waste are held during the normal course of transportation.~~

~~"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration or resource recovery.~~

~~"Treatment" means any method, technique or process, including but not limited to incineration or neutralization, designed to change the physical, chemical or biological character or composition of any waste to neutralize it or to render it less hazardous or infectious, safer for transport, amenable to recovery, or storage or reduced in volume.~~

~~"Waste management" means the collection, source separation, storage, transportation, transfer, processing, treatment and disposal of waste or resource recovery.~~

9 VAC 20-90-20. Authority for regulation. (Repealed.)

~~These regulations are promulgated pursuant to § 10.1-1402 11 of the Code of Virginia which authorizes the Virginia Waste Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of the Virginia Waste Management Act and the federal acts and § 10.1-1402 16 of the Code of Virginia which authorizes the board to collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste, permit application fees sufficient to defray only costs related to the issuance of permits.~~

9 VAC 20-90-30. Purpose of regulation.

~~The purpose of this regulation *these regulations* is to establish schedules and procedures pertaining to the payment and collection of fees from any applicant seeking a new permit or seeking a modification or an amendment to an existing permit for operation of a solid or infectious *regulated medical* waste management facility in *this* the Commonwealth of Virginia. *These regulations also establish fees for the review of other permit-related documents required to be reviewed by the department.*~~

9 VAC 20-90-40. Administration of regulation.

A. The Virginia Waste Management Board promulgates and enforces regulations that it deems necessary to carry out its powers and duties.

B. The director is authorized and directed to administer ~~this regulation~~ *these regulations* in accordance with the Virginia Waste Management Act, §§ 10.1-1400 through 10.1-1457 of the Code of Virginia.

9 VAC 20-90-50. Applicability of regulations.

A. ~~This regulation applies~~ *These regulations apply* to all applicants for ~~solid or infectious waste management facility permits~~ *permit actions* under:

1. Part VII (9 VAC 20-80-480 through 9 VAC 20-80-620) of the Virginia Solid Waste Management Regulations ~~or~~;
2. Part ~~X~~ X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the ~~Infectious Regulated Medical Waste Management Regulations, respectively, unless specifically exempt under 9 VAC 20-90-50 E.~~;
3. Part V (9 VAC 20-101-160 through 9 VAC 20-101-180) of the *Vegetative Waste Management and Yard Waste Composting Regulations*; or
4. Part V (9 VAC 20-85-170 through 9 VAC 20-85-180) of the *Regulation Governing Management of Coal Combustion By-Products*.

The fees shall be assessed in accordance with Part III (9 VAC 20-90-70 through 9 VAC 20-90-120) of this chapter.

B. When the director finds it necessary to amend or modify any permit ~~under in accordance with § 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, 9 VAC 20-80-620 of the Virginia Solid Waste Management Regulations, or §§ 9.14 and 9.15~~ *Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Infectious Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-90-90 even if the director has initiated the amendment or modification action.*

C. When the director finds it necessary to revoke and reissue any permit in accordance with ~~§ 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, 9 VAC 20-80-600 B 1 of the Virginia Solid Waste Management Regulations, or §§ 9.14 and 9.15~~ *Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Infectious Regulated Medical Waste Management Regulations, as applicable, the holder of that permit shall be considered an applicant for a new permit and shall be assessed a fee in accordance with 9 VAC 20-90-80.*

D. If the director finds it necessary either to revoke and reissue a permit in accordance with ~~§ 10.1-1408.1 E or § 10.1-1409 of the Code of Virginia, 9 VAC 20-80-600 B 2 of the Virginia Solid Waste Management Regulations, or to perform a minor amendment or modification of a permit in accordance with 9 VAC 20-80-620 F of the Virginia Solid Waste Management Regulations, or § 9.17~~ *Part X (9 VAC 20-120-680 through 9 VAC 20-120-830) of the Infectious Regulated Medical Waste Management Regulations, as applicable, the*

holder of that permit shall be considered an applicant and shall be assessed a fee in accordance with 9 VAC 20-90-100.

~~E. Exemptions. No permit application fees will be assessed to:~~

1. ~~The applicant for an emergency permit to a nonhazardous solid or infectious waste treatment, storage, or disposal facility in accordance with applicable regulations.~~
2. ~~The owners and operators of facilities which are deemed to possess a permit by rule in accordance with applicable regulations.~~
3. ~~The applicants for solid and infectious waste management facility permits who have submitted to the department complete permit applications by July 1, 1990.~~

~~(NOTE: Transfer facilities regulated under the Infectious Waste Management Regulations do not require a permit and, consequently, are not subject to this chapter.)~~

9 VAC 20-90-60. Payment, deposit, and use of fees.

A. Due date.

1. Except as specified in ~~9 VAC 20-90-60 A subdivisions 2 and 9 VAC 20-90-60 A-3 of this subsection, all permit application~~ *action* fees are due on the day of application and must accompany the application.

2. Applicants for solid waste management permits shall submit the appropriate fee along with the certification from the local governing body and the disclosure statements at the time of the submittal of the notice of intent. *An applicant for a new facility shall submit appropriate Part A fees with the notice of intent, and submit the Part B action fee when the Part B application is submitted.*

3. ~~All applicants for a solid or infectious waste management facility permit or for a modification or amendment of an existing permit, not otherwise exempt under 9 VAC 20-90-50 E-3, who have submitted their application prior to the effective date of this chapter and who have not been issued such a permit or a modification or amendment to a permit by that date, shall submit the appropriate application fee within 60 days of the effective date of the regulation or by the effective date of the permit or the modification or amendment to the permit, whichever is sooner. Applicants who have received from the department an approval or a conditional approval of the Part A of their application prior to the effective date of this chapter need to submit only the fee for Part B of the application. Applicants for an emergency permit shall submit the permit action fee to the department within 60 days of submitting an application.~~

B. Method of payment. Acceptable payment is cash or check ~~made payable to the Commonwealth of Virginia, Department of Waste Management Environmental Quality.~~

C. Incomplete payments. All incomplete payments will be deemed nonpayments.

D. ~~Late Payment required.~~ No applications will be deemed to be complete ~~(see 9 VAC 20-80-500 C and D of the Virginia Solid Waste Management Regulations or § 9.2 C of the Infectious Waste Management Regulations)~~ until proper

Proposed Regulations

payment is received by the department. *The department shall not begin a review of an incomplete application unless the application is for an emergency permit. Nonpayment of fees will result in a processing delay. If the director is amending or revoking and re-issuing a permit for cause, nonpayment of fees may lead to termination of the permit.*

E. Deposit and use of fees. The department shall collect all fees pursuant to this chapter and deposit them into a special fund. ~~All moneys so collected by the department shall be used solely to defray the direct costs of processing solid waste management facility permit applications. No such moneys shall be used to defray indirect costs or otherwise be used except for the processing of solid waste management facility permit applications for use as described in § 10.1-1402.1 of the Code of Virginia.~~

~~(NOTE: With the exception of emergency permits and permits by rule under the Infectious Waste Management Regulations, the department cannot act on an incomplete application (see 9 VAC 20-80-500 C 2 and D 2 of the Virginia Solid Waste Management Regulations or § 9.2 C of the Infectious Waste Management Regulations). Nonpayment of fees will result in the processing delay and may lead to termination procedures in the case of permits being amended or revoked and reissued for cause.)~~

9 VAC 20-90-70. General.

A. Each application for a new permit, each application for a modification or amendment to a permit, and each revocation and issuance of a permit is a separate action and shall be assessed a separate fee. The amount of such fees is determined on the basis of this Part III (9 VAC 20-90-70 through 9 VAC 20-90-120).

B. The amount of the permit application action fee is based on the costs directly associated with the permitting program required by Part VII of the Virginia Solid Waste Management Regulations or Part ~~X~~ X of the ~~Infectious~~ Regulated Medical Waste Management Regulations and includes costs for personnel and directly related public participation costs. The fee schedules are shown in APPENDIX 3.1. ~~These schedules will be reevaluated annually and the results of such reevaluations will be used to recommend to the Virginia Waste Management Board the necessary adjustments, if any 9 VAC 20-90-120 as Tables 3.1-1, 3.1-2, 3.1-3, and 3.1-4.~~

C. Fees in Column 3 of the tables in 9 VAC 20-90-120 have been adjusted to the Consumer Price Index for All Urban Consumers (CPI-U, 1982-84 = 100) for August 2002 (published monthly by the U.S. Bureau of Labor Statistics, Washington, D.C. 20212, <http://www.bls.gov>), rounded to the nearest \$10 increment.

D. In addition to permit action fees listed in Tables 3.1-1, 3.1-2, 3.1-3 and 3.1-4 of 9 VAC 20-90-120, the applicant for a permit action shall arrange for the newspaper publication and radio broadcast and bear the cost of the publication and broadcast if required. The department shall send notification to the applicant that the publication and broadcast are required, and the notification shall include the text of the notice, dates of publication and broadcast, and the acceptable newspapers and radio stations wherein the notice may be published. The department shall also require the petitioner for

a variance from any regulation to arrange for any newspaper publication and radio broadcast required under the Virginia Solid Waste Management Regulations (9 VAC 20-80) or the Regulated Medical Waste Management Regulations (9 VAC 20-110) and to bear the cost of such publication and broadcast. The department may arrange for the newspaper publication and radio broadcast listed in this subsection and require the applicant to remit the cost of such publication and broadcast.

9 VAC 20-90-80. New facility permits permit issuance or action.

All applicants for new ~~nonhazardous~~ solid and ~~infectious~~ regulated medical waste treatment, storage, and disposal facility permits are assessed an appropriate fee shown in Table 3.1-1, ~~APPENDIX 3.1 which depends of 9 VAC 20-90-120 depending on the type of facility permit being applied for or permit action.~~

Applicants for an emergency permit are assessed a fee shown on Table 3.1-1 of 9 VAC 20-90-120 unless the director determines that a lesser fee is appropriate at the time the permit is issued.

(NOTE: Certain solid waste management facility permit amendments are so extensive that they require issuance of new permits (see 9 VAC 20-80-480 C of the Virginia Solid Waste Management Regulations). Such applications will be considered to be applications for new facilities.)

9 VAC 20-90-90. Applications for permit actions, amendment or modification.

A. General. Facility permits issued by the ~~department~~ director are typically based on the modular concept to assure completeness and consistency of the documents. Each facility permit may consist of several modules dealing with the requirements addressing separate topics pertinent to the specific facility. The modules used in the ~~nonhazardous~~ solid and ~~infectious~~ regulated medical waste program are:

1. The general permit conditions module (Module I) that contains the general conditions required for all solid or ~~infectious~~ regulated medical waste facility permits and includes documents to be submitted prior to operation, documents that must be maintained at the facility, and a compliance schedule, if any.
2. The general facility requirements module (Module II) that contains the listing of wastes that the facility may accept or a list of wastes prohibited from acceptance, an analysis plan, security and site access information, inspection requirements, personnel training requirements, special standards based on particular location, a preparedness and prevention plan, a contingency plan, closure and post-closure cost estimates, and facility-specific financial assurance requirements.
3. The separate facility modules, one for each of the different type of facility provided for in Parts V and VI of the Virginia Solid Waste Management Regulations, ~~that contain~~ containing design requirements (e.g., liners, leachate management systems, aeration systems, wastewater collection systems), specific operating requirements (e.g., compaction and cover requirements, equipment,

monitoring), and recordkeeping requirements. The following modules have been developed:

- a. Module III - Sanitary landfills;
- b. Module IV - Construction/demolition/debris landfill;
- c. Module V - Industrial landfill;
- d. Module VI - Compost facility;
- e. Module VII - Transfer station;
- f. Module VIII - Materials recovery facility; and
- g. Module IX - Energy recovery and incineration facility.

4. *All gas management plans submitted for review (Module III, VI, or V) will be assessed a fee as listed in Table 3.1-2 or 3.1-3 of 9 VAC 20-90-120.*

4. *5. The groundwater monitoring modules that contain requirements for well location, installation, and construction, listing of monitoring parameters and constituents, sampling and analysis procedures, statistical procedures, data evaluation, recordkeeping and reporting, and special requirements when significant increases occur in monitoring parameters. Module X is designed specifically for Phase I monitoring and Module XI for Phase II or III monitoring.*

5. *6. The closure module (Module XII), included in all permits that, contains requirements for actions during the active life of the facility (updating plan), during the closure process, and after the closure has been performed. Facilities required to submit a closure plan in accordance with §§ 10.1-1410.1 and 10.1-1410.2 A 1 of the Code of Virginia will be assessed a fee for Module XII as listed in Table 3.1-2 of 9 VAC 20-90-120.*

6. *7. The post-closure module (Module XIII), included in solid waste disposal facility permits that, contains requirements during the post-closure period and for periodic updating of the post-closure plan. Facilities required to submit a post-closure plan in accordance with § 10.1-1410.2 of the Code of Virginia will be assessed a fee for Module XIII as listed in Table 3.1-2 of 9 VAC 20-90-120.*

7. *8. The schedule for compliance for corrective action (Module XIV) is used when facility groundwater monitoring results indicate contamination groundwater protection standards have been statistically exceeded.*

8. *9. The leachate handling module (Module XV), included in solid waste disposal facility permits that, contains requirements for storage, treatment and disposal of leachate generated by the facility.*

~~(NOTE: Appropriate modules for infectious waste storage and treatment facilities (other than incineration) have not been developed as yet.)~~

10. *The regulated medical waste storage module (Module XVI) and regulated medical waste treatment module (Module XVII) have been developed for facilities storing and/or treating regulated medical waste.*

B. Applicants for a modification or amendment of an existing permit will be assessed a fee associated with only those modules that will require changes. In situations where the modular concept is not employed (for example, changes have been incorporated directly into an older nonmodular permit), fees will be assessed as appropriate for the requirements stipulated for modules in ~~9 VAC 20-90-90~~ subsection A of this section had they been used.

C. Applicants for a modification or amendment or subject to revocation and reissuance of an existing permit will be assessed a separate public participation fee whenever the modification or amendment requires a public hearing.

D. The fee schedules for the modification or amendment or subject to revocation and reissuance of an existing permit are shown in Table 3.1- 2, ~~APPENDIX 3.4~~ of 9 VAC 20-90-120.

E. In no case will the fee for a modification or, amendment or revocation and reissuance of a permit be higher than that for a new facility of the same type.

9 VAC 20-90-100. Minor action, amendments or modifications.

Notwithstanding the provisions of 9 VAC 20-90-90, an applicant for a minor amendment or modification or minor permit action of an existing facility permit based on 9 VAC 20-80-620 F of the Virginia Solid Waste Management Regulations or ~~§ 9-17 Part X (9 VAC 20-120-680 through 9 VAC 20-120-830)~~ of the Infectious Regulated Medical Waste Management Regulations will be assessed a fee shown in Table 3.1-3, ~~APPENDIX 3.4~~ of 9 VAC 20-90-120.

9 VAC 20-90-110. Review of variance requests.

Applicants requesting variances from the Virginia Solid Waste Management Regulations (9 VAC 20-80), the Regulated Medical Waste Management Regulations (9 VAC 20-110), or the Regulation Governing Management of Coal Combustion By-Products (9 VAC 20-85) will be assessed a fee as shown in Table 3.1-4 of 9 VAC 20-90-120. All variance requests are subject to base fees. Additional fees are listed for reviews of specific types of variance requests and are to be submitted in addition to base fees. For example, a variance request for an alternate liner design would require submission of the base fee in addition to the fee associated with the review of the alternate liner system design. Variance requests are not subject to public participation fees listed in Table 3.1-2 of 9 VAC 20-90-120.

APPENDIX 3.4 9 VAC 20-90-120. Permit application fee schedules.

~~The effective date of this Appendix is June 8, 1992.~~

Proposed Regulations

TABLE 3.1-1. NEW FACILITIES OR INITIAL ISSUANCE OR ACTION

TYPE OF FACILITY	FEE
All landfills	
Part A application	\$3,200
Part B application	\$14,300
Incineration/Energy Recovery Facility	\$4,500
Transfer Station, Materials Recovery Facility, Infectious Waste Storage Facility, Infectious Waste Treatment Facility	\$3,300
Compost Facility	
Part A application	\$1,600
Part B application	\$8,100
Experimental Solid Waste Facility	(Reserved) [†]

TYPE OF FACILITY	Column 2	Column 3
	FEE	
	July 1, 2003, through June 30, 2004	July 1, 2004, and thereafter
All landfills:		
Part A application	\$9,600	\$4,120
Part B application	\$42,900	\$18,430
Incineration/Energy Recovery Facility	\$13,500	\$5,800
Transfer Station, Materials Recovery Facility, Regulated Medical Waste Storage Facility, or Regulated Medical Waste Treatment Facility	\$9,900	\$4,250
Compost Facility		
Part A application	\$4,800	\$2,060
Part B application	\$24,300	\$10,440
Experimental Solid Waste Facility	Reserved [†]	\$2,060
Permit-by-rule Initial Review and Confirmation		\$390
Emergency Permit		\$2,280

[†] Indicates insufficient experience at the present time to determine proper fee. Should an application for such a facility be received, the lowest fee in the table will be assessed.

TABLE 3.1-2. MAJOR PERMIT ACTIONS, AMENDMENTS OR MODIFICATIONS

TYPE OF PERMIT MODULE	FEE
General – Module I	\$300
Facility – Module II	\$1,000
Landfill – Module III, IV, or V	\$5,400
Design plan review	\$700
Liner design review	\$1,500
Leachate system review	\$1,000
Gas management plan review	---
Drainage plan review	\$700
Cover design review	\$1,400
Equipment	---
Compost facility – Module VI	\$2,800
Design plan review	\$500
Liner design review	\$1,000
Leachate system review	\$700
Air supply system review	---
Drainage plan review	\$500
Equipment	---
Transfer station – Module VII	\$900
Material recovery facility – Module VIII	\$1,200
Waste supply analysis	\$500
Waste management areas	\$400

Proposed Regulations

Wastewater management areas	\$300
Incinerator/Energy recovery facility - Module IX	\$2,300
Waste and residue storage	\$700
Operational requirements	\$1,200
Waste control procedures	\$400
Groundwater monitoring - Module X or XI	\$2,500
Well placement	\$1,000
Materials and specifications	\$300
Sampling plan	\$1,200
Well abandonment	---
Closure - Module XII	\$300
Post-closure - Module XIII	\$300
Corrective action - Module XIV	(Reserved)
Leachate handling - Module XV	(Reserved)
Infectious waste storage facility - Module XVI	(Reserved)
Infectious waste treatment facility - Module XVII	(Reserved)
Public participation	\$800

TYPE OF PERMIT MODULE	Column 2	Column 3
	FEE	
	July 1, 2003, through June 30, 2004	July 1, 2004, and thereafter
Landfill Part A	\$9,600	\$4,120
General - Module I	\$900	\$390
Facility - Module II	\$3,000	\$1,290
Landfill - Module III, IV, or V	\$16,200	\$6,960
Design plan review	\$2,100	\$900
Liner design review	\$4,500	\$1,930
Leachate system review	\$3,000	\$1,290
Gas management plan review	---	\$1,680
Drainage plan review	\$2,100	\$900
Cover design review	\$4,200	\$1,800
Equipment	---	\$390
Compost facility - Module VI	\$8,400	\$3,610
Design plan review	\$1,500	\$640
Liner design review	\$3,000	\$1,290
Leachate system review	\$2,100	\$900
Drainage plan review	\$1,500	\$640
Equipment	---	\$390
Transfer station - Module VII	\$2,700	\$1,160
Material recovery facility - Module VIII	\$3,600	\$1,550
Waste supply analysis	\$1,500	\$640
Waste management areas	\$1,200	\$520
Wastewater management areas	\$900	\$390
Incinerator/Energy recovery facility - Module IX	\$6,900	\$2,960
Waste and residue storage	\$2,100	\$900
Operational requirements	\$3,600	\$1,550
Waste control procedures	\$1,200	\$520
Groundwater monitoring - Module X or XI	\$7,500	\$3,220
Well placement	\$3,000	\$1,290
Materials and specifications	\$900	\$390
Sampling plan	\$3,600	\$1,550
Closure - Module XII	\$900	\$390
Post-closure - Module XIII	\$900	\$390
Corrective action - Module XIV	Reserved	\$22,560
Leachate handling Module XV	Reserved	\$1,290
Regulated medical waste storage facility - Module XVI	Reserved	\$390
Regulated medical waste treatment facility - Module XVII	Reserved	\$390

Proposed Regulations

Permit-by-rule Modification Review and Confirmation		\$390
Public participation (does not include costs of newspaper advertisements or radio broadcasts)	\$2,400	\$1,030

TABLE 3.1-3. MINOR PERMIT ACTIONS, AMENDMENT OR MODIFICATION

TYPE OF PERMIT MODULE	FEE
Minor amendment or modification	\$300

TYPE OF PERMIT MODULE	Column 2	Column 3
	FEE	
	July 1, 2003, through June 30, 2004	July 1, 2004, and thereafter
Minor amendment or modification (excluding Gas Management Plans)	\$900	\$390
Gas Management Plans		\$1,680

TABLE 3.1-4. VARIANCE REQUESTS

Type of Variance	Column 2	Column 3
	FEE	
	July 1, 2003, through June 30, 2004	July 1, 2004, and thereafter
Base fee for all variances		\$390
Supplemental fees based on variance type		
Exemption from classification as a solid waste		\$520
Variance to permitting requirements		
Siting requirements		\$520
Facility design (other than alternate liner design)		\$520
Operational requirements		---
Groundwater monitoring (other than groundwater protection levels and location of monitoring system)		\$900
Closure requirements		---
Post-closure requirements		---
Groundwater Protection Standards		---
Alternate liner system design		\$1,540
Location of groundwater monitoring system		\$900

VA.R. Doc. No. R02-207; Filed January 8, 2003, 10:44 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-20. Fees for Permits and Certificates (amending 9 VAC 25-20-10, 9 VAC 25-20-110, 9 VAC 25-20-120, and 9 VAC 25-20-130).

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Public Hearing Date: March 6, 2003 - 10 a.m.

Public comments may be submitted until March 28, 2003.
(See Calendar of Events section for additional information)

Agency Contact: Jon G. Van Soestbergen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4117 or e-mail jvansoest@deq.state.va.us.

Basis: The basis for the proposed regulatory amendment is § 62.1-44.15:6 of the Code of Virginia, which provides the authority for the State Water Control Board to establish a fee assessment and collection system to recover a portion of the costs associated with processing certain permit applications.

Purpose: Fees for permits and certificates are authorized to recover, up to the maximums specified in statute, the direct and indirect costs associated with application review and permit or certificate issuance. The required January 2002 Permit Fee Program Evaluation Report to the General Assembly indicates that in Fiscal Year 2001 actual water permit program costs exceeded \$10.6 million, whereas permit fee revenues were only slightly above \$1 million. Additionally, the agency's budget was reduced by approximately \$3 million per year with the expectation that these funds would be recouped through the increase in fees for permits and certificates. The amendment to this regulation is intended to recoup at least a portion of the funds removed from the agency's budget and ensure resources necessary to administer water quality programs for the protection of the health, safety and welfare of citizens of the Commonwealth.

Substance: The regulation is being revised to reflect the changes in maximum amounts as specified in § 62.1-44.15:6 of the Code of Virginia. Proposed amendments to the existing emergency regulation include (i) changes to the definitions in 9 VAC 25-20-10 for Virginia Water Protection (VWP) Permit

Project categories to reflect the current definitions for such projects; (ii) changes to 9 VAC 25-20-130 in recognition that there is no permit fee for VWP Permits for projects impacting less than one-tenth of an acre; and (iii) addition of fee schedules in 9 VAC 25-20-110, 9 VAC 25-20-120, and 9 VAC 25-20-130 that will become effective after the provisions of the Act of Assembly expire on July 1, 2004.

Issues: The primary disadvantage to the public is that the cost to obtain a permit from the State Water Control Board will triple. The increased revenue is the primary advantage to the Department of Environmental Quality and the Commonwealth, recouping at least a portion of the funds removed from the agency's budget based on the legislation.

Locality Particularly Affected: There are no localities particularly affected. The proposed regulation applies statewide to applicants for permits and certificates.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest lands.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period. Oral comments may be submitted at the public hearing.

Fiscal Impact: This regulatory amendment will increase the fees that the State Water Control Board charges for processing permit applications. Because a fee collection infrastructure already exists, there is no additional cost to the state projected to implement and enforce the proposed regulation.

The regulatory amendment will triple the amount of fees for permits and certificates. The increased fees will affect all individuals, business, or other entities that are required to obtain permits from the State Water Control Board. It is projected that the additional cost to localities and businesses associated with the increased fees will be approximately \$2 million per year on average statewide.

Currently, there are approximately 1,200 active Virginia Pollution Discharge Elimination System (VPDES) individual permits, 150 active Virginia Pollution Abatement (VPA) permits, and approximately 3,000 active VPDES General Permit registrations and Virginia Water Protection Program (VWPP) permits.

The gross impact upon small businesses is unknown. The impact of the regulatory amendment will be to increase by 300% the amount that small businesses must pay to obtain discharge permits through the State Water Control Board.

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 § 62.1-44.15.6 of the Code of Virginia that the State Water Control Board promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit or certificate that the State Water Control Board has authority to issue. The regulation proposes the following changes:

1. Chapter 822 of the Acts of Assembly for 2002 increased by a factor of three the maximum fees that can be charged for the processing of applications for permits and applications received between July 1, 2002, and June 30, 2004. The maximum fee schedule will revert to its previous level on July 1, 2004. The proposed regulation is intended to replace the emergency regulation to this effect passed earlier this year and to reflect the new fee schedule in effect between July 1, 2002, and June 30, 2004.

2. Apart from the temporary fee increases enacted through Chapter 822 of the Acts of Assembly, the regulation permanently increases the fee charged for filing an application or registration statement for coverage under certain Virginia Water Protection (VWP) general permits.

3. The definition of the three categories of VWP individual permits are modified to make them more consistent with how similar permits are defined in federal regulations.

4. The regulation permanently removes the option that allows the Department of Environmental Quality (DEQ) in some cases to waive permit requirements for new and modified VWP individual permits. The option to waive was removed for the two years between July 1, 2002, and June 30, 2004, by the 2002 Act of Assembly. DEQ intends to make that change permanent.

Estimated economic impact. (1) In Chapter 822 of the Acts of Assembly for 2002, the General Assembly increased the maximum allowable fees for Virginia Pollution Discharge Elimination System (VPDES) permits, Virginia Pollution Abatement (VPA) permits, VWP permits, Surface Water Withdrawal (SWW) permits or certificates, and Ground Water Withdrawal (GWW) permits. The maximum allowable fees have been tripled for the issuance of new permits and for major modifications to existing permits. The new maximum fee schedule is to apply to all relevant permit and certificate applications received between July 1, 2002, and June 30, 2004. Barring any further legislative action, the maximum fee schedule will revert to pre-July 1, 2002, levels on July 1, 2004. The proposed regulation reflects these changes. It triples fees for the abovementioned permits and certificates over the next

Proposed Regulations

two years, with the fees reverting to their original levels on July 1, 2004.

According to the January 2002 Permit Fee Program Evaluation Report to the General Assembly, actual water permit program costs were over \$10.6 million and permit fee revenues were a little over \$1 million in fiscal year 2001. Moreover, DEQ's budget for the next two years was cut by approximately \$3 million per year. The higher fees for permits and certificates are intended to make up for the budget cut and cover some of the costs of running the permitting program. The provisions of the 2002 Act of Assembly will expire on June 30, 2004. However, DEQ expects legislative action before June 30, 2004, introducing permanent increases in the fees charged for permits and certificates issued by the State Water Control Board. A task force has been set up to look into the inadequacy of the current fee schedule and recommend a new fee schedule that better reflects the time and complexity of processing a permit or certificate in each of the various categories of permits and permit actions. Following the task force's report, due in the next few months, DEQ expects the General Assembly to consider a new fee schedule for these permits and certificates in the 2004 legislative session.

The fee increases will affect all localities, businesses, and individuals seeking to get a permit from the State Water Control Board. DEQ estimates that the increase in fees will impose a \$2 million additional cost. According to DEQ, the increase in permit fee revenues will be used to make up for the budget cut and cover the costs of running the various permit programs.

Facilities that discharge pollutants into state waters have the potential to create serious public health and environmental hazards as a result of their activities. The aim of the permitting mechanism is to ensure that these activities are conducted in a manner that is protective of both public health and the environment. The cost of a permit can be viewed as the cost of safely using an environmental resource. In this case, the cost of the permit is the cost of safely using state waters to discharge pollutants. As the January 2002 Permit Fee Program Evaluation Report indicates, current permit fees fall well short of the cost incurred by DEQ in ensuring the safe use of state waters. Thus, facilities discharging pollutants are paying only a fraction of the actual cost of safely using state waters, with taxpayers paying the rest. Increasing the fees will transfer some or all of this cost to facilities that are actually discharging the pollutants into state waters.

Transferring the cost will have a positive economic impact and result in more efficient use of resources. With some of the cost being subsidized by taxpayers, localities, businesses, and individuals discharging pollutants into state waters are paying lower-than-actual costs of using state waters for that purpose. This could potentially result in the overuse of this resource. Permit fees that better reflect costs will reduce the potential for overuse, leading to the more efficient use of state waters. On the other hand, raising permit fees could have a negative economic impact by causing some localities, businesses, or individuals to postpone or abandon voluntary projects requiring permits that could be beneficial to the

Commonwealth, such as wastewater reclamation and reuse projects that require a VPA or a VPDES permit.

(2) The 2002 Act of Assembly tripled the maximum fee that can be charged for VWP general permits from \$400 to \$1,200. However, under the pre-July 1, 2002, policy, DEQ was charging up to \$200 for a VWP general permit and not the maximum allowable amount of \$400. Under the proposed regulation, for a VWP general permit authorizing an impact of half an acre or more on nontidal surface water, DEQ now intends to charge the maximum, i.e., \$1,200 for permits issued before July 1, 2004, and \$400 thereafter. The proposed increase in fees is to cover the costs of running the VWP general permits program. The Commonwealth of Virginia and the Army Corps of Engineers share responsibility for issuing wetlands permits. Effective November 1, 2002, the Army Corps of Engineers issued a State Program General Permit (SPGP) that will allow DEQ to be the sole permitting agency for certain nontidal wetlands impacts that are greater than half an acre. Most of these permits fall under the VWP general permit for which fees are being raised.

The increase in fees will affect all localities, businesses, and individuals seeking to obtain a VWP general permit that authorizes an impact of half an acre or more on nontidal surface water. In fiscal 2002, DEQ estimates that it issued 70 VWP general permits, a large proportion of which were for impacts of half an acre or more. This number is likely to increase following November 1, 2002, when the SPGP transfers some permit applications out of the Army Corps of Engineers' permit program and into DEQ's VWP general permit program. According to DEQ, the memorandum of agreement between DEQ and the Army Corps of Engineers regarding issues such as permit compliance and enforcement and the increased volume of VWP general permit applications received by DEQ will require an increase in the DEQ's wetlands permitting staff. The higher fees are expected to go toward meeting these additional requirements.

In order to induce the most efficient use of resources, permit fees should reflect the actual cost of using a resource in a safe manner. The higher fees are simply transferring some or all of the cost of using state waters from DEQ and hence the taxpayer to the localities, businesses, or individuals who are using state waters for discharge purposes. To the extent the higher fees better reflect the cost of using state waters, the proposed change will have a positive economic impact by resulting in a more efficient use of resources. On the other hand, the proposed change could have a negative economic impact by discouraging certain wetlands projects that might have been beneficial to the state.

(3) The proposed regulation modifies the definition of the various categories of VWP individual permits to make them more consistent with how similar permits are defined in federal regulations. The definition of a VWP Category I individual permit has been modified to include projects that cumulatively affect five acres or more of surface waters. Under current policy, a VWP Category I individual permit is issued to projects cumulatively affecting ten acres or more of surface water. A VWP Category II individual permit now refers to projects affecting two to five acres of surface waters, compared to current policy of issuing VWP Category II

individual permits to projects affecting between one and ten acres. A VWP Category III individual permit will be issued to projects affecting two acres or less of surface water. Under current policy, a VWP Category III individual permit is issued to projects affecting one acre or less of surface water.

Under the proposed regulation, some projects previously classified as Category II will be classified as Category I and will be required to pay higher fees when obtaining or modifying a permit (Category I permits cost 30% more than Category II permits). However, some projects previously classified as Category II will now be classified as Category III and will have to pay lower fees when obtaining or modifying a permit (Category II permits cost over 60% more than Category III permits). The net economic impact of the proposed change will depend on the number of applicants now required to pay the higher fees compared to the number now required to pay the lower fees. In fiscal years 2001 and 2002, a total of 24 Category I permits, 34 Category II permits, and 15 Category III permits were issued. However, breakdown by the amount of surface water impacted by projects within each of the categories is not available. While DEQ does not believe that many projects will now have to pay higher fees, the exact number of affected projects is not available. As the proportion of Category II projects that are now likely to have to pay the higher fee and the proportion that are now likely to have to pay the lower fee is not known, it is not possible to estimate at this time the net economic impact of the proposed change.

(4) The proposed regulation removes a provision that allows DEQ to grant waivers to localities, businesses, and individuals allowing them to be exempt from getting a new VWP individual permit or modifying an existing VWP individual permit. The 2002 Act of Assembly removed this provision for the period between July 1, 2002, and June 30, 2004. DEQ plans to make the change permanent.

The proposed change will not have a significant economic impact. DEQ has not issued any waivers under this provision over the past few years and the proposed change is aimed at making the regulation more consistent with current practice.

Businesses and entities affected. The proposed regulation will affect all individuals and businesses seeking to get permits or modify existing permits issued by the State Water Control Board. For most categories of permits, fees have tripled for permits issued between July 1, 2002, and June 30, 2004. For certain types of VWP general permits, permanent fee increases have been proposed. The additional cost of obtaining permits may reduce the incentive of some businesses and individuals to undertake voluntary projects, such as wastewater reclamation and reuse, that require a permit from the State Water Control Board. The proposed regulation will also affect projects seeking to obtain or modify VWP individual permits. While some previously classified as Category II may be required to pay higher fees and get a Category I permit, others may now be required to pay lower fees and get a Category III permit.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth. Localities, such as in the Norfolk area, that have a large number of projects requiring permits from the State Water Control Board are likely to be especially affected.

Projected impact on employment. The proposed regulation is not expected to have a significant impact on employment.

Effects on the use and value of private property. The proposed regulation triples the cost of obtaining a permit between July 1, 2002, and June 30, 2004, from the State Water Control Board. Further legislative action is likely that will make permanent increases to fees charged for these permits and certificates. The regulation also proposes additional fee increases for certain types of VWP general permits. The higher fees are likely to increase the cost of operation for individuals and businesses required to obtain a new permit or modify an existing permit. Moreover, the higher cost of obtaining or modifying a permit is likely to discourage the adoption of voluntary projects, such as projects reclaiming and reusing wastewater, which require such permits. The regulation could also affect individuals and businesses requiring VWP individual permits. By redefining the categories of VWP individual permits, the regulation could increase the cost of operation for some and reduce the cost of operation for others.

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

Summary:

The proposed amendments increase by a factor of three the maximum fees for processing applications for permits and certificates. The proposed amendments to the regulation include (i) changes to the definitions for Virginia Water Protection (VWP) Permit Project categories to reflect the current definitions for such projects; (ii) recognition that there is no permit fee for VWP Permits for projects impacting less than one tenth of an acre; and (iii) addition of fee schedules that will become effective after the provisions of Chapter 822 of the 2002 Acts of Assembly expire on July 1, 2004.

9 VAC 25-20-10. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, § 62.1-44.3; the board's Permit Regulation, 9 VAC 25-30-10; the board's Virginia Water Protection Permit Regulation, 9 VAC 25-210-10; the board's Surface Water Management Area Regulation, 9 VAC 25-220-10; and the Ground Water Management Act of 1992, § 62.1-255 of the Code of Virginia, including any general permits issued thereunder.

"*Applicant*" means for the purposes of this chapter any person filing an application for issuance, reissuance, or modification, except as exempted by 9 VAC 25-20-50, of a permit, certificate or special exception or filing a registration statement for coverage under a general permit issued in response to Chapters 3.1 (§ 62.1-44.2 et seq.), 24 (§ 62.1-242 et seq.), and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"*Application*" means for the purposes of this chapter the forms approved by the State Water Control Board for applying for

Proposed Regulations

issuance or reissuance of a permit, certificate or special exception or for filing a registration statement for coverage under a general permit issued in response to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case of modifications to an existing permit, certificate or special exception requested by the permit, certificate or special exception holder and not exempted by 9 VAC 25-20-50, the application shall consist of the formal written request and any accompanying documentation submitted by the permit, certificate or special exception holder to initiate the modification.

"Existing permit" means for the purposes of this chapter a permit, certificate or special exception issued by the board and currently held by an applicant.

"Major modification" means for the purposes of this chapter modification or amendment of an existing permit or, certificate or special exception before its expiration which is not a minor modification as defined in this regulation.

"Minor modification" means for the purposes of this chapter minor modification or amendment of an existing permit, certificate or special exception before its expiration as specified in 9 VAC 25-30-40 ~~et seq.~~, 9 VAC 25-210-210, 9 VAC 25-220-230, or in regulations promulgated in response to Chapter 25 of Title 62.1 of the Code of Virginia. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules.

"New permit" means for the purposes of this chapter a permit, certificate or special exception issued by the board to an applicant that does not currently hold and has never held a permit, certificate or special exception at that location.

"Revoked permit" means for the purposes of this chapter an existing permit, certificate or special exception which is terminated before its expiration.

"VWP Category I Project" means for the purposes of this chapter a project requiring complex staff review including, but not limited to, those ~~which~~ *that* affect instream flows such as reservoirs, hydropower impoundments, and surface water withdrawals; major subdivisions, industrial parks, commercial developments, and regional stormwater facilities ~~which~~ *that* cumulatively impact more than ~~40~~ *five* acres of *surface waters, including wetlands*; projects in waters containing wild trout or threatened or endangered species; *and* new marinas, navigational dredging projects, and instream sand and gravel mining operations.

"VWP Category II Project" means for the purposes of this chapter a project requiring moderately complex staff review including, but not limited to, those impacting between ~~one and 40~~ *two and five* acres of ~~isolated or headwaters~~ *surface waters, including wetlands, stream channel modifications or relocations of perennial streams; rip rap and bank stabilization of 500 feet or more; expansion of existing marinas and dredging of navigation channels.*

"VWP Category III Project" means for the purposes of this chapter a project requiring routine staff review including, but not limited to, those ~~which~~ *that* impact ~~one acre or less of~~ adjacent nontidal wetlands; dredging for single residence boatslip and access channels; perpendicular or linear sub-bed crossings of pipelines for sewer and other utilities in waters ~~which do not contain wild trout or threatened or endangered species; impoundments in nonperennial streams, for the purpose of stormwater management which do not require a VPDES permit, including piping, filling, relocations and channel modifications of such streams, provided that wetland impacts do not exceed one acre, and the stream does not contain threatened or endangered species~~ *two acres or less of surface waters, including wetlands.*

9 VAC 25-20-110. Fee schedules for individual new permit issuance and individual existing permit reissuance.

A. Through June 30, 2004, the following fee schedules apply to applications for issuance of a new individual permit or certificate and reissuance of an existing individual permit or certificate:

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major	\$24,000
VPDES Municipal Major	\$21,300
VPDES Municipal Stormwater	\$21,300
VPDES Industrial Minor/No Standard Limits	\$10,200
VPDES Industrial Minor/Standard Limits	\$6,600
VPDES Industrial Stormwater	\$7,200
VPDES Municipal Minor/100,000 GPD or More	\$7,500
VPDES Municipal Minor/More Than 10,000 GPD-Less Than 100,000 GPD	\$6,000
VPDES Municipal Minor/More Than 1,000 GPD-10,000 GPD or Less	\$5,400
VPDES Municipal Minor/1,000 GPD or less	\$4,200

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation	\$10,500
VPA Industrial Sludge Operation	\$7,500
VPA Municipal Wastewater Operation	\$13,500
VPA Municipal Sludge Operation	\$7,500
All other operations not specified above	\$750

3. Virginia Water Protection (VWP) permits.

VWP Category I Project	\$9,000
VWP Category II Project	\$6,300
VWP Category III Project	\$2,400

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
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Proposed Regulations

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Certificate for an Existing Nonagricultural Withdrawal	\$6,000
Permit for a New or Expanded Nonagricultural Withdrawal	\$9,000

5. Permits for the withdrawal of groundwater issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Initial Permit for an Existing Nonagricultural Withdrawal	\$1,200
Permit for a New or Expanded Nonagricultural Withdrawal	\$6,000

B. Effective July 1, 2004, the following fee schedules apply to applications for issuance of a new individual permit or certificate and reissuance of an existing individual permit or certificate:-

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major	\$8,000
VPDES Municipal Major	\$7,100
VPDES Municipal Stormwater	\$7,100
VPDES Industrial Minor/No Standard Limits	\$3,400
VPDES Industrial Minor/Standard Limits	\$2,200
VPDES Industrial Stormwater	\$2,400
VPDES Municipal Minor/100,000 GPD or More	\$2,500
VPDES Municipal Minor/More Than 10,000 GPD-Less Than 100,000 GPD	\$2,000
VPDES Municipal Minor/More Than 1,000 GPD-10,000 GPD or Less	\$1,800
VPDES Municipal Minor/1,000 GPD or less	\$1,400

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation	\$3,500
VPA Industrial Sludge Operation	\$2,500
VPA Municipal Wastewater Operation	\$4,500
VPA Municipal Sludge Operation	\$2,500
All other operations not specified above	\$250

3. Virginia Water Protection (VWP) permits.

VWP Category I Project	\$3,000
VWP Category II Project	\$2,100
VWP Category III Project	\$800
VWP Waivers	\$300

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Certificate for an Existing Nonagricultural Withdrawal	\$2,000
Permit for a New or Expanded Nonagricultural Withdrawal	\$3,000

5. Permits for the withdrawal of groundwater issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Initial Permit for an Existing Nonagricultural Withdrawal	\$400
Permit for a New or Expanded Nonagricultural Withdrawal	\$2,000

9 VAC 25-20-120. Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.

A. Through June 30, 2004, the following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder:

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major	\$12,000
VPDES Municipal Major	\$10,650
VPDES Municipal Stormwater	\$10,650
VPDES Industrial Minor/No Standard Limits	\$5,100
VPDES Industrial Minor/Standard Limits	\$3,300
VPDES Industrial Stormwater	\$3,600
VPDES Municipal Minor/100,000 GPD or More	\$3,750
VPDES Municipal Minor/More Than 10,000 GPD-Less Than 100,000 GPD	\$3,000
VPDES Municipal Minor/More Than 1,000 GPD-10,000 GPD or Less	\$2,700
VPDES Municipal Minor/1,000 GPD or Less	\$2,100

Proposed Regulations

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation	\$5,250
VPA Industrial Sludge Operation	\$3,750
VPA Municipal Wastewater Operation	\$6,750
VPA Municipal Sludge Operation	\$3,750
All other operations not specified above	\$375

3. Virginia Water Protection (VWP) permits.

VWP Category I Project	\$4,500
VWP Category II Project	\$3,150
VWP Category III Project	\$1,200

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Certificate for an Existing Nonagricultural Withdrawal	\$3,000
Permit for a New or Expanded Nonagricultural Withdrawal	\$4,500

5. Permits for the withdrawal of groundwater issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Initial Permit for an Existing Nonagricultural Withdrawal	\$600
Permit for a New or Expanded Nonagricultural Withdrawal	\$3,000

B. Effective July 1, 2004, the following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder:-

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major	\$4,000
VPDES Municipal Major	\$3,550
VPDES Municipal Stormwater	\$3,550
VPDES Industrial Minor/No Standard Limits	\$1,700
VPDES Industrial Minor/Standard Limits	\$1,100
VPDES Industrial Stormwater	\$1,200
VPDES Municipal Minor/100,000 GPD or	\$1,250

More	
VPDES Municipal Minor/More Than 10,000 GPD-Less Than 100,000 GPD	\$1,000
VPDES Municipal Minor/More Than 1,000 GPD-10,000 GPD or Less	\$900
VPDES Municipal Minor/1,000 GPD or Less	\$700

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation	\$1,750
VPA Industrial Sludge Operation	\$1,250
VPA Municipal Wastewater Operation	\$2,250
VPA Municipal Sludge Operation	\$1,250
All other operations not specified above	\$125

3. Virginia Water Protection (VWP) permits.

VWP Category I Project	\$1,500
VWP Category II Project	\$1,050
VWP Category III Project	\$400
VWP Waivers	\$150

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Certificate for an Existing Nonagricultural Withdrawal	\$1,000
Permit for a New or Expanded Nonagricultural Withdrawal	\$1,500

5. Permits for the withdrawal of groundwater issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Initial Permit for an Existing Nonagricultural Withdrawal	\$200
Permit for a New or Expanded Nonagricultural Withdrawal	\$1,000

9 VAC 25-20-130. Fees for filing registration statements for general permits issued by the board.

A. Through June 30, 2004, the following fees apply to filing of applications or registration statements for all general permits issued by the board, except:

1. The fee for filing a registration statement for coverage under 9 VAC 25-110 is \$0.

2. The fee for filing a registration statement for coverage under 9 VAC 25-120 is \$0.

3. The fee for filing an application or registration statement for coverage under any VWP General Permit authorizing impacts to one tenth of an acre or more but less than one-half of an acre of nontidal surface waters shall be \$600.

4. The fee for filing an application or registration statement for coverage under any VWP General Permit authorizing impacts to one-half of an acre or more of nontidal surface waters shall be \$1,200.

5. Except as specified in subdivisions 1, 2, 3 and 4 of this subsection, the maximum fee for filing an application or registration statement for coverage under any general permit issued by the board shall be \$600. Fees for coverage under general permits will be based on the number of years from the filing of a registration statement until the general permit expires. The annual prorated amount is equal to the maximum fee of \$600 divided by the total term of the general permit. The fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the filing of a registration statement until the expiration of the general permit.

B. Effective July 1, 2004, the following fees apply to filing of applications or registration statements for all general permits issued by the board, except:

A. 1. The fee for filing a registration statement for coverage under 9 VAC 25-110-40 et seq. is \$0.

B. 2. The fee for filing a registration statement for coverage under 9 VAC 25-120-40 et seq. is \$0.

3. The fee for filing an application or registration statement for coverage under any VWP General Permit authorizing impacts to one tenth of an acre or more but less than one-half of an acre of nontidal surface waters shall be \$200.

4. The fee for filing an application or registration statement for coverage under any VWP General Permit authorizing impacts to one-half of an acre or more of nontidal surface waters shall be \$400.

C. 5. Except as specified in ~~9 VAC 25-20-130 A and B~~ subdivisions 1, 2, 3 and 4 of subsection A of this section and subdivisions 1, 2, 3 and 4 of this subsection, the maximum fee for filing a registration statement for coverage under any general permit issued by the board shall be \$200. Fees for coverage under general permits will be based on the number of years from the filing of a registration statement until the general permit expires. The annual prorated amount is equal to the maximum fee of \$200 divided by the total term of the general permit. The fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the filing of a registration statement until the expiration of the general permit.

VA.R. Doc. No. R02-208; Filed January 8, 2003, 10:43 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-218. Rules and Regulations Governing Outpatient Health Data Reporting (adding 12 VAC 5-218-10 through 12 VAC 5-218-70).

Statutory Authority: § 32.1-12 and 32.1-276.6 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until April 1, 2003.

(See Calendar of Events section for additional information)

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Basis: Sections 32.1-276.3, 32.1-276.6, 32.1-276.8 and 32.1-276.9 of the Code of Virginia direct the State Board of Health to implement an outpatient patient level data system in association with the nonprofit, tax-exempt organization established in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) or Title 32.1 of the Code of Virginia.

Purpose: The outpatient patient level data system collects information on at least five surgical procedures when performed on an outpatient basis in ambulatory surgical centers, hospitals and by physicians performing office-based surgery. The information is collected utilizing existing nationally adopted billing forms including but not limited to the data elements on the UB-92 and HCFA 1500 forms. The nonprofit, tax-exempt organization established in accordance with § 32.1-276.2 et seq. of the Code of Virginia collects, edits and verifies the data submitted. The information will be used to assist businesses and consumers in making informed health care decisions, and will also be available to health care providers, planners, and policymakers. The law includes a study of the impact and cost-benefit of this data collection system and the information's value to the public.

Substance: The outpatient patient level data system will collect information on at least five surgical procedures from ambulatory surgical centers, hospital outpatient departments, and physicians performing the procedures in their offices. The information will primarily be collected utilizing existing nationally adopted billing forms including but not limited to the UB-92 and HCFA 1500 forms. The nonprofit, tax-exempt organization established in accordance with Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia will edit and verify the data submitted as well as develop comparative information to benefit the public and support public policy. The regulations include a pilot period to evaluate the impact and cost-benefit of this data collection system.

Issues: The primary advantages to consumers are access to information about outpatient surgical health providers, their

Proposed Regulations

location, and certain performance information. Other advantages to the Commonwealth include the use of the collected data for health policy, health research, and quality improvement activities by health care providers. There have been no identified disadvantages to the public.

Fiscal Impact: The nonprofit, tax-exempt organization (as described in Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia) has funded costs associated with initial development, collection, and processing of the outpatient data during the first year. The nonprofit will continue funding for the second year at an amount of \$36,000 to process and edit data. After the first twelve months of data submission, provider fees may be collected from providers who submit data that is not considered processed and verified following editing and calculation of minimum accuracy rates. A pilot study of the costs and benefits of the data collection program is expected to be conducted after data collection is considered to be complete and accurate - within the next two to three years. It is expected that funding will ultimately include core contributions from General Appropriations as with the inpatient patient level data system. Total fiscal impact from all sources is estimated to be between \$36,000 to \$50,000 per year using the nonprofits' existing data infrastructure to reduce costs.

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 establish an outpatient data reporting system for outpatient hospitals, ambulatory surgical centers, and physicians performing selected outpatient surgical procedures.

Estimated economic impact. These regulations establish reporting requirements for outpatient surgical data as mandated by Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia (amended by 2001 Acts of Assembly, HB 2763). The entities, which include outpatient hospitals, ambulatory surgical centers, and a number of physicians performing selected outpatient surgical procedures,¹ are currently required to report data under emergency regulations that have been effective since November 2001. The proposed action will make the emergency regulations permanent without any change in the original language.

¹ These outpatient surgical procedures are not specified in law or in the regulations, but determined by a task force.

The outpatient data reporting system established under the emergency regulations requires data submission on at least five specific outpatient surgical procedures. Currently, seven procedures are approved for reporting by the Board of Health.² The number and the type of these procedures are subject to change over time. These specific procedures are selected among others based on their frequency, actual or perceived risk to the patient, the potential for moving from an inpatient procedure to an outpatient procedure, and the level of costs. Frequently performed procedures are of interest because they may affect a significant number of Virginians. Procedures whose performance presents an actual or perceived risk are of interest for studying and developing information to help providers and patients and reduce the morbidity and mortality risks. Information on procedures that are likely to move to an outpatient basis may provide information on differences in costs and the effectiveness of care between the different settings (inpatient, ambulatory surgical center, and hospital). Finally, information on costs may allow consumers and providers to make cost comparisons.

The system works in the following manner. Reporting entities submit patient level data for each patient for whom an outpatient surgical procedure is performed. The data elements include (i) identities: the identity of patients, hospitals, operating physicians, payors, employers of the patients; (ii) demographic information: sex, date of birth, postal zip code, relationship between the patient and the insured; (iii) billing information: procedure codes, procedure dates, revenue codes, revenue units, procedure specific charges, total charges; and (iv) health information: status at discharge, admission date and hour, admission diagnosis, principal diagnosis, secondary diagnosis, external cause of injury, co-morbid conditions existing but not treated. Most of this information is already collected on standard UB-92 and HCFA 1500 forms³ and reported to insurance companies by the reporting entities regardless of these regulations. For example, reporting entities collect all of the demographic information at registration and enter procedure codes, duration of the operation, and the outcome once the surgery is completed. However, a few elements are reported in addition to the information on standard reporting forms because of these regulations. These elements are the hospital identity and co-morbid conditions reported by hospitals and admission diagnosis, external cause of injury, as well as the hospital identity and co-morbid conditions reported by physicians.

Upon collection of the required patient level data, reporting entities are required to either submit quarterly data to the Board of Health that in turn passes the same data to Virginia Health Information, a nonprofit organization that has a contract with the board, or directly to the nonprofit organization for processing and verification of reported data.

² The approved procedures are (1) colonoscopy, (2) laparoscopy and laparoscopic surgery, (3) surgery of the breast including repair and reconstruction surgery, (4) hernia repair, (5) liposuction, (6) facial surgery including facelift, blepharoplasty, and laser resurfacing, and 7) knee arthroscopy.

³ UB 92 is the standard reporting form for hospitals and HCFA 1500 is for physicians.

Reporting entities performing less than 100 of the surgical procedures per year may submit the data in either electronic or hard copy format. Entities with at least 100 procedures are required to submit data in electronic format such as on a CD or a floppy disk. However, all entities must eventually utilize electronic reporting by January 2004.

Once the data is received, the nonprofit organization processes and verifies data. If the error rate is greater than 5.0%, a fee may be levied on the reporting entity. However, the regulations do not establish any specific amount of fees. Under § 32.1-276.8 of the Code of Virginia, the nonprofit organization may charge a fee up to one dollar for each erroneous record. The purpose of the fee for erroneous records is to improve the accuracy of the reported data. The erroneous data is edited by the nonprofit organization.

Then, the nonprofit organization extracts information in a raw form, or calculates new variables from reported data elements. For example, patient age is calculated from the date of birth information. This information is made available free of charge to Virginia Department of Health (VDH) support programs, health system agencies, reporting providers, and consumers through direct dissemination of the data, through printed consumer guides, or through internet access. The organization tries to accommodate individual consumer requests without a charge as well. Nonreporting providers or commercial users can obtain the data from the organization for a fee.

Information is not free as it requires human capital and machines to collect, process, verify, analyze, organize, store, and disseminate data. The costs associated with the outpatient data reporting system fall on the reporting entities and the nonprofit organization. Reporting entities must designate a contact person for the data reporting responsibilities. Their costs include additional utilization of their electronic systems or purchase of additional capacity if necessary, the use of additional office supplies if hard copy reporting is chosen, and additional staff time to execute the reporting requirements. These costs are unlikely to be uniform across reporting entities and are very much likely to increase with the number of outpatient surgical procedures performed. Although no estimate is available for these costs, it should be remembered that reporting entities already collect much of this information on standard forms and, therefore, additional costs may be relatively small. In addition to these, reporting entities may be assessed a fee for erroneous data, which would increase their overall costs.

Similarly, the nonprofit organization already has the technical infrastructure and human resources for inpatient data collection and dissemination in place since 1994. The outpatient surgical data reporting system closely resembles existing inpatient reporting system. Thus, the costs to the nonprofit organization are in terms of additional utilization of existing electronic equipment or new equipment if needed, expanded utilization of existing programs and modifications to them, additional web design costs, and additional staff time to handle hard copy reporting, resolving erroneous data entries, designing search algorithms, developing user-friendly interfaces, and organizing and managing electronic data in general. The nonprofit organization spent \$36,000 on this

project during the first year from its own resources and will continue to spend another \$36,000 to \$50,000 for the second year. The sources of these expenditures are the funding the organization receives from general fund appropriation for inpatient data reporting system, federal grants, and revenues from commercial customers.

Although currently the nonprofit organization incurs the costs of the outpatient data reporting system, the costs associated with human capital and machines supporting human productivity will have to be funded somehow. In fact, there is expectation that the outpatient system will be funded sometime in the future as the inpatient system and basic processing costs will ultimately come from the contributions from general fund appropriation and/or from the federal grants. Alternately, the nonprofit organization may be able to supplement its resources by compensation from consuming entities in the market. If that route is a part of the organization's financing strategy, there is likely to be some additional costs for marketing of the outpatient data. These may include, for example, press releases, direct mail, and telephone costs that are expected to be in hundreds of dollars. If the organization cannot generate enough revenues or cannot find a funding source, it may have to abandon its role as a facilitator at some point in the future.

The proposed regulations may create another potential cost in terms of privacy. The data collected contains personal health information at the patient level. The release of any patient identifiers and the release of any data or information or combination of data elements that could reasonably be expected to identify an individual are prohibited under the statute and are punishable by civil penalties. While additional reporting and processing required under these regulations may increase the chance of unlawful privacy breaches, the nonprofit organization indicates that its internal controls, policies and procedures have prevented any breach of privacy for the more than 6.5 million inpatient records processed since 1993. Similar controls are employed for processing of outpatient data the volume of which is a small fraction of the inpatient discharges.

Availability of outpatient surgical data is expected to generate a number of benefits. At the aggregate level, these regulations will reveal among other things a more complete and accurate picture of the healthcare outcomes either bad or good and reduce potential bias that would have prevailed under a voluntary self-reporting approach. Under a voluntary approach, reporting entities might only provide information that reflects positively on their interests and might try to curtail access to information that reflects negatively on them. Also, the providers would not voluntarily release information that may benefit competitors while the same information may improve consumer well-being. Thus, these regulations will likely help reveal a reasonably accurate picture of health outcomes at the aggregate level as well as at the provider level.

Also, readily available inpatient data and outpatient data complement each other and may produce additional benefits. Both databases may be combined at the patient level and are expected to produce overall synergies in terms of tracking the patient over time. In other words, it is likely that the new

Proposed Regulations

outpatient data will enrich readily available inpatient data while the readily available inpatient data will increase the likely benefits from the outpatient data reported pursuant to these regulations. For example, at the extreme, if a mortality occurs following a discharge from an inpatient procedure, it may lead to wrong conclusions when in fact the patient had an outpatient procedure performed elsewhere after being discharged from the hospital that performed the inpatient procedure.

The availability of data to VDH support programs or health system agencies may further help identify trends, inform policy makers early on about the potential problems and desired outcomes, and help shape the health policy. For example, VDH has undertaken a major program to reduce the number of Virginians suffering from cardiovascular diseases using patient level data to identify cities and counties with higher rates of this condition and initiated screening programs and other related treatment programs. Similar programs have been developed for diabetes. Injury prevention programs such as seatbelt usage, bicycle helmet programs have employed the patient level data system to determine the scope of the problem by geographic area and then focus educational and other interventions where they can be most effective. Additionally, the proposed regulations will help build a local level database that may enable decision makers to identify differences between national and local trends regarding various variables such as length of stay, infection rates, outpatient surgical costs, etc. As an example, policy makers may be better informed about the safety of the procedures performed at the local level relative to the national level.

Outpatient health care providers may also benefit from the proposed data reporting system. Reporting hospitals or physicians may be able to compare their performance with other providers and identify the areas that may need improvement. Examples may include how often patients receiving procedures develop complications or infections following care. Similar information on how frequently patients require related treatment to address problems with earlier outpatient care can also be used to improve performance. In addition, the providers may use some of the information to identify new markets for outpatient procedures and enhance their market share. They may be able to identify where patients are coming from by zip code, where they go for outpatient services, and what areas they need to target to gain market share. Taken together, the effects on providers may improve healthcare outcomes and may contribute to competition in the outpatient surgical industry.

The outpatient data may further benefit consumers who seek to find out critical information about providers for benchmarking purposes. They may benefit from consumer guides published in print or on the world wide web by the nonprofit organization based on reported outpatient data. They may be able to easily locate providers and learn more about the indications and expected results from the procedures. Consumers may access data about average charges for procedures, and they may obtain information about the experience and the performance of the providers. In other words, they may be afforded a chance to make better-informed health care decisions.

Finally, with this data, the nonprofit organization may be able to increase its revenues by selling it to nonreporting providers or commercial users as a compensation for the value it adds to the raw data. Such business transactions are expected to take place if they benefit both the seller and the buyer.

Businesses and entities affected. The proposed regulations will establish reporting requirements for approximately 90 outpatient hospitals, about 20 to 25 ambulatory surgical centers, and several hundred physicians who perform the selected surgical procedures in their offices.

Localities particularly affected. The proposed regulations apply throughout Virginia and are not expected to affect any locality more than others.

Projected impact on employment. The proposed reporting requirements may increase the demand for labor slightly as reporting entities will likely devote more human resources to report outpatient data and the nonprofit organization will likely devote additional labor for processing and verification of reported data. However, existing staff at these entities will likely meet much of the need for additional labor.

Effects on the use and value of private property. The proposed regulations are not expected to have any direct effect on the use and value of private property. However, reporting entities may enhance their profitability with the comparative provider information collected. These may include for instance identifying their performance on reported outpatient surgical procedures and using this information to reduce costs and to identify new markets to increase revenues. To the extent this happens, there is likely to be a positive effect on the value of their businesses.

Recordkeeping represents a significant cost to outpatient service providers. This rule increases these costs by some small amount and will likely result in a small reduction in the stream of expected profits from outpatient service providers. Given the small incremental nature of this change, the effect of the value of outpatient surgery practices will certainly be too small to measure.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: VDH concurs substantially with the DPB economic impact analysis conducted on the proposed regulations governing outpatient data reporting.

Summary:

This regulation implements Virginia code requiring the reporting of certain outpatient surgical procedures when performed at ambulatory surgical centers, hospital outpatient departments and physicians' offices.

The regulation defines the information to be submitted, timing of submission and electronic format to be employed as well as exceptions to electronic reporting.

CHAPTER 218.
RULES AND REGULATIONS GOVERNING OUTPATIENT
HEALTH DATA REPORTING.

12 VAC 5-218-10. Definitions.

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.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, a hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, a hospital operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the care and treatment of the mentally ill, or a hospital operated by the University of Virginia or Virginia Commonwealth University Health System Authority.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with the characteristics, expertise and capacity to execute the powers and duties set forth for such entity in Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia and with which the Commissioner of Health has entered into a contract as required by the Code of Virginia.

"Outpatient processed, verified data" means data on outpatient records that have been subjected to edits. These edits shall be applied to data elements that are on the UB-92 Billing Form, HCFA 1500 Billing Form or a nationally adopted successor billing form used by reporting entities. The edits shall have been agreed to by the board and the nonprofit organization. Outpatient records containing invalid UB-92 codes, HCFA 1500 codes, another nationally adopted billing form codes or all blank fields for any of the data elements subjected to edits shall be designated as error records. To be considered processed and verified, a complete filing of outpatient surgical procedures specified by the board submitted by a reporting entity in aggregate per calendar year quarter and that are subjected to these edits must be free of error at a prescribed rate. The overall error rate shall not exceed 5.0%. A separate error rate shall be calculated for patient identifier, and it shall not exceed 5.0%. The error rate shall be calculated on only those fields approved by the board through the process specified in 12 VAC 5-218-20.

"Outpatient surgery" means all surgical procedures performed on an outpatient basis in a general hospital, ordinary hospital, outpatient surgical hospital or other facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia or in a physician's office. Outpatient surgery refers only to those surgical procedure groups on which data are collected by the nonprofit organization as a part of a pilot study.

"Physician" means a person licensed to practice medicine or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

"Physician's office" means a place (i) owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever or by a corporation, partnership, limited liability company or other entity that employs or engages physicians and (ii) designed and equipped solely for the provision of fundamental medical care, whether diagnostic, therapeutic, rehabilitative, preventive or palliative, to ambulatory patients.

"Reporting entity" means every general hospital, ordinary hospital, outpatient surgical hospital or other facility licensed or certified pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia and every physician performing surgical procedures in his office.

"Surgical procedure group" means at least five procedure groups, identified by the nonprofit organization designated pursuant to § 32.1-276.4 of the Code of Virginia in compliance with regulations adopted by the board, based on criteria that include, but are not limited to, the frequency with which the procedure is performed, the clinical severity or intensity, and the perception or probability of risk. The nonprofit organization shall form a technical advisory group consisting of members nominated by its board of directors' nominating organizations to assist in selecting surgical procedure groups to recommend to the board for adoption.

"System" means the Virginia Patient Level Data System.

12 VAC 5-218-20. Reporting requirements for outpatient data elements.

Every reporting entity performing outpatient surgical procedures shall submit each patient level data element listed below for each patient for which an outpatient surgical procedure is performed and for which the data element is collected on the standard claim form utilized by the reporting entity. Most of these data elements are currently collected from a UB-92 Billing Form or HCFA 1500 Form. In the table below, the column for a field description indicates where the data element is located on the UB-92 and HCFA 1500 forms. An asterisk (*) indicates when the required data element is either not on the UB-92 or the HCFA 1500. The instructions provided under that particular data element should then be followed. If a successor billing form to the UB-92/HCFA 1500 form is adopted nationally, information pertaining to the data elements listed below should be derived from that successor billing form. The nonprofit organization will develop detailed record layouts for use by reporting entities in reporting outpatient surgical data. This detailed record layout will be based upon the type of base electronic or paper-billing form utilized by the reporting entity. Outpatient surgical procedures reported will be those adopted by the Board of Health as referred by the nonprofit organization. The nonprofit organization may recommend changes to the list of procedures to be reported not more than annually.

Proposed Regulations

Data Element Name	Instructions	UB-92 Form Locator	HCFA 1500 Field Number
<i>Hospital Identifier</i>	<i>Hospitals and ambulatory care centers enter the six-digit Medicare provider number, or when adopted by the Board of Health, the National Provider Identifier or other number assigned by the board. Physicians, leave blank.</i>	<i>N/A-see instructions</i>	<i>N/A-see instructions</i>
<i>Operating Physician Identifier</i>	<i>Enter the nationally assigned physician identification number, either the Uniform Physician Identification Number (UPIN), National Provider Identifier (NPI) or it's successor as approved by the Board of Health for the physician identified as the operating physician for the principal procedure reported.</i>	<i>83 A & B</i>	<i>17a but with NPI</i>
<i>Payor Identifier</i>	<i>Enter the Board of Health approved payor designation which will be the nationally assigned PAYERID, it's successor, or English description of the payor.</i>	<i>50 A, B, C 50-1 through 50-11 as described in instructions</i>	<i>9d as described in instructions</i>
<i>Employer Identifier</i>	<i>Enter the federally approved EIN, or employer name, whichever is adopted by the Board of Health.</i>	<i>65 A with name/codes noted in instructions</i>	<i>9c with name/codes noted in instructions</i>
<i>Patient Identifier</i>	<i>Enter the nine-digit social security number of the patient. If a social security number has not been assigned, leave blank. The nine-digit social security number is not required for patients under four years of age.</i>	<i>Not specified as to patient</i>	<i>Not specified as to patient</i>
<i>Patient Sex</i>		<i>15</i>	<i>3</i>
<i>Date of Birth</i>	<i>Enter the code in MM/DD/YYYY format.</i>	<i>14 Must be in format specified in instructions</i>	<i>3 Must be in format specified in instructions</i>
<i>Zip Code</i>		<i>13</i>	<i>5</i>
<i>Patient Relationship to insured</i>		<i>59 A, B, C</i>	<i>6</i>
<i>Employment status code</i>		<i>64 A, B, C</i>	<i>8</i>
<i>Status at discharge</i>		<i>22</i>	<i>Use outpatient UB-92 codes</i>
<i>Admission Date</i>	<i>Admission/start of care date</i>	<i>17</i>	<i>24 A</i>
<i>Admission Hour</i>	<i>Hour of admission in military time 00-24</i>	<i>18</i>	<i>See instructions</i>
<i>Admission Diagnosis</i>	<i>Code sets- ICD 9 or CPT 4 or their successors to be specified in detailed record layouts.</i>	<i>76</i>	<i>*</i>
<i>Principal Diagnoses</i>	<i>Code sets- ICD 9 or CPT 4 or their successors to be specified in detailed record layouts.</i>	<i>67</i>	<i>21-1</i>
<i>Secondary Diagnoses</i>	<i>Code sets- ICD 9 or CPT 4 or their successors to be specified in detailed record layouts.</i>	<i>68 to 75t</i>	<i>21-2 to 21-4</i>
<i>External Cause of Injury</i>	<i>(E-code). Record all external cause of injury codes in secondary diagnoses position after recording all treated secondary diagnoses.</i>	<i>77</i>	<i>*</i>
<i>Co-morbid condition existing but not treated</i>	<i>Enter the code for any co-morbid conditions existing but not treated. Code sets- ICD 9 or CPT 4 or their successors to be specified in detailed record layouts.</i>	<i>*</i>	<i>*</i>
<i>Procedures</i>	<i>Code sets- ICD 9 or CPT 4 or their successors to be specified in detailed record layouts.</i>	<i>80</i>	<i>24d:1 to 24d:6</i>
<i>Procedure Dates</i>		<i>81</i>	<i>24a:1 to 24a:6</i>
<i>Revenue Center codes</i>	<i>As specified for UB –92 completion, not available for HCFA 1500</i>	<i>42</i>	<i>N/A</i>
<i>Revenue Center Units</i>		<i>46</i>	<i>24g:1 to 24g:6</i>

Revenue Center charges		47	24f:1 to 24f:6
Total Charges		(R.C. Code 001 is for total charges.)	28

12 VAC 5-218-30. Options for filing format.

Reporting entities that perform on an annual basis 100 or more of the specified outpatient surgical procedures shall submit patient level data in an electronic data format. Reporting entities performing fewer than 100 of the specified outpatient surgical procedures annually that submit patient level data directly to the board or the nonprofit organization may directly submit it in electronic data format or in hard copy. If hard copy is utilized, the reporting entity shall submit for each outpatient discharged a copy of the UB-92/HCFA 1500 and an addendum sheet for those data elements not collected on the UB-92/HCFA 1500 or nationally adopted billing form. These reporting entities performing specified outpatient surgical procedures must submit all outpatient patient level data in electronic data format by January 1, 2004.

12 VAC 5-218-40. Options for submission.

Each reporting entity shall submit the outpatient patient level data to the board for processing and verification. If data is submitted in this fashion, the board will transmit it to the nonprofit organization along with any fees submitted by the reporting entity to the board for the processing and verification of such data.

As an alternative to submitting the outpatient patient level data to the board, a reporting entity may submit the outpatient patient level data to the office of the nonprofit organization for processing and verification. If this alternative is chosen, the reporting entity reporting the outpatient patient level data shall notify the board and the nonprofit organization of its intent to follow this procedure.

In lieu of submitting the patient level data to the board or to the nonprofit organization, a reporting entity may submit already processed, verified data to the nonprofit organization. If a reporting entity chooses this alternative for submission of patient level data, it shall notify the board and the nonprofit organization of its intent to utilize this procedure.

If a reporting entity decides to change the option it has chosen, it shall notify the board of its decision 30 days prior to the due date for the next submission of patient level data.

12 VAC 5-218-50. Contact person.

Each reporting entity shall notify in writing the board and the nonprofit organization of the name, address, telephone number, email (where available) and fax number (where available) of a contact person. If the contact person changes, the board and the nonprofit organization shall be notified in writing as soon as possible of the name of the new person who shall be the contact person for that reporting entity.

12 VAC 5-218-60. Frequency of submission.

A. Reporting entities shall submit the data required by 12 VAC 5-218-20 at least on a calendar-year quarterly basis.

B. If the data is submitted to the board or to the nonprofit organization for processing and verification, it shall be received at the office of the board or the office of the nonprofit organization within 45 days after the end of each calendar year quarter.

C. If a reporting entity chooses to submit processed, verified data directly to the nonprofit organization, it shall be received at the office of the nonprofit organization within 120 days after the end of each calendar year quarter.

12 VAC 5-218-70. Establishment of annual fee.

There shall be no fees levied for outpatient surgical data submitted for the first four calendar quarters of data submission.

VA.R. Doc. No. R02-51; Filed January 2, 2003, 10:04 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (amending 12 VAC 30-70-221, 12 VAC 30-70-281, and 12 VAC 30-70-351).**

Title of Regulation: **12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-20).**

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

Public Hearing Date: N/A -- Public comments may be submitted until March 28, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Peterson Epps, Analyst, Division of Reimbursement, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4591, FAX (804) 786-1680 or e-mail pepps@dmass.state.va.us.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements.

Proposed Regulations

Outpatient Hospital Reimbursement: These provisions on Medicare hospital outpatient reimbursement are codified in § 1833(t) of the Social Security Act, and were directed by the Balanced Budget Act of 1997, § 4523.

Direct Graduate Medical Education: The Medicaid authority, as established by § 1902 (a) of the Social Security Act (42 USC 1396a), provides governing authority for payments for services. The Medicare authority for direct graduate medical education is the Social Security Act, § 1886(h), and as set forth in 42 CFR 413.86.

Purpose: These proposed regulations are not necessary to protect the health, safety, or welfare of the citizens of the Commonwealth. Both of these proposed changes affect the reimbursement methodologies for inpatient and outpatient hospital services.

Outpatient Hospital Reimbursement: This action amends the Title XIX State Plan for Medical Assistance to continue to reimburse outpatient hospital services using Medicare principles of cost reimbursement that were in effect as of June 30, 2000. This action is necessary because the Medicare program changed its hospital outpatient reimbursement methodology to Ambulatory Payment Classifications (APCs) effective August 1, 2000, necessitating the removal of the link from DMAS' regulations requiring DMAS to automatically follow Medicare's lead with the use of the APC payment methodology.

Direct Graduate Medical Education: This action also amends the Title XIX State Plan for Medical Assistance to revise the means of payment to certain hospital providers for direct Graduate Medical Education (GME) costs. This change is needed in order to provide appropriate Medicaid reimbursement of GME costs at several teaching hospitals.

Substance: The regulatory action applicable to hospital outpatient reimbursement affects the Methods and Standards for Establishing Payment Rates-Other Types of Care: Services Reimbursed on a Cost Basis (Attachment 4.19-B of the State Plan for Medical Assistance (12 VAC 30-80-20)). The regulatory action applicable to inpatient and outpatient hospital Direct Graduate Medical Education (GME) costs revises the regulation section for payment for direct medical education costs (Attachment 4.19-A (12 VAC 30-70-281) and Attachment 4.19-B (12 VAC 30-80-20)).

Outpatient Hospital Reimbursement: Currently, Medicaid reimburses outpatient hospital services at 100% of the reasonable costs less a 10% reduction for capital costs and a 5.8% reduction for operating costs. This is the same payment methodology used by Medicare prior to August 1, 2000.

Effective August 1, 2000, the Medicare program changed its outpatient hospital reimbursement methodology to Ambulatory Payment Classifications (APC). The APC methodology for outpatient services parallels the Diagnosis Related Groups methodology developed by Medicare for inpatient hospital services. This methodology serves as a way to classify patients, and thereby bill for services rendered, in a systematic, relative manner.

Direct Graduate Medical Education: Currently, Medicaid reimburses hospitals for direct medical education costs on an

allowable cost basis. Payments for direct medical education costs are made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end. Final payment for direct medical education costs is based retrospectively on the ratio of Medicaid inpatient and outpatient costs to total allowable costs.

The hospitals that will be affected by this change are those organizations that operate graduate medical education programs for interns and residents. GME costs will be reimbursed prospectively based on a per-resident amount of Medicaid-reimbursable GME costs determined for the base year ended in state fiscal year 1998 (base year).

As proposed, the reimbursement of GME-related costs will be made on a prospective basis, based on the affected hospitals' GME costs incurred in the base year. This amount will be converted to a per-resident amount for the base period. This per-resident amount will be updated annually by the DRI-Virginia moving average values published by DRI•WEFA, Inc. The updated per-resident amount for each hospital will be multiplied by the full-time resident equivalents reported on the most recent cost report to determine the amount of Medicaid allowable GME costs for that cost reporting period.

Issues:

Outpatient Hospital Reimbursement: With the implementation of APCs by Medicare, the 10% reduction for capital costs and the 5.8% reduction to operating costs, previously utilized by Medicare and historically relied upon by DMAS, no longer exists. If DMAS were to convert to the new Medicare APC methodology, it would require significant, costly changes to the computerized claims processing system (Medicaid Management Information System) and more general fund appropriations than required by the old system. Therefore, since the capital and operating cost reductions are no longer used under Medicare's current payment regulations, the department intends to retain the previous Medicare payment methodology in effect before August 1, 2000.

This change saves general fund dollars for the Commonwealth and causes no disadvantages for the public. If DMAS were to continue to follow the Medicare trend to the use of APCs, it would result in the payment of an additional \$4.6 million in payments to affected outpatient hospitals.

Direct Graduate Medical Education: Recent revisions to Medicare cost reporting standards require certain teaching hospitals to accumulate and report costs and charges in such a manner that dilutes the ratio of Medicaid charges and costs to total charges and costs. This change would result in an inappropriate reduction in the apportionment of Graduate Medical Education (GME) costs related to interns and residents to be reimbursed by Medicaid. The conversion to the proposed prospective method will allow these affected state-operated teaching hospitals to retain a more appropriate level of Medicaid reimbursement for GME related costs.

This change has no disadvantage to the public. It constitutes a big advantage for those hospitals that conduct teaching programs to be reimbursed at more appropriate levels for these training expenses.

Fiscal Impact:

Outpatient Hospital Reimbursement: Approximately 101 enrolled hospitals will be affected by this change. Because the department is not changing the payment methodology, there will be no fiscal impact and this action is budget neutral. If DMAS were to adopt the new Medicare APCs methodology, it would require an additional \$4.6 million in general funds to reimburse for outpatient hospital services.

Direct Graduate Medical Education: Converting the direct graduate medical education reimbursement to the prospective method will allow the approximately 32 affected teaching hospitals to retain their present level of Medicaid reimbursement of GME costs, or approximately \$15.5 million for all affected providers and especially \$2.0 million for the University of Virginia Hospital System. Failure to implement this change will result in either the absorption of the \$2.0 million loss by UVA or payment with 100% general fund dollars. Making this change in the Medicaid State Plan enables the Commonwealth to claim federal matching dollars for this change thereby reducing the state budget impact.

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 (i) modify the Medicaid reimbursement methodology for direct graduate medical education costs for inpatient and outpatient services and (ii) clarify the current outpatient reimbursement methodology.

Estimated economic impact. These regulations establish the reimbursement methodology for direct graduate medical education costs. Direct medical education costs include salaries and fringe benefits for teaching faculty and resident students and hospital overhead such as rent, maintenance, electricity, and supplies. The costs at teaching hospitals are usually higher than the costs at other hospitals because of the additional costs incurred for educational purposes. The economic rationale for graduate medical education (GME) reimbursement to teaching hospitals largely lies with the public good characteristic of medical education.

Proponents argue that GME not only benefits the medical students in terms of higher future earnings as with any other graduate education, but also the society as a whole in terms of improved health care. According to the Department of Medical Assistance Services (the department), the Commonwealth benefits from supporting GME in two ways: (i) from the medical care provided by licensed physician residents in oftentimes medically underserved areas, and (ii) from recent graduates who remain in the Commonwealth to

practice their art. GME cost reimbursement method is designed to compensate for program administrative costs incurred by hospitals with medical teaching responsibilities. Since individuals cannot be excluded from receiving better health care resulting from GME, cost reimbursement for this service is a way that the society participates in the costs for the benefits that spills over to them. Most of the financing comes from public or tax based sources. Virginia Medicaid program is one of these sources.

The current Medicaid reimbursement methodology for direct costs of GME in Virginia relies on two factors: the utilization of the hospital by Medicaid recipients and total direct costs of GME. Based on this methodology, the department makes quarterly lump sum payments to teaching hospitals for the Medicaid share of the direct costs of GME. The quarterly payments are initially based on an estimate and later settled at the hospital's fiscal year end through the cost reporting process. In fiscal year (FY) 1998, 32 hospitals with residency programs incurred \$236.6 million in direct GME costs, Medicaid utilization rates ranged from 4.9% to 56.1%, and the total reimbursement was approximately \$15.5 million. The two teaching hospitals, MCV and UVA, have relatively large residency programs as compared to others, and consequently incur the majority of reimbursable costs. In 1998, the Medicaid utilization rates for these two hospitals were 18.6% for UVA, 22.3% for MCV, and the total reimbursements to them were approximately \$6.5 million and \$4.4 million, respectively.

The 2002 Appropriation Act¹ requires the department to reimburse hospitals for GME costs on a prospective methodology and requires the reimbursement amount to be determined on a per resident basis. The statute also requires the department to implement these changes on an emergency basis. To meet its mandate, the department promulgated emergency regulations that were effective July 2002. However, no payments have been made yet under the emergency regulations. The proposed action will replace the emergency regulations with permanent regulations. The department is currently making estimated GME payments based on the previous payment methodology which will be reconciled to the new prospective per resident methodology at the hospital's fiscal year end.

According to the proposed changes, GME direct costs will be reimbursed based on a hospital specific prospective per resident amount that will be adjusted for inflation. Hospital specific per resident amount will be calculated by dividing the GME direct costs of the hospital by the number of residents and interns working at that hospital. The department proposes FY 1998 as the base year to calculate the per resident reimbursement rate. The reimbursement amounts calculated according to the proposed method are hospital specific and vary from hospital to hospital. For example, per resident amounts for FY 1998 would be \$14,110 for UVA and \$11,063 for MCV. Once per resident amount for the base year calculated, it will be adjusted for inflation. For example, when accounted for 20.1% inflation between FY 1998 and FY 2003,

¹ Chapter 899, item 325, section U.

Proposed Regulations

the reimbursement amounts for UVA and MCV will be \$16,947 and \$13,287, respectively in FY 2003.²

The proposed changes will also provide discretion to the department to change the base year. The department plans to re-base per resident amount when diagnostic related group rates are re-based. Historically, this has been every three years. Once the per resident amount is calculated based on data that will be available in the future, a potential change in GME reimbursements is possible. However, the magnitude of the potential change is unknown at this time.

Under normal circumstances, the current method and the proposed method would yield very little difference in the total payments to hospitals for direct GME costs. This is expected for several reasons. First, the proposed method allows inflation adjustment. The base year per resident amount will be adjusted for inflation over time just as the costs would increase by inflation. So, the inflation effect will be captured. Second, the number of residents at teaching hospitals is expected to be stable over time. The number of residents is relevant because per resident rate includes some fixed direct GME costs such as rent and electricity. If hospitals could increase the number of residents, the hospital's reimbursement for its fixed costs would increase with each resident as well. However, teaching hospitals do not seem to have much flexibility on their resident count. The department notes that the resident count is determined by the Centers for Medicare and Medicaid Services and the federal approval of the number of residents prevents hospitals from unilaterally increasing the resident count. With these two facts and the assumptions that the FY 1998 data is representative of future direct GME costs and that inflation factors are representative of the relationship between the prices of direct GME costs relative to the DRI-WEFA, Inc. Virginia Specific Hospital Input Price Index, the total payments to hospitals under the both methods would not differ significantly. However, using FY 1998 data will likely particularly benefit UVA.

After 1998, UVA underwent reorganization. It changed its status from being a freestanding clinic to being a provider-based clinic to take advantage of Medicare outpatient reimbursement rates. The effect of this change was to dilute the Medicaid GME payments that would be reimbursed to UVA. Dilution occurred because after the reorganization facility charges were included in the total charges.³ GME reimbursement is limited to the amount that charges are below costs. By including additional costs on the cost report, the ratio of cost to charges increased, narrowing the gap between cost and charges. Thus, if the current method continued to be applied, the loss in Medicaid GME reimbursement to UVA would be approximately \$2 million per year. Of this amount, the Commonwealth would have avoided paying approximately \$989,400 and the federal matching share would be about \$1,010,600. In short, using the FY 1998 data to calculate the base per resident rate will allow UVA to continue to maintain its current reimbursements from Medicaid program. The Commonwealth and the federal government will continue to

pay about \$2 million per year that would be saved if these regulations were not promulgated.

The department has argued that this loss of reimbursement from Medicaid could have caused the Commonwealth to underwrite UVA's loss with 100% from the general fund. If the level of GME reimbursement is not held constant for UVA, then UVA would be forced to operate with a deficit. The Commonwealth would then be forced to increase its funding by the full \$2 million to eliminate the deficit.

According to the department, a key point to consider is the extent to which state funds will be used for GME funding. For every dollar in federal funds participation the department accrues through its GME reimbursement methodology, it equates to one more dollar of general funds saved. This equates to \$1.01 million dollars that the Commonwealth does not have to budget for GME. The department proposes to use FY 1998 as the base year as a way to maximize Medicaid reimbursements to the state's teaching hospitals pursuant to the 2002 Appropriation Act⁴ that directed department to maximize the amount of federal funds participation claimed by the state.

It is worth noting however the department assumes UVA would have maintained the current level of activity without regard to anticipated funding. In contrast, the Commonwealth could choose to let the residency program at UVA shrink. While it is possible that the current funding would have been maintained through some other means, there is no provision in the proposed regulations requiring the department to maintain the current level of GME funding. For the purposes of this analysis, it is not appropriate to assume that current level of GME funding must be maintained. Put simply, the proposed changes do represent about \$989,400 in terms of forgone savings the Commonwealth might otherwise enjoy.

The main benefit of the proposed regulations is maintaining the current level of funding to UVA. With these changes UVA will continue to receive the \$2 million combined federal and state support and will not be forced to reduce the size of its residency program. This will maintain the potential numbers of physicians coming into the marketplace from Virginia medical schools to practice medicine. Whether maintaining the current number of residents is beneficial for Virginia is not easy to answer as the Commonwealth currently may be under or over investing into its residency program. This requires a thorough investigation of the subject, which is beyond the scope of this analysis.

Maintaining the current UVA funding through these regulations also allows the Commonwealth to save almost half of the GME reimbursements because of federal participation in GME costs. In other words, the proposed method allows the Commonwealth to support UVA GME program at half price.

Additionally, the prospective nature of the proposed methodology has the potential to provide cost containment incentives. Under the current retrospective cost reimbursement method, teaching hospitals do not have incentives to keep their direct costs low, as they are eventually

² Inflation factors between FY 1998 and FY 2003 are 1.039, 1.016, 1.056, 1.044, and 1.032, respectively.

³ Source: UVA.

⁴ Chapter 899, item 325, sections Z, AA, and RR.

reimbursed for these costs. With the prospective system, the costs incurred above the inflation adjustment will not be reimbursed. Thus, teaching hospitals are expected to be very keen in keeping the growth in direct costs at or below the inflation factor in a given year. This will also contain reimbursement rates in the long run as the rates are re-based using already contained historical costs.

The proposed change in methodology is further expected to improve the predictability and the stability of the GME funding for the teaching hospitals. This is because the resident count is expected to be stable due to the federal approval of the number of residents. A reduction in the volatility of future reimbursement streams is likely to benefit teaching hospitals in terms of financial risk stemming from changing business conditions in the healthcare market. On the other hand, inflation adjustments made according to the proposed method may fail to closely track the changes in GME costs. Thus, there is a chance that reimbursements may not be commensurate with the level of costs the hospitals may incur in practice. However, when the rates are re-based every three years as expected, the potential discrepancies between reimbursements and actual costs will not likely prevail more than a few years.

In addition, there is likely to be some additional administrative costs to department to implement proposed changes. The department will have to calculate per resident reimbursement rates as proposed. This will be done through a consultant and expected to take about two to three weeks. The department does not know the size of these administrative costs.

With another amendment pursuant to the 2002 Appropriation Act⁵, the current reimbursement methodology for outpatient hospital services will be clarified. In practice, DMAS had been using the Medicare outpatient cost-based reimbursement methodology. According to this methodology, hospitals are reimbursed for 100% of reasonable outpatient hospital costs less a 10% reduction for capital costs and a 5.8% reduction for operating costs. Starting from August 2000, Medicare changed its outpatient cost reimbursement methodology to another method that relies on Ambulatory Payment Classifications. Because of the statutory requirement and because of the possibility that the change in Medicare's outpatient reimbursement methodology could create confusion as to whether Medicaid reimbursement methodology would also change, the department outlined in the emergency regulations the same method for Medicaid outpatient reimbursements that had been previously in effect. The proposed regulations are the same as the emergency regulations and they simply establish the same Medicaid outpatient hospital reimbursement methodology that has been previously in effect. Thus, this proposed change is unlikely to create any significant economic effect.

Businesses and entities affected. The proposed regulations apply to 32 hospitals with residency programs and 101 outpatient hospitals. By maintaining the current level of funding, UVA will be able to maintain the current number of residents. Thus, residents and interns in teaching hospitals

will likely be indirectly affected. Furthermore, the customers of UVA will likely to continue to receive the same services provided through the residency program.

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

Projected impact on employment. The proposed changes will maintain the current level of funding for UVA GME direct costs and maintain the current number of residents and interns at UVA. Thus, the proposed changes in GME reimbursement methodology will avoid a reduction in UVAs demand for residents and interns that otherwise would occur.

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Regulations establishing payment for graduate medical education (GME) are promulgated under the direction of law established by the General Assembly (GA). Estimating the economic impact is a consideration of creating law and subsequent regulation governing implementation. In this governing budget bill, H.B. 36, an overarching direction of the GA is to maximize federal funds participation to achieve global reduction in the amount of general fund dollars exposed to Department of Medical Assistance Services program expenditures.

The Department of Medical Assistance Services (DMAS) agrees with Department of Planning and Budget (DPB) that GME is a public good and should be funded. Thus, as a public good, the funding analysis should take a global perspective to insure the viability of the teaching institutions.

DMAS disagrees with the DPB finding that the proposed change represents about \$989,400 in foregone savings to the Commonwealth. Indeed, the DMAS believes that failure to fund the University of Virginia (UVA) residency program would cause the Commonwealth to underwrite UVA's loss of Medicaid revenue with approximately \$2.0 million general fund (GF) dollars. Failure to make this change in this reimbursement regulation would cause the Commonwealth to lose acquisition of \$1.01 million dollars in matching federal funds (FFP).

The DPB economic impact analysis states, "there is no provision in the proposed regulations requiring the department to maintain the current level of GME funding." This is true. However, the regulation as written, intends to pay equitably for established graduate medical education programs. It is outside the statutory purview of DMAS to establish GME programs or regulate the numbers of interns and residents to be trained. That responsibility belongs to the medical teaching facilities. The medical school residency programs are governed by the federal Centers for Medicare and Medicaid Services (CMS) and other oversight bodies.

Summary:

The proposed amendments retain the outpatient hospital reimbursement methodology prior to Medicare's conversion to its current APC methodology and promulgate a graduate medical education methodology to provide an appropriate

⁵ Chapter 899, item 325, section T.

Proposed Regulations

apportionment of those costs related to interns and residents at the state teaching hospitals.

12 VAC 30-70-221. General.

A. Effective July 1, 2000, the prospective (DRG-based) payment system described in this article shall apply to inpatient hospital services provided in enrolled general acute care hospitals, rehabilitation hospitals, and freestanding psychiatric facilities licensed as hospitals, unless otherwise noted.

B. The following methodologies shall apply under the prospective payment system:

1. As stipulated in 12 VAC 30-70-231, operating payments for DRG cases that are not transfer cases shall be determined on the basis of a hospital specific operating rate per case times relative weight of the DRG to which the case is assigned.

2. As stipulated in 12 VAC 30-70-241, operating payments for per diem cases shall be determined on the basis of a hospital specific operating rate per day times the covered days for the case with the exception of payments for per diem cases in freestanding psychiatric facilities. Payments for per diem cases in freestanding psychiatric facilities licensed as hospitals shall be determined on the basis of a hospital specific rate per day that represents an all-inclusive payment for operating and capital costs.

3. As stipulated in 12 VAC 30-70-251, operating payments for transfer cases shall be determined as follows: (i) the transferring hospital shall receive an operating per diem payment, not to exceed the DRG operating payment that would have otherwise been made and (ii) the final discharging hospital shall receive the full DRG operating payment.

4. As stipulated in 12 VAC 30-70-261, additional operating payments shall be made for outlier cases. These additional payments shall be added to the operating payments determined in subdivisions 1 and 3 of this subsection.

5. As stipulated in 12 VAC 30-70-271, payments for capital costs shall be made on an allowable cost basis.

6. As stipulated in 12 VAC 30-70-281, payments for direct medical education costs of *nursing schools and paramedical programs* shall be made on an allowable cost basis. *Payment for direct graduate medical education (GME) costs for interns and residents shall be made quarterly on a prospective basis, subject to cost settlement based on the number of full time equivalent (FTE) interns and residents as reported on the cost report.*

7. As stipulated in 12 VAC 30-70-291, payments for indirect medical education costs shall be made quarterly on a prospective basis.

8. As stipulated in 12 VAC 30-70-301, payments to hospitals that qualify as disproportionate share hospitals shall be made quarterly on a prospective basis.

C. The terms used in this article shall be defined as provided in this subsection:

"Base year" means the state fiscal year for which data is used to establish the DRG relative weights, the hospital case-mix indices, the base year standardized operating costs per case, and the base year standardized operating costs per day. The base year will change when the DRG payment system is rebased and recalibrated. In subsequent rebasing, the Commonwealth shall notify affected providers of the base year to be used in this calculation. In subsequent rebasings, the Commonwealth shall notify affected providers of the base year to be used in this calculation.

"Base year standardized costs per case" reflects the statewide average hospital costs per discharge for DRG cases in the base year. The standardization process removes the effects of case-mix and regional variations in wages from the claims data and places all hospitals on a comparable basis.

"Base year standardized costs per day" reflects the statewide average hospital costs per day for per diem cases in the base year. The standardization process removes the effects of regional variations in wages from the claims data and places all hospitals on a comparable basis. Base year standardized costs per day were calculated separately, but using the same calculation methodology, for the different types of per diem cases identified in this subsection under the definition of "per diem cases."

"Cost" means allowable cost as defined in Supplement 3 (12 VAC 30-70-10 through 12 VAC 30-70-130) and by Medicare principles of reimbursement.

"Disproportionate share hospital" means a hospital that meets the following criteria:

1. A Medicaid utilization rate in excess of 15%, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a state Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subdivision 2 of this definition does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

"DRG cases" means medical/surgical cases subject to payment on the basis of DRGs. DRG cases do not include per diem cases.

"DRG relative weight" means the average standardized costs for cases assigned to that DRG divided by the average standardized costs for cases assigned to all DRGs.

"Groupable cases" means DRG cases having coding data of sufficient quality to support DRG assignment.

"Hospital case-mix index" means the weighted average DRG relative weight for all cases occurring at that hospital.

"Medicaid utilization percentage" is equal to the hospital's total Medicaid inpatient days divided by the hospital's total inpatient days for a given hospital fiscal year. The Medicaid utilization percentage includes days associated with inpatient hospital services provided to Medicaid patients but reimbursed by capitated managed care providers.

"Medicare wage index" and the "Medicare geographic adjustment factor" are published annually in the Federal Register by the Health Care Financing Administration. The indices and factors used in this article shall be those in effect in the base year.

"Operating cost-to-charge ratio" equals the hospital's total operating costs, less any applicable operating costs for a psychiatric DPU, divided by the hospital's total charges, less any applicable charges for a psychiatric DPU. The operating cost-to-charge ratio shall be calculated using data from cost reports from hospital fiscal years ending in the state fiscal year used as the base year.

"Outlier adjustment factor" means a fixed factor published annually in the Federal Register by the Health Care Financing Administration. The factor used in this article shall be the one in effect in the base year.

"Outlier cases" means those DRG cases, including transfer cases, in which the hospital's adjusted operating cost for the case exceeds the hospital's operating outlier threshold for the case.

"Outlier operating fixed loss threshold" means a fixed dollar amount applicable to all hospitals that shall be calculated in the base year so as to result in an expenditure for outliers operating payments equal to 5.1% of total operating payments for DRG cases. The threshold shall be updated in subsequent years using the same inflation values applied to hospital rates.

"Per diem cases" means cases subject to per diem payment and include (i) covered psychiatric cases in general acute care hospitals and distinct part units (DPUs) of general acute care hospitals (hereinafter "acute care psychiatric cases"), (ii) covered psychiatric cases in freestanding psychiatric facilities licensed as hospitals (hereinafter "freestanding psychiatric cases"), and (iii) rehabilitation cases in general acute care hospitals and rehabilitation hospitals (hereinafter "rehabilitation cases").

"Psychiatric cases" means cases with a principal diagnosis that is a mental disorder as specified in the ICD-9-CM. Not all mental disorders are covered. For coverage information, see Amount, Duration, and Scope of Services, Supplement 1 to Attachment 3.1 A & B (12 VAC 30-50-95 through 12 VAC 30-50-310). The limit of coverage of 21 days in a 60-day period for the same or similar diagnosis shall continue to apply to adult psychiatric cases.

"Psychiatric operating cost-to-charge ratio" for the psychiatric DPU of a general acute care hospital means the hospital's operating costs for a psychiatric DPU divided by the hospital's

charges for a psychiatric DPU. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from psychiatric DPUs.

"Readmissions" occur when patients are readmitted to the same hospital for the same or a similar diagnosis within five days of discharge. Such cases shall be considered a continuation of the same stay and shall not be treated as a new case. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Rehabilitation operating cost-to-charge ratio" for a rehabilitation unit or hospital means the provider's operating costs divided by the provider's charges. In the base year, this ratio shall be calculated as described in the definition of "operating cost-to-charge ratio" in this subsection, using data from rehabilitation units or hospitals.

"Statewide average labor portion of operating costs" means a fixed percentage applicable to all hospitals. The percentage shall be periodically revised using the most recent reliable data from the Virginia Health Information (VHI), or its successor.

"Transfer cases" means DRG cases involving patients (i) who are transferred from one general acute care hospital to another for related care or (ii) who are discharged from one general acute care hospital and admitted to another for the same or a similar diagnosis within five days of that discharge. Similar diagnoses shall be defined as ICD-9-CM diagnosis codes possessing the same first three digits.

"Type One" hospitals means those hospitals that were state-owned teaching hospitals on January 1, 1996. "Type Two" hospitals means all other hospitals.

"Ungroupable cases" means cases assigned to DRG 469 (principal diagnosis invalid as discharge diagnosis) and DRG 470 (ungroupable) as determined by the AP-DRG Grouper.

D. The All Patient Diagnosis Related Groups (AP-DRG) Grouper shall be used in the DRG payment system. Until notification of a change is given, Version 14.0 of this grouper shall be used. DMAS shall notify hospitals when updating the system to later grouper versions.

E. The primary data sources used in the development of the DRG payment methodology were the department's hospital computerized claims history file and the cost report file. The claims history file captures available claims data from all enrolled, cost-reporting general acute care hospitals, including Type One hospitals. The cost report file captures audited cost and charge data from all enrolled general acute care hospitals, including Type One hospitals. The following table identifies key data elements that were used to develop the DRG payment methodology and that will be used when the system is recalibrated and rebased.

Proposed Regulations

Data Elements for DRG Payment Methodology

Data Elements	Source
Total charges for each groupable case	Claims history file
Number of groupable cases in each DRG	Claims history file
Total number of groupable cases	Claims history file
Total charges for each DRG case	Claims history file
Total number of DRG cases	Claims history file
Total charges for each acute care psychiatric case	Claims history file
Total number of acute care psychiatric days for each acute care hospital	Claims history file
Total charges for each freestanding psychiatric case	Medicare cost reports
Total number of psychiatric days for each freestanding psychiatric hospital	Medicare cost reports
Total charges for each rehabilitation case	Claims history file
Total number of rehabilitation days for each acute care and freestanding rehabilitation hospital	Claims history file
Operating cost-to-charge ratio for each hospital	Cost report file
Operating cost-to-charge ratio for each freestanding psychiatric facility licensed as a hospital	Medicare cost reports
Psychiatric operating cost-to-charge ratio for the psychiatric DPU of each general acute care hospital	Cost report file
Rehabilitation cost-to-charge ratio for each rehabilitation unit or hospital	Cost report file
Statewide average labor portion of operating costs	VHI
Medicare wage index for each hospital	Federal Register
Medicare geographic adjustment factor for each hospital	Federal Register
Outlier operating fixed loss threshold	Claims history file
Outlier adjustment factor	Federal Register

12 VAC 30-70-281. Payment for direct medical education costs of nursing schools, paramedical programs, and graduate medical education for interns and residents.

A. Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis. Payments for these direct medical education costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end.

B. Final payment for these direct medical education (DMedEd) costs shall be the sum of the fee-for-service DMedEd payment and the managed care DMedEd payment. Fee-for-service DMedEd payment is the ratio of Medicaid inpatient costs to total allowable costs, times total DMedEd costs. Managed care DMedEd payment is equal to the managed care days times the ratio of fee-for-service DMedEd payments to fee-for-service days.

C. ~~Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals Effective with cost reporting periods beginning on or after July~~

1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis, subject to cost settlement as outlined in subsection E of this section.

D. The new methodology provides for the determination of a hospital-specific base period per-resident amount to initially be calculated from cost reports with fiscal years ending in state fiscal year 1998 or as may be re-based in the future and provided to the public in an agency guidance document. This per-resident amount shall be calculated by dividing a hospital's Medicaid allowable direct GME costs for the base period by its number of interns and residents in the base period yielding the base amount.

E. The base amount shall be updated annually by the DRI-Virginia moving average values as compiled and published by DRI-WEFA, Inc. (12 VAC 30-70-351). The updated per-resident base amount will then be multiplied by the weighted number of full-time equivalent (FTE) interns and residents as reported on the annual cost report to determine the total Medicaid direct GME amount allowable for each year. Payments for direct GME costs shall be made in estimated quarterly lump sum amounts and settled at the hospital's fiscal year end based on the actual number of FTEs reported in the cost reporting period. The total Medicaid direct GME allowable amount shall be allocated to inpatient and outpatient services based on Medicaid's share of costs under each part.

F. Direct medical education shall not be a reimbursable cost in freestanding psychiatric facilities licensed as hospitals.

12 VAC 30-70-351. Updating rates for inflation.

Each July, the DRI-Virginia moving average values as compiled and published by ~~DRI/McGraw-Hill~~ DRI-WEFA, Inc., under contract with the department shall be used to update the base year standardized operating costs per case, as determined in 12 VAC 30-70-361, and the base year standardized operating costs per day, as determined in 12 VAC 30-70-371, to the midpoint of the upcoming state fiscal year. The most current table available prior to the effective date of the new rates shall be used to inflate base year amounts to the upcoming rate year. Thus, corrections made by ~~DRI/McGraw-Hill~~ DRI-WEFA, Inc., in the moving averages that were used to update rates for previous state fiscal years shall be automatically incorporated into the moving averages that are being used to update rates for the upcoming state fiscal year.

DOCUMENTS INCORPORATED BY REFERENCE

All Patient Diagnosis Related Groups (AP-DRG) Grouper, DRG and MDC Code Listings, Version 12, January 1995.

~~Data Resources, Incorporated: Health Care Cost HCFA-Type Hospital Market Basket, DRI/McGraw-Hill Review, Second Quarter 2000, copyright 2001, DRI-WEFA, Inc.~~

12 VAC 30-80-20. Services which are reimbursed on a cost basis.

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 2 c of this section. The upper

limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and
7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals
2. Outpatient hospital services excluding laboratory.
 - a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health

of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 2 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 2b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and

Proposed Regulations

effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Outpatient reimbursement methodology. DMAS shall continue to reimburse for outpatient hospital services, with the exception of direct graduate medical education for interns and residents, at 100% of reasonable costs less a 10% reduction for capital costs and a 5.8% reduction for operating costs.

d. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12 VAC 30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

3. Rehabilitation agencies. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

4. Comprehensive outpatient rehabilitation facilities.

5. Rehabilitation hospital outpatient services.

VA.R. Doc. No. R02-229; Filed January 8, 2003, 9:50 a.m.

* * * * *

Title of Regulation: 12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-30).

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

Public Hearing Date: N/A -- Public comments may be submitted until March 28, 2003.

(See Calendar of Events section for additional information)

Agency Contact: William Lessard, Reimbursement Analyst, Division of Reimbursement and Cost Settlement, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or e-mail wlessard@dmass.state.va.us.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to

administer and amend the Plan for Medical Assistance according to the board's requirements.

Item 325AA of Chapter 899 of the 2002 Acts of Assembly authorized the Department of Medical Assistance Services to develop and pursue cost savings strategies that focus on maximizing upper payment limits. Medicaid payments to physicians are subject to the requirement in § 1902(a)(30) of the Social Security Act, that payments for services be consistent with efficiency, economy, and quality of care. To the extent that Medicaid payments to physicians are less than that permitted under federal law and regulations, DMAS may make supplemental payments to physicians.

Purpose: The purpose of this regulation is to maximize federal revenue for the state. Assuming that either the state academic health system or academic health system under a state authority provides DMAS the money needed to make the supplemental payment through a transfer agreement, DMAS is able to make the supplemental payment at no net cost to either the state or the academic health system. DMAS intends to negotiate these transfer agreements prior to making the Medicaid supplemental payments. After the Medicaid payment is made, DMAS can draw down the federal financial participation (FFP) related to the Medicaid payment. This proposed regulatory action will have no affect on the health, safety, or welfare of the citizens of the Commonwealth.

Substance: The proposed regulation would create a category of physician (Type I) who is a member of a group affiliated with a state academic health system or an academic health system that operates under a state authority. This includes physicians affiliated with UVA Medical Center, VCU's Medical College of Virginia, and Eastern Virginia Medical School.

The proposed regulation would provide supplemental reimbursement for Type I physician services equal to the difference between the maximum amount permitted under federal law and regulation and the Medicaid fee schedule. If DMAS pays up to the provider charges, this meets the federal standard that payments for services be consistent with efficiency, economy, and quality of care.

Providers affected by this action are Type I physicians receiving the supplemental payments. Localities affected are those with Type I physicians. Other providers and localities are not affected, and recipients are not affected.

DMAS intends to negotiate transfer agreements with the public academic health centers with which these providers are associated through their group practices to provide the funding needed for this transaction.

Issues: Physicians affiliated with academic health centers fulfill an important and unique role within the Virginia health care system as safety-net providers. Many safety-net providers incur costs for which they are not currently reimbursed above and beyond the costs incurred by private providers.

Because approximately 50% of Medicaid payments are federally funded, by maximizing payments to Type I physicians, the Commonwealth will maximize the federal funding available to Virginia through these increased Medicaid payments. No disadvantages to the public have been

identified in connection with this regulation. The agency projects no negative issues involved in implementing this regulatory change.

Fiscal Impact: On an annual basis, DMAS expects to make supplemental payments to Type I physicians totaling \$27.3 million from which it will collect \$14.1 million in new federal revenues. The source of funds for the payment will be the academic health centers.

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 create a new group of physicians and authorize supplemental payments for their services, which will be used to claim federal matching funds from the Medicaid program for supplementing the Medicaid operating budget. The proposed changes are effective since July 2002 under the emergency regulations.

Estimated economic impact. The 2002 Appropriation Act¹ requires the Department of Medical Assistance Services (the department) to develop and pursue cost saving strategies in conjunction with other state agencies or governmental entities that focus on maximizing upper payment limits. To achieve its objective, the department implemented emergency regulations to maximize federal matching funds for supplementing its Medicaid operating budget. However, no reimbursements have been made yet under the emergency regulations. The proposed action will replace the emergency regulations with permanent regulations.

The proposed regulations create a category of physicians called "Type I" physicians. These physicians are members of a practice group organized by or under the control of a state academic health system or an academic health system that operates under state authority. Type I physicians include physicians affiliated with the University of Virginia (UVA), Virginia Commonwealth University Medical College of Virginia (MCV), and Eastern Virginia Medical School (EVMS). Currently, there are 3,064 Type I physicians in group practices affiliated with these academic health systems.

Under the emergency regulations, the department was authorized to make supplemental payments for the services provided by these physicians in the amount of the difference between the Medicaid physician fee schedule and the lesser

of billed charges or the Medicare physician fee schedule as authorized by the 2002 Appropriation Act.² With the proposed permanent changes the amount of the supplemental payments for Type I physician services will be the difference between Medicaid physician fee schedule and maximum allowed under federal law and regulation effective August 13, 2002.

Many private and public insurers including Medicaid and Medicare use Current Procedural Terminology (CPT) developed and copyrighted by American Medical Association in determining physician fees. CPT contains approximately 9,000 codes each corresponding to specific medical/surgical procedures. For each physician service, a fee is determined taking into account the relative value of the service compared to other physician services and geographical differences in costs of practicing medicine. Generally speaking, physician fees in the Medicaid schedule are lower than the fees in the Medicare schedule and Medicare fees are generally lower than the billed charges.

According to the department, current Medicaid physician reimbursements are approximately 70% of what would be paid under the Medicare program. The authority under the emergency regulations allows the department to increase the payments for Type I physician services from \$9.5 million to \$14 million on an annual basis or by 47%. Under the proposed regulations, this formula would be effective for the period, July 2 to August 12. Effective August 13, 2002, the proposed regulations will provide authority to increase supplemental payments even more as the difference between Medicaid fees and the maximum allowed under federal law and regulation is greater than the difference between Medicaid and Medicare fees. Overall, it is estimated that the supplemental payments that can be made under the proposed regulations will total about \$17.9 million, or almost twice pre-emergency reimbursements.

The purpose of these regulations is to claim additional federal matching funds for the Medicaid program pursuant to the Appropriation Act. Of the \$17.9 million estimated supplemental payments, \$9.1 million is federal matching funds and \$8.8 million is state appropriations. The department plans to enter into contractual agreements with UVA, VCU, and EVMS prior to these regulations becoming final to transfer to DMAS the funds to cover the Medicaid supplemental payments.

The explanation of expected flow of supplemental payments under the contract is as follows. DMAS will make Medicaid supplemental payments to the physicians in group practices affiliated with the academic health centers. The academic health centers that organize or control the group practices will transfer the same amount minus any participation fee to the Commonwealth. The department will claim \$9.1 million matching funds from the federal government.

As a result of these transactions, the department will be able to increase its operating budget by the \$9.1 million federal participation amount minus any incentive payments to academic health centers and transaction expenses. The

¹ Chapter 899, Item 325, section AA.

² Chapter 899, item 325, section EE.

Proposed Regulations

department anticipates that only EVMS will require incentive payments to be negotiated. The estimated transaction expenses such as consultant fees are about \$362,000. Further, increase in Medicaid operating budget will spill over to some or all of about 230,000 Medicaid recipients by making some services available that would not otherwise be available. The effect on UVA and VCU is expected to be insignificant provided that they do not require incentive payments to sign the contract.

Businesses and entities affected. The proposed changes will affect some or all of 230,000 Medicaid recipients depending on how the additional funds are spent and the three medical schools.

Localities particularly affected. The proposed changes are unlikely to affect any locality more than others.

Projected impact on employment. According to the department these funds will substitute for the general fund reductions already made. Thus, these additional funds that will be available in the Medicaid operating budget is expected to maintain the providers' current demand for labor as the additional funds are spent for services. Incentive payments to EVMS also have a potential positive effect on labor demand depending on how the funds are used.

Effects on the use and value of private property. Maintaining the current level of funding is expected to maintain the Medicaid provider revenues and future profit streams, and consequently their values.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Methods and Standards for Establishing Payment Rates-Other Types of Care Supplemental Payments for Type I Physicians. The agency raises no issues with this analysis.

Summary:

This regulation creates a category of physicians who are members of practice plans affiliated with either a state academic health system or an academic health system under a state authority. The regulation authorizes Medicaid to make supplemental payments to these physicians for services provided to Medicaid recipients equal to the difference between the maximum permitted under federal law and regulations and what these providers are paid under the Medicaid physician fee schedule.

12 VAC 30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services

when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments which DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

b. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

c. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as

described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment which is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services, including services paid to local school districts.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.

Proposed Regulations

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. *Reserved.*

17. *Supplemental payments for services provided by Type I physicians.*

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and the lesser of billed charges or the Medicare fee schedule. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and the maximum permitted under federal law and regulation.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

VA.R. Doc. No. R02-318; Filed January 8, 2003, 9:54 a.m.

Title of Regulation: 12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12 VAC 30-80-40).

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

Public Hearing Date: N/A -- Public comments may be submitted until March 28, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Alissa Nashwinter, Manager, Division of Programs Operations, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-2973, FAX (804) 786-1680 or e-mail anashwinter@dmas.state.va.us.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance.

Section 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of BMAS action pursuant to BMAS' requirements.

Purpose: The purpose of this regulatory action is to implement permanent regulations providing for increasing the offset percentage applied to the Average Wholesale Price and redefining the Virginia Maximum Allowable Cost methodology to include all products that participate in the pharmaceutical manufacturers' rebate program. This proposed regulatory action will have no effect on the health, safety, or welfare of the citizens of the Commonwealth.

Substance:

Revised Estimated Acquisition Cost. The agency's current reimbursement for drug products uses an estimated acquisition cost (EAC or reference cost) of the Average Wholesale Price (AWP) discounted by a factor of 9.0%.

Item 325 FF of Chapter 899 of the 2002 Acts of Assembly decreased the EAC by changing the discount factor to 10.25%. This is based on reports at the national level that the actual price paid for pharmaceuticals is less than what most state Medicaid programs are paying. Using an increased discount factor will reduce the purchase cost of pharmaceutical products thereby saving the Commonwealth expenditures or providing a greater level of services due to decreased costs per unit.

Virginia Maximum Allowable Cost (VMAC) Changes. Item 325 JJ (2) of Chapter 899 of the 2002 Acts of Assembly amended the definition of the Virginia Maximum Allowable Cost (VMAC) basing it on the availability of generic drugs in Virginia. Currently, the VMAC is defined based on the utilization of the Virginia Voluntary Formulary. The Omnibus Budget Reconciliation Act (OBRA) of 1990 mandated that Medicaid programs include coverage for all pharmaceutical products that participate in a rebate program as defined by OBRA '90. As a result of the OBRA legislation, the agency's listing of covered products has expanded and the new VMAC definition will allow the agency to price pharmaceutical products accordingly.

Issues: The advantages of both of these changes are to Medicaid recipients, the public, and the Commonwealth. The adjustment in Medicaid payments for prescription drugs will not affect Medicaid recipients directly in any way. The redefinition of the VMAC allows DMAS to establish a price and make generic drugs available under Medicaid more quickly. The public will benefit because the costs of this important Medicaid covered service may decrease. The Commonwealth will benefit because the cost of this important service will decline to be more in line with the costs of the products being purchased for Medicaid recipients.

The disadvantages of both of these changes will be to the pharmaceutical manufacturers, drug distribution business, and pharmacies whose profit margins will not be quite as large under the previous reimbursement methodology.

Fiscal Impact: These changes are expected to save the Commonwealth approximately \$5,600,000 in fiscal year 2003 and 5,700,000 in fiscal year 2004.

It is anticipated that implementation costs will be minimal and include only a minor change in calculation. Enforcement costs will be negligible.

No cost to localities will occur. Entities affected by this change are pharmaceutical companies.

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 increase the discount rate applied to average wholesale price of pharmaceutical products purchased by Medicaid from 9.0% to 10.25% and expand the definition of Virginia Maximum Allowable Cost methodology to include all pharmaceutical products with a rebate program. The proposed changes have been in effect under emergency regulations since July 2002.

Estimated economic impact. These regulations contain the Medicaid reimbursement methodology for pharmaceutical products provided to fee-for-service recipients, which comprises approximately 70% of about 230,000 total Medicaid population. Medicaid acquisition rate for multi-source (generic) drugs prior to emergency regulations is the lowest of (i) Average Wholesale Price (AWP) price minus 9.0% discount, (ii) usual and customary costs, (iii) federal upper payment limits, and (iv) Virginia maximum allowable cost. When specified by the prescriber as "medically necessary," the acquisition rate for single-source (brand name) drugs is the lesser of (i) or (ii). Except for usual and customary costs, a \$4.25 dispensing fee is added to the lowest ingredient cost for each prescription to cover the dispensing expenses incurred by the pharmacy. This \$4.25 dispensing fee is only paid once in 30 days per patient per prescription regardless of the number of times the pharmacist fills the prescription. The Virginia Medicaid program also receives a rebate from the manufacturers on each product unit.

AWP is the manufacturer's "sticker" price. The pharmacists can usually obtain lower prices. As a result, state Medicaid programs, managed care organizations, and state health programs apply a percent discount to the AWP. Virginia Medicaid program currently applies 9.0% discount to the AWP. Usual and customary price is the retail price to the cash-paying customer. Federal upper limit payment is generally 150% of the lowest price available nationwide.

Virginia maximum allowable cost is calculated from the price of drugs listed in the Virginia drug formulary. Virginia Medicaid requires the use of generic drugs unless the physician prescribes the brand name drug. Under this method, approximately \$388.7 million is reimbursed to 1,500 pharmacy providers annually.

The growth in the Commonwealth's Medicaid pharmacy expenditures has been in double digits during most of the last decade. The main reasons for rapid growth include the increase in drug prices simultaneously with the increase in utilization, growth in elderly population, innovation of new drugs, and changes in federal drug advertising guidelines.¹ The effects of these factors on pharmacy expenditures are observed nationally. However, Joint Legislative Audit and Review Commission found that Virginia Medicaid acquisition costs were high relative to the national average and several neighboring states.² The national standard was average wholesale price minus 10% plus a \$4.32 dispensing fee and the acquisition costs for Kentucky, Maryland, North Carolina, South Carolina, and West Virginia varied from average wholesale price minus 10% to 12% plus a \$3.90 to \$5.75 dispensing fee. After these findings, pursuant to the 2002 Appropriation Act,³ the Department of Medical Services (the department) promulgated emergency regulations effective July 2002 and reduced the maximum acquisition cost to average wholesale price minus 10.25%. These proposed regulations are the permanent replacement regulations for the emergency rules.

The department estimates that the proposed change in the reimbursement rate will amount to \$7.7 million (\$3,806,250 GF, \$3,923,746 NGF) reduction in FY 2003 for pharmacy reimbursements, \$8.4 million (\$4,181,250 GF, \$4,270,841 NGF) reduction in FY 2004, and approximately the same amount with inflation adjustment thereafter.

The main cost of this change will be on pharmacy providers. Their revenues are likely to decrease proportionally. It is also likely that some of the revenue losses will spill over to drug distribution businesses and pharmaceutical manufacturers. Overall, the revenues to manufacturers, distribution businesses, and pharmacies will decline by about \$7.7 million or 2.0% of the current total Medicaid reimbursements annually. This may reduce by a small degree the profit margins of drug manufacturers/distribution businesses/pharmacies and, therefore, may reduce the number of these businesses participating in the Virginia Medicaid program and reduce accessibility of drugs. On the other hand, the proposed changes will produce about \$3.8 million in FY 2003 and \$4.2 million in FY 2004 in general fund savings, which may be used for many other purposes. It should be noted that about \$3.9 million reduction in federal matching funds represents an additional loss for the

¹ Pharmaceutical Expenditures in the Commonwealth of Virginia, A report to the Governor and the Chairmen of the Senate Finance and House Appropriations Committees, October 20, 2000.

² Joint Legislative Audit and Review Commission, "A Review of Selected Programs in the Department of Medical Assistance Services," 2000.

³ Chapter 899, item 325 FF.

Proposed Regulations

Commonwealth's economy while saving \$3.8 million in general fund expenditures.

Pursuant to the 2002 Appropriation Act,⁴ the department also proposes to expand the definition of Virginia Maximum Allowable Cost (VMAC) to include generic drugs as long as the drugs are included in the Center for Medicare and Medicaid Services' state drug rebate program, have been approved by the Federal Food and Drug Administration, are included in the Approved Products with Therapeutic Equivalence Evaluations as generically equivalent, and are sold or marketed in Virginia. Currently, the VMAC is based on the cost of drugs in the Virginia Voluntary Formulary (VVF) only. Virginia drug formulary is a list of covered drugs by the Virginia Medicaid program. Pharmacies are allowed to automatically fill the prescriptions with interchangeable generic drugs listed on the formulary without having to get approval from the prescriber.

For a drug to be listed on VVF, the manufacturers incur significant costs associated with getting an approval, which involves submission of data for evaluation. These costs create disincentives for manufacturers to be included in VVF. As a result, the number of products for current VMAC pricing is small and often more expensive than similar products available in the marketplace.

With this change, VMAC reimbursement methodology will be applicable to all generic drugs that participate in the manufacturers' rebate program. This may allow the department to negotiate with the manufacturers of drugs in the expanded definition. In most cases, the current best option available to the department is the federal upper limit payment method. Thus, this proposed change will allow the department to obtain lower prices on many drugs such as hemophilic factor and growth hormones.

The department estimates that this change will reduce Medicaid pharmacy reimbursements by about \$3.8 million (\$1,800,000 GF, \$1,977,340 NGF) annually. Since this change will reduce the Medicaid pharmacy expenditures, pharmacies are likely to see a reduction in their revenues of which some will likely spill over to the distribution businesses and pharmaceutical manufacturers. However, it is unlikely that this change will introduce significant financial stress to pharmaceutical businesses to the extent to force them out of business. Similarly, this change is not expected to significantly affect the accessibility of the generic drugs because the department has the option of acquiring drugs under the federal upper limit payment methodology. The main expected benefit of this change is providing about \$1.8 million savings in general funds to the Commonwealth. Additionally, this change may make some generic drugs available to recipients more quickly by reducing pharmacists' confusion about the VVF and increasing their awareness of their ability to select from a wider variety of drugs available in the marketplace when filling Medicaid prescriptions. Eliminating the reference to the VVF in the department's regulations is expected to result in a more consistent procedure with the federal drug rebate process without the confounding factor of the VVF.

The administrative costs of these changes are expected to be insignificant as the department anticipates implementing them easily through the already existing computerized claims processing system.

Businesses and entities affected. The proposed changes will directly affect approximately 1,500 pharmacies currently providing services to approximately 230,000 Virginia Medicaid recipients. It is also likely that approximately 450 major drug manufacturers participating in the Medicaid program and less than 12 drug wholesalers will be affected indirectly.

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

Projected impact on employment. A higher discount rate applied to the AWP will reduce pharmaceutical reimbursements. There may be a small decrease in demand for labor in the pharmaceutical industry in Virginia.

Effects on the use and value of private property. The value of pharmaceutical businesses may decrease as the reimbursements decrease. The total likely reduction in reimbursements is expected to be about \$11.5 million or about 2.9% of the total pharmacy reimbursements. Lower reimbursements will likely reduce the profitability of pharmacies, manufacturers, and distribution businesses, their future profit streams, and consequently their values. This reimbursement reduction applies only to pharmacies' prescription drug services and not to any of the other products, such as over-the-counter drug sales, cosmetics, food, gifts, paper products, etc. Although the value of pharmacy-related businesses may decrease to some small degree, the total reduction of 2.9% in Medicaid reimbursements may not be sufficient to significantly affect pharmaceutical businesses when revenues from other sources are taken into account.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Medical Assistance Services (DMAS) has reviewed the Department of Planning and Budget's (DPB) Economic Impact Analysis (EIA) and disagrees on the following points:

- DMAS strongly disagrees that access to medications will be decreased as a result of providers leaving the market place. The potential for providers to leave the marketplace as a result of this decrease in reimbursement is significantly overstated. Although this change in reimbursement methodology does decrease reimbursement, it continues to allow for some profitability by providers. Furthermore, this reduction amounts to a share of all spending reductions that are being distributed across the Commonwealth's economy in light of the current fiscal crisis.
- The use of the term "sticker" price is misleading. Generally, "sticker" price is the manufacturer's suggested retail price and this is inconsistent with prescription pharmaceuticals. A more accurate term and definition would be specified as "the average of prices paid by retail pharmacies."
- The analysis statement is inaccurate that the \$3.8 million anticipated savings will be diverted to pay for other purposes as any savings realized will simply be an expenditure reduction.

⁴ Chapter 899, item 325 JJ (2).

- The use of the number 230,000 as the total Medicaid population is inaccurate. Approximately, 186,000 recipients, or about 70% of the total Medicaid population (265,850), receive fee-for-service benefits.

Summary:

This regulatory action changes the reimbursement methodology for pharmaceutical products. Currently, the Department of Medical Assistance Services uses the estimated acquisition cost (EAC) or reference cost of the Average Wholesale Price (AWP) discounted by a factor of 9.0%. The 2002 General Assembly mandated the increase of the percentage deducted from the AWP to be 10.25%. An additional mandate redefined the Virginia Maximum Allowable Cost methodology to include all products that participate in the pharmaceutical manufacturers' rebate program.

12 VAC 30-80-40. Fee-for-service providers: pharmacy.

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the HCFA Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the ~~Health Care Financing Administration (HCFA)~~ CMS for multiple source drugs pursuant to 42 CFR 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The Virginia Medicaid Maximum Allowable Cost (VMAC) established by the ~~agency~~ Virginia Department of Medical Assistance Services to be inclusive of appropriate multiple source and specific high cost drugs plus a dispensing fee for multiple source drugs listed on the VVF. *Multiple source drugs may include but are not limited to Food and Drug Administration-rated products such as drugs established by a Virginia Voluntary Formulary (VVF) drugs, Federal Upper Limit Drugs and any other state or federally approved listing. "Multisource drugs" means covered outpatient drugs for which there are two or more drug products that:*

- Are included in the Centers for Medicare and Medicaid Services' state drug rebate program;*
- Have been approved by the Federal Food and Drug Administration (FDA);*
- Are included in the Approved Products with Therapeutic Equivalence Evaluations as generically equivalent; and*
- Are sold or marketed in Virginia.*

3. The Estimated Acquisition Cost (EAC) which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the *General*

Assembly or in the absence thereof by the following methodology set out in subdivisions a through c below.

- Percentage discount shall be determined by a statewide survey of providers' acquisition cost.*
- The survey shall reflect statistical analysis of actual provider purchase invoices.*
- The agency will conduct surveys at intervals deemed necessary by DMAS.*

4. (Reserved.)

5. The provider's usual and customary charge to the public, as identified by the claim charge.

6. Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. *The dispensing fee of \$4.25 (effective July 1, 1995) shall remain in effect.*

7. The Program pays additional reimbursement for the 24-hour unit dose delivery system of dispensing drugs. This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add-on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC, based on the 60th percentile *or maximum* cost level, as identified by the state agency or ~~HCFA's CMS'~~ upper limits as *applicable*. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

8. Determination of EAC was the result of ~~an analysis of FY89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990 a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on the documented costs to the pharmacy. An EAC of AWP minus 10.25% shall become effective July 1, 2002.~~

~~The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of \$4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of July 1, 1995, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be \$4.25.~~

9. Home infusion therapy.

- The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug

Proposed Regulations

therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the HCFA 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

VA.R. Doc. No. R02-230; Filed January 8, 2003, 9:52 a.m.

Title of Regulation: 12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (amending 12 VAC 30-90-41; adding 12 VAC 30-90-257).

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

Public Hearing Date: N/A -- Public comments may be submitted until March 28, 2003.

(See Calendar of Events section for additional information)

Agency Contact: James Branham, Analyst, Division of Reimbursement, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4587, FAX (804) 786-1680 or e-mail jbranham@dmas.state.va.us.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements.

Indirect patient care ceilings and inflator. These amendments were mandated by the General Assembly in Item 325 HH (1) and (2) of Chapter 899 of the 2002 Acts of Assembly.

Credit balance reporting. 42 CFR Part 447, Payment for Services, prescribes State Plan requirements, Federal Financial Participation limitations, and procedures concerning payments made by State Medicaid agencies for Medicaid services. States must provide sufficient detail in their plans about their reimbursement methodologies in order that the Centers for Medicare and Medicaid Services (CMS) may determine if the methodologies conform to existing federal law and regulations and are, therefore, approvable for Federal Financial Participation.

Purpose: Neither of these recommended changes is required to specifically protect the health, safety, and welfare of either Medicaid recipients or other citizens of the Commonwealth.

Indirect Patient Care Ceiling and Inflator. The purpose of this recommended regulatory action to modify the indirect patient care ceiling and inflator is to reduce reimbursements to NFs.

Credit Balance Reporting. The purpose of this regulatory action is to add a new requirement to the Nursing Home Payment System that each nursing facility submit a quarterly report of Medicaid credit balances. A credit balance would be defined as an improper or excess payment made to a provider as a result of patient billing or claims processing errors. Therefore, for each credit balance the nursing facility would also be required to either submit to the Department of Medical Assistance Services the payment of the credit balance or an adjustment claim to correct any billing or claims processing errors.

Substance: Indirect Patient Care Ceilings and Inflator. Prior to the currently effective emergency regulations, DMAS set the indirect patient care operating ceiling at 106.9% of the median of facility specific indirect cost per day. The calculation of the median is based on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 1998. In accordance with the State Plan, DMAS revises its ceilings every two years. This regulatory action is necessary to implement revisions to calculating indirect costs as directed by the 2002 General Assembly to mandate a decrease in the indirect patient care operating cost ceiling. The ceiling will decrease from 106.9% to 103.9% of the median of nursing facility specific costs. The General Assembly made the decision to set the indirect patient care operating ceiling at 103.9%, and to base the calculation of the median on cost reports from freestanding nursing homes for provider fiscal years ending in calendar year 2000.

Nursing facilities currently have their prospective operating cost ceilings (direct and indirect) and prospective operating cost rates adjusted for inflation. The allowance for inflation is based on the percentage of change in the moving average of the Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by Data Resources, Incorporated (DRI-WEFA), adjusted for Virginia, determined in the quarter in which the nursing facility's most recent fiscal year ended. The same legislative mandate directed that DMAS amend the State Plan to eliminate the increase for inflation to indirect patient care rates in state fiscal year 2003. No changes were mandated nor are recommended for reimbursement for direct patient care.

Credit Balance Reporting. Currently, DMAS does not require NFs to report credit balances. Consequently, those NFs who are overpaid (due to various reasons such as payments from third party payers and claims processing errors) retain these tax dollars until biannual audits can be conducted.

This regulatory action is necessary to implement a reporting requirement for nursing facilities which will make it possible for DMAS to more timely identify, collect, and correct claims for Medicaid overpayments. Such overpayments may exist for paid claims from providers for services rendered to recipients.

Issues:

Indirect Patient Care Ceilings and Inflation. This modification to the nursing facility reimbursement regulations was directed by the 2002 Session of the General Assembly as a budget reduction item for the state fiscal year 2003. This will reduce the reimbursement to the Commonwealth's nursing facilities on average by approximately \$1.95 per day. The disadvantage is to the affected provider industry because this change reduces their Medicaid reimbursement. The only advantage to the public for this change is the expenditure reduction (demand for the General Fund dollar) that it represents. The advantage to the Commonwealth is that this expenditure reduction will help with the current budget balancing process underway in the Commonwealth.

Credit Balance Reporting. This revision to the regulations will require the Virginia nursing facility providers to submit a quarterly report of Medicaid patient accounts receivable credit balances. The provider will also have to pay the department the amount of any such identified credit balances. The disadvantage to the affected nursing home industry is the requirement of additional paperwork and a reduction to the period of time that they could use Medicaid overpayments to assist their cash flow. There are no disadvantages to the public. The advantage of this change to the public and the Commonwealth is that overpayments will be more quickly returned to state coffers.

Fiscal Impact:

Indirect Patient Care Ceilings and Inflation. There is minimal or no administrative cost to actually implement this revision. It is estimated that this revision to the regulations will result in a reduction in reimbursement to the approximately 270 Virginia nursing facilities in FY 2003 totaling approximately \$12,000,000 (\$5,989,918 GF) (\$6,174,822 NGF).

Credit Balance Reporting. Each of the approximately 270 Virginia nursing facilities will be required to file with DMAS their quarterly report of credit balances. The actual preparation of each quarterly report by each facility should take approximately three to four hours, resulting in an approximate administrative cost of \$100 for each facility for each quarterly report.

The department will incur approximately \$50,000 annually to administer this program. It is estimated that these reports will identify approximately \$2,500,000 annually of overpayments to be refunded to 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 Department of Medical Assistance Services proposes to amend the Medicaid cost reimbursement method for indirect costs incurred by long-term care providers. The proposed changes will reduce the indirect care ceiling to 103.9% of the median of facility specific indirect cost per day from 106.9% and eliminate the inflation adjustment for indirect costs in fiscal year 2003. The proposed changes to the reimbursement method have been already in effect since July 2002 under the emergency regulations. Additionally, the proposed changes will establish credit balance reporting requirements for all nursing facilities.

Estimated economic impact. These regulations contain rules for nursing home reimbursement methodology. The Department of Medical Assistance Services (the department) reimburses the long-term care costs to Medicaid providers. One of the main cost categories is operating costs. Operating costs are divided into direct operating costs (nurse salaries and benefits, supplies, ancillary services etc.) and indirect operating costs (administrative, general, dietary, housekeeping, laundry, maintenance etc.). Operating cost reimbursements are determined using prospective rates based on the actual costs incurred by the providers, as long as the prospective rates are below the allowable payment ceiling. The determination of reimbursements for the operating costs depends mainly on the payment ceiling and inflation adjustment.

The operating costs payment ceilings are determined for six different peer groups (three direct and three indirect) from base year (every second year) costs incurred by all nursing facilities enrolled with the Virginia Medicaid program. This is accomplished by: (i) calculating the per diem cost figures for all of the facilities in each peer group, (ii) finding the median per diem cost figure for each peer group, and (iii) applying a percentage factor to the median per diem cost figure. The payment ceilings provide cost containment incentives. Without the payment ceiling, providers would be reimbursed based on the costs they incur subject to specific cost limitations and tests for "reasonableness." With the payment ceilings, each provider's prospective reimbursement rates are established based on either their inflation adjusted actual costs or the ceiling rates whichever is less. Every year the ceilings and each facility's prospective per diem, based on incurred costs, are adjusted by an inflation factor using the Virginia specific DRI-WEFA Skilled Nursing Facility Market Basket Index of routine service costs.

During the base year 2000 the median per diem for indirect costs for all nursing facility providers was \$38.09 and the percentage factor was 106.9%. This would have resulted in following peer group rates calculated as of July 2000; \$49.47 for the northern Virginia peer group; \$45.57 for the rest of state facilities with less than 61 beds; \$40.42 for the rest of state facilities with more than 60 beds. The inflation adjustment factors would be applied to these rates to determine the ceilings applicable to each provider. The inflation adjustment factors were 3.9% in 2001 and 6.2% in 2002. Under this payment system, the department paid approximately \$244 million to 270 providers in fiscal year (FY) 2001 for indirect operating costs. As of July 2002, there were 17,761 Medicaid patients and 8,934 other patients in Virginia nursing facilities. Thus, the proportion of Medicaid patients at

Proposed Regulations

nursing facilities is approximately 66.5%. The department is currently making interim payments based on the proposed methodology under the emergency regulations and will settle the payments at the year end.

The proposed permanent regulations will reduce the indirect operating cost ceilings by 3.0% (from 106.9% to 103.9%). The proposed 3.0% reduction in the ceilings will affect approximately 131 providers whose per diem costs are higher than the median. These providers will experience a reduction in their reimbursements as compared to the reimbursement they would have received without these changes. Additionally, the inflation adjustment will be eliminated for FY 2003. This change will affect all providers in that their prior year indirect operating costs used to establish their subsequent year prospective rates for periods during the FY 2003 will not be increased by the current 6.2% inflation factor. Also the ceilings will be not be inflated by 6.2% during FY 2003. The impact of the elimination of the inflation adjustment will reduce the reimbursement rates of all providers as compared to what they would have received under the old methodology by an average of approximately \$2.98 for the northern Virginia peer group, \$2.74 for the rest of state facilities with less than 61 beds, and \$2.43 for the rest of state facilities with more than 60 beds.

These changes are proposed to meet the mandate of the 2002 Acts of Assembly.¹ The General Assembly directed these changes to provide an estimated \$12 million savings in nursing home payments. Of the expected savings, approximately \$5,989,918 will reduce general fund expenditures while about \$6,174,822 will reduce federal matching fund expenditures. It should be noted that the \$6.2 million reduction in federal matching funds represents an additional loss for the Commonwealth's economy while saving \$6 million in general fund expenditures.

Lower reimbursement rates for nursing homes are expected to introduce costs for the providers, as they will not receive as much as otherwise they would have received. Lower reimbursements have the potential to negatively affect Medicaid patients due to a potential decrease in the quality of care stemming from lower funding. There is also a chance that lower funding could increase the pressure on private pay residents through likely higher charges to subsidize Medicaid patients. According to a survey conducted by the Joint Audit and Review Commission, nursing home providers indicated that Medicaid reimbursement rate was one of the reasons for charging more to private pay residents of nursing facilities.² Since the proportion of Medicaid patients at nursing facilities is approximately 66.5%, the pressure on non-Medicaid patients to make up for the reduced reimbursements may be significant. Additionally, the proposed changes may introduce financial distress to some marginally profitable nursing homes.

The proposed changes will also establish quarterly credit balance reporting requirements for Medicaid providers. At a given time, providers may have accounts with a positive credit

balance, which indicates an excess or overpayment received by the provider due to a claim or billing error. In addition, many times providers are representative payees for benefits the residents receive from social security or other sources and maintain an individual account for each resident's personal funds. From this account, the provider transfers the monies to apply to the recipient's nursing home account receivable and leaves approximately \$30 (per month) in the recipient's personal fund account for incidental personal expenses such as purchase of a toothbrush, gum, or candy. Sometimes the providers fail to credit the \$30 for incidental expenses. Currently, there is no reporting requirement for credit balances. The department conducts field audits every two years. During the biennial audit, the department identifies credit balances. According to the department, providers have about \$2.5 million recoverable credit balances per year.

The proposed regulations will require the providers to report and settle the credit balances on a quarterly basis. Thus, the department and/or the nursing home residents are expected to receive approximately \$625,000 per quarter from providers for credit balances. The main benefit of the proposed change to the department and nursing home residents is to have providers timely identify and clear credit balances that occur in their accounts receivables. The department and the nursing home residents will benefit from the additional liquidity it will provide and the time value of receiving overpayments as credit balances are identified and settled quarterly rather than waiting up to two years. The value of additional liquidity and the time value of overpayments are difficult to quantify because the appropriate discount rate that should be applied is uncertain. However, the time value of overpayments can be calculated for various discount rates. The biennial benefit of receiving \$625,000 on eight quarterly payments as opposed to receiving \$5 million after two years for 2.0%, 4.0%, and 6.0% discount rates are \$85,348, \$166,531, and \$317,194, respectively.

There will be need for some staff time to administer the new quarterly reporting requirement. The administrative costs of reviewing the reports are estimated to be approximately \$100,000 biennially. Thus, the net effect on the department will depend on the appropriate discount rate. If the discount rate is 4.0% or higher, the department will likely experience net benefits. If the value of additional liquidity is about \$15,000, then the department may experience net benefits even at the 2.0% discount rate. Since the Medicaid recipients at nursing homes will not incur any additional costs, they are likely to experience net benefits in terms of additional liquidity and time value of money.

On the other hand, the proposed changes are likely to introduce net costs to the providers. According to the department, each report should take about three to four hours of provider staff time to prepare and would cost about \$100 per facility. Thus, the total biennial administrative costs to 270 providers are expected to be \$216,000. In addition, the providers will lose the liquidity and the time value of the \$5 million on a biennial basis. Thus, the net economic effect on the providers will likely be negative.

Businesses and entities affected. The proposed changes will directly affect nursing home providers. Currently, there are

¹ Chapter 899, item 325 HH (1) and (2).

² Virginia's Medicaid Reimbursement to Nursing Facilities, Senate Document No. 28, 2000, Joint Legislative Audit and Review Commission of the Virginia General Assembly.

270 Medicaid participating nursing home facilities in Virginia. Half of these providers will likely experience a reduction in their reimbursements. The Medicaid residents of the facilities will be indirectly affected and may experience some decrease in the quality of care they receive. There are approximately 17,761 Medicaid residents in nursing homes in the Commonwealth. Approximately 8,934 private pay residents at these facilities may also be negatively affected from the proposed changes since they are more likely to subsidize the Medicaid residents. On the other hand residents will likely benefit in terms of additional liquidity and the time value provided by timely credits to their incidental expense accounts.

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

Projected impact on employment. Lower reimbursement rates have the potential to discourage the development of new nursing homes, discourage expansion at current nursing homes, and increase the likelihood of financial distress for marginally profitable nursing homes. This may decrease demand for labor at nursing facilities. It remains to be determined by the department how it will implement the processing and review of these new provider reports, so the potential impact on the department's staffing need is not known at this time.

Effects on the use and value of private property. The value of some nursing homes may decrease as the reimbursements for providing administrative, dietary, housekeeping, laundry, maintenance, and other general services decreases. The proposed reduction in reimbursements is about \$12 million or about 4.9% of the total indirect cost reimbursements. In addition nursing homes will incur additional costs for quarterly reporting of credit balances and will lose the liquidity and the time value of credit balances they used to enjoy. Lower reimbursements coupled with higher costs and losses in current benefits such as liquidity and the time value of money they currently enjoy will likely reduce the profitability of nursing homes, reduce the future profit streams, and consequently their values.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Methods and Standards for Establishing Payment Rates for Long-Term Care (NF Indirect Patient Care Cost Reductions and Credit Balance Reporting). The agency raises no issues with this analysis.

Summary:

The proposed amendments comply with the legislative mandate of Item 325 HH of Chapter 899 of the 2002 Acts of Assembly to decrease the indirect patient care operating ceiling and eliminate the increase for inflation for indirect patient case rates and peer groups ceilings for indirect costs in SFY 2003. The proposed amendments also institute the requirement that nursing facilities file reports when they have credit balances.

12 VAC 30-90-41. Nursing facility reimbursement formula.

A. Effective on and after July 1, 2002, all NFs subject to the prospective payment system shall be reimbursed under "The Resource Utilization Group-III (RUG-III) System as defined in Appendix IV (12 VAC 30-90-305 through 12 VAC 30-90-307)." RUG-III is a resident classification system that groups NF residents according to resource utilization. Case-mix indices (CMIs) are assigned to RUG-III groups and are used to adjust the NF's per diem rates to reflect the intensity of services required by a NF's resident mix. See 12 VAC 30-90-305 through 12 VAC 30-90-307 for details on the Resource Utilization Groups.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings and rates.

a. In accordance with 12 VAC 30-90-20 C, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in 12 VAC 30-90-271.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, for the rest of the state for facilities with less than 61 licensed beds, and for the rest of the state for facilities with more than 60 licensed beds.

3. Each facility's average case-mix index shall be calculated based upon data reported by that nursing facility to the Centers for Medicare and Medicaid Services (CMS) (formerly HCFA) Minimum Data Set (MDS) System. See 12 VAC 30-90-306 for the case-mix index calculations.

4. The normalized facility average Medicaid CMI shall be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NFs subsequent fiscal year. See 12 VAC 30-90-306 D 2 for the calculation of the normalized facility average Medicaid CMI.

a. A NFs direct patient care operating cost prospective ceiling shall be the product of the NFs peer group direct patient care ceiling and the NFs normalized facility average Medicaid CMI. A NFs direct patient care operating cost prospective ceiling will be calculated semiannually.

b. A CMI rate adjustment for each semiannual period of a nursing facility's prospective fiscal year shall be applied by multiplying the nursing facility's normalized facility average Medicaid CMI applicable to each prospective semiannual period by the nursing facility's case-mix neutralized direct patient care operating cost base rate for the preceding cost reporting period (see 12 VAC 30-90-307).

c. See 12 VAC 30-90-307 for the applicability of case-mix indices.

Proposed Regulations

5. Effective for services on and after July 1, 2002, the following changes shall be made to the direct and indirect payment methods.

a. The direct patient care operating ceiling shall be set at 112% of the respective peer group day-weighted median of the facilities' case-mix neutralized direct care operating costs per day. The calculation of the medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group direct patient care operating ceilings shall be revised and case-mix neutralized every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

b. The indirect patient care operating ceiling shall be set at ~~106.9%~~ 103.9% of the respective peer group day-weighted median of the facility's specific indirect operating cost per day. The calculation of the peer group medians shall be based on cost reports from freestanding nursing homes for provider fiscal years ending in the most recent base year. The medians used to set the peer group indirect operating ceilings shall be revised every two years using the most recent reliable calendar year cost settled cost reports for freestanding nursing facilities that have been completed as of September 1.

B. Adjustment of ceilings and costs for inflation. Effective for provider fiscal years starting on and after July 1, 2002, ceilings and rates shall be adjusted for inflation each year using the moving average of the percentage change of the Virginia-Specific Nursing Home Input Price Index, updated quarterly, published by Standard & Poor's DRI. *For state fiscal year 2003, peer group ceilings and rates for indirect costs will not be adjusted for inflation.*

1. For provider years beginning in each calendar year, the percentage used shall be the moving average for the second quarter of the year, taken from the table published for the fourth quarter of the previous year. For example, in setting prospective rates for all provider years beginning in

January through December 2002, ceilings and costs would be inflated using the moving average for the second quarter of 2002, taken from the table published for the fourth quarter of 2001.

2. Provider specific costs shall be adjusted for inflation each year from the cost reporting period to the prospective rate period using the moving average as specified in subdivision 1 of this subsection. If the cost reporting period or the prospective rate period is less than 12 months long, a fraction of the moving average shall be used that is equal to the fraction of a year from the midpoint of the cost reporting period to the midpoint of the prospective rate period.

3. Ceilings shall be adjusted from the common point established in the most recent rebasing calculation. Base period costs shall be adjusted to this common point using moving averages from the DRI tables corresponding to the provider fiscal period, as specified in subdivision 1 of this subsection. Ceilings shall then be adjusted from the common point to the prospective rate period using the moving average(s) for each applicable second quarter, taken from the DRI table published for the fourth quarter of the year immediately preceding the calendar year in which the prospective rate years begin. Rebased ceilings shall be effective on July 1 of each rebasing year, so in their first application they shall be adjusted to the midpoint of the provider fiscal year then in progress or then beginning. Subsequently, they shall be adjusted each year from the common point established in rebasing to the midpoint of the appropriate provider fiscal year. For example, suppose the base year is made up of cost reports from years ending in calendar year 2000, the rebasing year is SFY2003, and the rebasing calculation establishes ceilings that are inflated to the common point of July 1, 2002. Providers with years in progress on July 1, 2002, would receive a ceiling effective July 1, 2002, that would be adjusted to the midpoint of the provider year then in progress. In some cases this would mean the ceiling would be reduced from the July 1, 2002, ceiling level. The following table shows the application of these provisions for different provider fiscal periods.

Table I
Application of Inflation to Different Provider Fiscal Periods

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of First PFY	Second PFYE After Rebasing Date	Inflation Time Span from Ceiling Date to Midpoint of Second PFY
3/31	7/1/02	3/31/03	+ 1/4 year	3/31/04	+ 1-1/4 years
6/30	7/1/02	6/30/03	+ 1/2 year	6/30/04	+ 1-1/2 years
9/30	7/1/02	9/30/02	- 1/4 year	9/30/03	+ 3/4 year
12/31	7/1/02	12/31/02	-0-	12/31/03	+ 1 year

The following table shows the DRI tables that would provide the moving averages for adjusting ceilings for different prospective rate years.

Table II
Source Tables for DRI Moving Average Values

Provider FYE	Effective Date of New Ceiling	First PFYE After Rebasing Date	Source DRI Table for First PFY Ceiling Inflation	Second PFYE After Rebasing Date	Source DRI Table for Second PFY Ceiling Inflation
3/31	7/1/02	3/31/03	Fourth Quarter 2001	3/31/04	Fourth Quarter 2002
6/30	7/1/02	6/30/03	Fourth Quarter 2001	6/30/04	Fourth Quarter 2002
9/30	7/1/02	9/30/02	Fourth Quarter 2000	9/30/03	Fourth Quarter 2001
12/31	7/1/02	12/31/02	Fourth Quarter 2000	12/31/03	Fourth Quarter 2001

In this example, when ceilings are inflated for the second PFY after the rebasing date, the ceilings will be inflated from July 1, 2002, using moving averages from the DRI table specified for the second PFY. That is, the ceiling for years ending June 30, 2004, will be the June 30, 2002, base period ceiling, adjusted by 1/2 of the moving average for the second quarter of 2002, compounded with the moving average for the second quarter of 2003. Both these moving averages will be taken from the fourth quarter 2002 DRI table.

C. The RUG-III Nursing Home Payment System shall require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rate or prospective operating ceiling.

D. Nonoperating costs. Plant or capital, as appropriate, costs shall be reimbursed in accordance with Articles 1, 2, and 3 of this subpart. Plant costs shall not include the component of cost related to making or producing a supply or service.

NATCEPs cost shall be reimbursed in accordance with 12 VAC 30-90-170.

E. The prospective rate for each NF shall be based upon operating cost and plant/capital cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant or capital, as appropriate, costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. Effective July 1, 2001, for those NFs whose indirect operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable indirect operating cost rates and the indirect peer group ceilings.

1. The following table presents four incentive examples:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$3.00	10%	\$0.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. Efficiency incentives shall be calculated only for the indirect patient care operating ceilings and costs. Effective July 1, 2001, a direct care efficiency incentive shall no longer be paid.

G. Quality of care requirement. A cost efficiency incentive shall not be paid for the number of days for which a facility is out of substantial compliance according to the Virginia Department of Health survey findings as based on federal regulations.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

12 VAC 30-90-257. Credit balance reporting.

A. *Definitions.* The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Claim" means a bill consistent with 12 VAC 30-20-180 submitted by a provider to the department for services furnished to a recipient.

"Credit balance" means an excess or overpayment made to a provider by Medicaid as a result of patient billings.

"Interest at the maximum rate" means the interest rate specified in § 32.1-312 or § 32.1-313 of the Code of Virginia depending on the facts of the excess payment.

"Negative balance transaction" means the reduction of a payment or payments otherwise due to a provider by amounts or portions of amounts owed the department from previous overpayments to the provider.

"Overpayment" means payments to a provider in excess of the amount that was or is due to the provider.

"Weekly remittance" means periodic (usually weekly) payment to a provider of amounts due to the provider for claims previously submitted by the provider.

B. NFs shall be required to report Medicaid credit balances on a quarterly basis no later than 30 calendar days after the close

Proposed Regulations

of each quarter. For a credit balance arising on a Medicaid claim within three years of the date paid by the department, the NF shall submit an adjustment claim. If the NF does not want the claim retracted from future DMAS payments, a check in the amount of the credit balance or the adjustment claim or claims shall be submitted with the report. For credit balances arising on claims over three years old, the NF shall submit a check for the balance due and a copy of the original DMAS payment. Interest at the maximum rate allowed shall be assessed for those credit balances (overpayments) that are identified on the quarterly report but not reimbursed with the submission of the quarterly report. Interest will begin to accrue 30 days after the end of the quarter and will continue to accrue until the overpayment has been refunded or adjusted.

C. A penalty shall be imposed for failure to submit the quarterly credit balance report timely as follows:

1. NFs that have not submitted their Medicaid credit balance data within the required 30 days after the end of a quarter shall be notified in writing by the department. If the required report is not submitted within the next 30 days, there will be a 20% reduction in the Medicaid per diem payment.
2. If the required report is not submitted within the next 30 days (60 days after the due date), the per diem payments shall be reduced to zero until the report is received.
3. If the credit balance has not been refunded within 90 days of the end of a quarter, it shall be recovered, with interest, from the due date through the use of a negative balance transaction on the weekly remittance.
4. A periodic audit shall be conducted of the NFs' quarterly submission of Medicaid credit balance data. NFs shall maintain an audit trail back to the underlying accounts receivable records supporting each quarterly report.

VA.R. Doc. No. R02-236; Filed January 8, 2003, 9:48 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Bureau of Insurance

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 14 VAC 5-335. Rules Governing Claims-Made Liability Insurance Policies (adding 14 VAC 5-335-10 through 14 VAC 5-335-60).

Statutory Authority: §§ 12.1-13, 38.2-223 and 38.2-229 of the Code of Virginia.

Agency Contact: Pat Worley, Principal Insurance Market Examiner, P.O. Box 1157, Richmond, VA 23218, telephone

(804) 371-9668, FAX (804) 371-9396, toll free 1-800-552-7945 or e-mail pworley@scc.state.va.us.

Summary:

This regulation applies to all claims-made liability insurance policies delivered or issued for delivery in the Commonwealth becoming effective on or after May 1, 2003. Key provisions are as follows:

1. Insurers writing claims-made liability insurance policies are required to offer extended reporting coverage to each named insured upon termination of the claims-made coverage.
2. Insurers are required to offer an unlimited extension of the time allowed to report claims subject to any applicable statute of limitations. Insurers may also offer other, more limited extensions of time in which to report claims.
3. The premium charge for extended reporting coverage may not exceed 200% of the premium for the expiring policy, unless the additional premium charge is filed with the commission in compliance with the delayed-effect filing provisions of § 38.2-1912 of the Code of Virginia.
4. Insurers must offer an extended reporting period that includes unimpaired limits of liability equal to the limits of the policy being extended. However, insurers may also offer higher or lower limits of liability applicable to the extended reporting period. This provision does not apply to excess or umbrella liability coverage, or environmental impairment or pollution liability coverage, or to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge.
5. Insurers may not cancel extended reporting coverage except for nonpayment of premium.
6. With respect to excess or umbrella liability policies, the offer of extended reporting coverage may not be contingent upon the existence or extent of underlying coverage.
7. With the exception of a limited extended reporting period of 60 days or less provided automatically without an additional premium charge, insurers may not void extended reporting coverage on the basis that other applicable insurance coverage is in effect.

AT RICHMOND, JANUARY 6, 2003

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-01318

Ex Parte: In the matter of
Adopting Rules Governing Claims-
Made Liability Insurance Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223

of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

Section 38.2-2229 of the Code of Virginia provides that the Commission may issue rules regarding claims-made liability insurance policies.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance has submitted to the Commission proposed rules entitled "Rules Governing Claims-Made Liability Insurance Policies," which are to be published in Chapter 335 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-335-10 through 14 VAC 5-335-60.

The Bureau has recommended to the Commission that the proposed rules be adopted with an effective date of March 1, 2003.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed rules be attached hereto and made a part hereof as rules to be designated 14 VAC 5-335-10 through 14 VAC 5-335-60.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed rules shall file such comments or hearing request on or before February 27, 2003, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-01318.

(3) If no written request for a hearing on the proposed rules is filed on or before February 27, 2003, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed rules, may adopt the rules proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Mary M. Bannister, who forthwith shall give further notice of the proposed rules by mailing a copy of this Order, together with a draft of the proposed rules, to all insurers licensed by the Commission to write liability insurance, other than automobile liability insurance, in the Commonwealth of Virginia.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached proposed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) On or before January 8, 2003, the Commission's Division of Information Resources shall make available this Order and the attached proposed rules on the Commission's website: <http://www.state.va.us/scc/caseinfo/orders.htm>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

CHAPTER 335.
RULES GOVERNING CLAIMS-MADE LIABILITY
INSURANCE POLICIES.

14 VAC 5-335-10. Scope.

The provisions of this chapter shall apply to all policies of liability insurance, as defined in §§ 38.2-117 and 38.2-118 of the Code of Virginia, that limit the time allowed for reporting claims arising out of injury or damage covered by the policy. Any such policy shall be deemed to be a claims-made liability insurance policy for purposes of this chapter. The provisions of this chapter shall apply to all claims-made liability insurance policies delivered or issued for delivery in the Commonwealth to become effective on or after May 1, 2003.

14 VAC 5-335-20. Definitions.

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

"Claims-made liability insurance policy" means an insurance policy or endorsement providing coverage for the insured's liability for injury or damage occurring prior to the termination of coverage but subsequent to any retroactive date, provided the claim for such injury or damage is first made during the policy period or any extended reporting period.

"Extended reporting coverage" means an extension of the time allowed for reporting claims, after termination of claims-made liability coverage, for injury or damage that occurred prior to termination of the coverage and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy.

"Retroactive date" means the date on or after which injury or damage may occur and be covered under a claims-made liability policy.

14 VAC 5-335-30. Insurers to offer extended reporting coverage.

A. Any insurer that issues or delivers a claims-made liability insurance policy in this Commonwealth shall offer to each named insured extended reporting coverage.

1. The extended reporting coverage shall be offered, in writing, to all named insureds upon termination of claims-made coverage. Termination of claims-made coverage shall include:

- a. Cancellation or nonrenewal of the policy by the insurer or the insured;*
- b. Advancement of any retroactive date; or*
- c. Renewal of the coverage on other than a claims-made basis.*

2. The insured shall be allowed at least 30 days after termination in which to purchase the extended reporting coverage.

B. Notwithstanding the foregoing, extended reporting coverage does not have to be offered if cancellation or nonrenewal of a claims-made policy is due to:

Proposed Regulations

1. Nonpayment of premium; or
2. Failure to comply with terms or conditions of the policy.

C. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in this section.

14 VAC 5-335-40. Extended reporting coverage requirements.

A. Each insurer shall offer an unlimited extension of the time allowed to report claims subject to any applicable statute of limitations. However, this shall not prohibit the insurer from also offering other, more limited, extensions of time in which to report claims. The premium charge for extended reporting coverage shall not exceed 200% of the premium for the expiring policy unless such additional premium charge is filed with the commission in compliance with the delayed effect filing provisions of § 38.2-1912 of the Code of Virginia as if competition is not an effective regulator of rates. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in this subsection.

B. Each insurer shall offer an extended reporting period that includes unimpaired limits of liability equal to the limits of the policy being extended. However, this shall not prohibit the insurer from also offering higher or lower limits of liability applicable to the extended reporting period. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in this subsection. This subsection shall not apply to excess or umbrella liability coverage, or environmental impairment or pollution liability coverage, or to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge.

C. When an insurer excludes any existing coverage from a claims-made liability insurance policy and the policy remains in effect or is renewed, the insurer shall offer an extended reporting period for such coverage on the same basis that the extended reporting period would be offered if the entire policy were being terminated.

14 VAC 5-335-50. Prohibitions.

A. Once purchased by the insured, extended reporting coverage shall not be cancelled by the insurer except for nonpayment of premium. No extended reporting endorsement shall be delivered or issued for delivery in this Commonwealth unless it contains this provision.

B. The offer of extended reporting coverage by an insurer providing excess or umbrella liability coverage shall not be contingent upon:

1. The continuation of the underlying liability insurance coverage;
2. The purchase of extended reporting coverage for the underlying liability insurance policy; or
3. The type of extended reporting coverage purchased for the underlying liability insurance policy.

C. Except with respect to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge, an insurer shall be prohibited from voiding extended reporting coverage on the basis that other applicable insurance coverage is in effect. However, this shall not prohibit an insurer from applying the extended reporting coverage as excess over such other insurance.

14 VAC 5-335-60. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R03-108; Filed January 8, 2003, 8:08 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic (amending 18 VAC 85-20-280, 18 VAC 85-20-290, and 18 VAC 85-20-300; adding 18 VAC 85-20-285).**

Statutory Authority: §§ 54.1-2400 and 54.1-2910.1 of the Code of Virginia.

Public Hearing Date: February 6, 2003, 8:15 a.m.

Public comments may be submitted until March 28, 2003.

(See Calendar of Events section for additional information)

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Medicine, 6603 W. Broad Street, Richmond, VA 23230, 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 mandate for the board to implement the physician profile is found in § 54.1-2910.1 of the Code of Virginia.

Purpose: Chapter 38 of the 2002 Acts of Assembly resolves several problems with the existing law on physician profiling in § 54.1-2910.1 of the Code of Virginia. The department identified several ways in which the physician profile system could be more efficient and effective and worked with the patron and other interested parties in amending provisions of the law that were problematic and offered no real benefit to the consumers of health care services by doctors. Required elements of the profile are intended to provide information sufficient for the public to locate doctors in their area who practice in a particular specialty and to further assure the

public health, safety and welfare in their informed selection of doctors in the Commonwealth.

Substance: Requirements for the physician profile have been amended in conformity to changes in § 54.1-2910.1 of the Code of Virginia. Certain information is now required - such as telephone numbers of practice locations, availability of translating services at secondary practice settings, and reports of any felony convictions. In addition, contact information, such as an email address, which is necessary for communicating with practitioners in times of emergency situations is required to be reported, but not available on the profile viewed by the public. Information on insurance plans accepted is voluntary, and the amended regulations specify that notices and orders will be posted by the board after the notice has been adjudicated. The statistical methodology for calculating the rating of malpractice claims has been modified to more accurately reflect the relative nature of the claim. Where there have been fewer than 10 claims in a specialty, no rating is applied. Other technical changes are proposed to make the regulation clearer and more enforceable.

Issues: There are several advantages to the public of the amended regulation:

1. Current law requires the licensees to report any "insurance plans accepted" - a requirement with which it is nearly impossible to comply since the list can be well over 1,000 and licensees sometimes don't even know when they have been added or deleted from a panel. By making that field in the profile optional, the practitioner can choose several options: (i) he can report no insurance plans; (ii) he can list the 10 or more that are most frequently used in his office; (iii) he can state that most major plans are accepted with instruction for the patient to call the office; or (iv) he can respond in some other fashion. If he chooses to report insurance plans, he is responsible for keeping it accurate. The amended law and regulation make the reporting of this information optional and less confusing to the consumer.

2. Under current regulations, primary and secondary practice addresses are required but telephone numbers are not. Including telephone numbers will be a convenience for patients.

3. Current regulation requires the reporting of translating services only at the primary practice setting. Including secondary practice settings will better serve consumers.

4. The amended regulation requires a practitioner to report a felony conviction, which is information that consumers may need to make an informed choice about a doctor.

There are no disadvantages to the public as all amendments are intended to provide better access to useful information on doctors of medicine, osteopathy and podiatry.

There are no advantages or disadvantages to the agency; the amended regulations clarify several aspects of the profile and address some issues that had been difficult to resolve. The provision of email addresses and facsimile numbers will provide a valuable resource and an immediate contact for the board or the Department of Health in cases of emergency.

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 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, and podiatry.

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

Projected costs to the affected entities: There are no additional costs to affected entities. The physician profile is currently operational, and all affected entities have been required to report the information in the statute. Some practitioners will have to modify their profile to provide information not previously captured, but that process will be carried out at no additional cost to licensees.

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. Pursuant to a statutory mandate found in § 54.1-2910.1 as amended by Chapter 38 of the 2002 Session of the General Assembly, the Board of Medicine (board) proposes several changes to the practitioner profile system for doctors of medicine, osteopathy, and podiatry.

Estimated economic impact. Per Chapter 38 of the 2002 Acts of Assembly, the board proposes to eliminate the requirement that doctors provide the names of all insurance plans

Proposed Regulations

accepted, and instead make that field in the practitioner profile optional. Under the proposed regulations the practitioner can: (i) report no insurance plans, (ii) list the plans most frequently used in her office, (iii) state that most plans are accepted with instructions for the patient to call her office to check on specific plans, or (iv) respond in some other fashion. Since the list of insurance plans accepted can be well over 1,000,¹ and licensees are not always promptly notified when they have been added or deleted from insurers' lists of approved practitioners, it is not reasonable to hold the practitioner responsible for keeping the list accurate. Since, unlike in the current regulations, the proposed field in the practitioner profile for insurance plans accepted can be feasibly kept accurate by all practitioners, this proposed change is beneficial.

Under the current regulations, practitioners are required to provide, among other information, their primary and secondary location addresses and whether there is access to translating services for non-English speaking patients at the primary practice setting (specifying the language translated). Pursuant to Chapter 38 of the 2002 Acts of Assembly, the board proposes to additionally require that practitioners provide the telephone numbers for their primary and secondary practice locations and whether there is access to translating services for non-English speaking patients at the secondary practice setting (specifying the language translated). The practitioners can provide this information at very little cost and there is no clear disadvantage to their providing the data. Since the cost of providing the information is minimal and the inquiring public may find it useful, this proposed change likely creates some net benefit.

Also pursuant to the Code of Virginia (§ 54.1-2910.1), the board proposes to require that practitioners report felony convictions. Many prospective patients would likely find this information to be useful in choosing a doctor. Practitioners with convictions may find reporting this data unpleasant, but the actual reporting of the information could be performed quickly. The result of reporting the information would likely be somewhat costly for doctors with felony convictions in that they would most likely lose some business. On the other hand, physicians without felony convictions would overall likely benefit by an approximately equal increase in business. Prospective patients would benefit by being able to make better-informed choices in doctors. Thus, this proposed amendment will produce a net benefit.

Businesses and entities affected. The proposed amendments affect 28,174 doctors of medicine and surgery, 893 doctors of osteopathy and surgery, and 487 doctors of podiatry licensed in Virginia, as well as their patients and prospective patients.

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

Projected impact on employment. The proposed changes to the practitioner profile system for doctors of medicine, osteopathy, and podiatry will in aggregate likely increase the amount of employment hours for staff in practices that have doctors without felony convictions, and decrease the amount

of work hours for staff in practices that have doctors with felony convictions. The amount of employment hours for all practices in total will not be significantly affected.

Effects on the use and value of private property. Practices with doctors that have felony convictions will likely lose some business, and consequently some value. Practices without doctors that have felony convictions will in total increase their business by approximately the same amount lost by practices with doctors that have felony convictions, and consequently increase their value.

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 statutory mandate for changes to the physician profile system.

Summary:

The proposed amendments conform the regulation to amendments to § 54.1-2910.1 of the Code of Virginia as amended by Chapter 38 of the 2002 Acts of Assembly relating to the data required for the profiles of doctors of medicine, osteopathy, and podiatry. The proposed amendments (i) require telephone numbers for primary and secondary practice settings to be included in the practitioner profile in addition to the addresses; (ii) remove the mandatory reporting of insurance participation while allowing voluntary reporting of this information; (iii) add the requirement of reporting translating services at secondary practice settings in addition to primary practice settings; (iv) specify that a doctor must report any felony conviction; (v) require information on final disciplinary orders from a regulatory board of another jurisdiction or a disciplinary action taken by a federal health institution or agency; (vi) require the posting of adjudicated orders and notices or decision documents that are subject to public disclosure in § 54.1-2400.2 D of the Code of Virginia; (vii) require doctors to provide e-mail addresses or facsimile numbers for the sole purpose of expediting the dissemination of information about a public health emergency, although this information will not be published on the profile or released to the public; and (viii) amend the requirements for reporting malpractice paid claims by requiring the doctor to report the specialty in which he was practicing at the time the claim was paid and changing the statistical method used to rate paid claims.

18 VAC 85-20-280. Required information.

A. In compliance with requirements of § 54.1-2910.1 of the Code of Virginia, a doctor of medicine or osteopathy or a doctor of podiatry licensed by the board shall provide, upon initial request or whenever there is a change in what has been entered on the profile, the following information within 30 days:

1. The address and telephone number of the primary practice setting and all secondary practice settings with the percentage of time spent at each location;
2. Names of medical, osteopathic or podiatry schools and graduate medical or podiatric education programs attended with dates of graduation or completion of training;

¹ Source: Department of Health Professions.

3. Names and dates of specialty board certification, if any, as approved by the American Board of Medical Specialties, the Bureau of Osteopathic Specialists of the American Osteopathic Association or the Council on Podiatric Medical Education of the American Podiatric Medical Association;

4. Number of years in active, clinical practice in the United States or Canada following completion of medical or podiatric training and the number of years, if any, in active, clinical practice outside the United States or Canada;

5. The specialty, if any, in which the physician or podiatrist practices;

~~6. Names of insurance plans accepted or managed care plans in which the physician or podiatrist participates and whether he is accepting new patients under such plans;~~

~~7. 6. Names of hospitals with which the physician or podiatrist is affiliated;~~

~~8. 7. Appointments within the past 10 years to medical or podiatry school faculties with the years of service and academic rank;~~

~~9. 8. Publications, not to exceed 10 in number, in peer-reviewed literature within the most recent five-year period;~~

~~10. 9. Whether there is access to translating services for non-English speaking patients at the primary and secondary practice setting and which, if any, foreign languages are spoken in the practice; and~~

~~11. 10. Whether the physician or podiatrist participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients;~~

~~12. A report on felony convictions including the date of the conviction, the nature of the conviction, the jurisdiction in which the conviction occurred, and the sentence imposed, if any; and~~

~~13. Final orders of any regulatory board of another jurisdiction that result in the denial, probation, revocation, suspension, or restriction of any license or that results in the reprimand or censure of any license or the voluntary surrender of a license in a state other than Virginia while under investigation, as well as any disciplinary action taken by a federal health institution or federal agency.~~

~~B. The physician or podiatrist may provide additional information on hours of continuing education earned, subspecialties obtained, and honors or awards received.~~

~~C. Whenever there is a change in the information on record with the physician profile system, the practitioner shall provide current information in any of the categories in subsection A of this section within 30 days of such change.~~

~~B. Adjudicated notices and final orders or decision documents, subject to § 54.1-2400.2 D of the Code of Virginia, shall be made available on the profile. Information shall be posted indicating the availability of unadjudicated notices and of orders that are subject to being vacated at the request of the practitioner.~~

~~C. For the sole purpose of expediting dissemination of information about a public health emergency, an email address or facsimile number shall be provided, if available. Such addresses or numbers shall not be published on the profile and shall not be released or made available for any other purpose.~~

18 VAC 85-20-285. Voluntary information.

~~A. The doctor may provide names of insurance plans accepted or managed care plans in which he participates.~~

~~B. The doctor may provide additional information on hours of continuing education earned, subspecialties obtained, and honors or awards received.~~

18 VAC 85-20-290. Reporting of malpractice paid claims and board actions.

~~A. All malpractice paid claims reported to the Board of Medicine within the 10 years immediately preceding the report shall be used to calculate the level of significance as required by § 54.1-2910.1 of the Code of Virginia. Each report of an award or settlement shall indicate:~~

~~1. The number of years the physician or podiatrist has been licensed in Virginia.~~

~~2. The specialty in which the physician or podiatrist practices.~~

~~3. The relative frequency of paid claims described in terms of the number of physicians or podiatrists in each specialty and the percentage who have made malpractice payments within the 10-year period.~~

~~4. The date of the paid claim.~~

~~5. The relative amount of the paid claim described as average, below average or above average, which shall be defined as follows:~~

~~a. "Average" if the amount of the award is within one standard deviation above or below the mean for the amount of all reported claims for physicians or podiatrists who share the same specialty as the subject of the report;~~

~~b. "Below average" if the amount of the award is below one standard deviation from the mean for the amount of all reported claims for physicians or podiatrists who share the same specialty as the subject of the report; and~~

~~c. "Above average" if the amount of the award is above one standard deviation from the mean for the amount of all reported claims for physicians or podiatrists who share the same specialty as the subject of the report.~~

~~B. The board shall make available as part of the profile information regarding disciplinary notices and orders as provided in § 54.1-2400.2 D of the Code of Virginia.~~

~~A. In compliance with requirements of § 54.1-2910.1 of the Code of Virginia, a doctor of medicine, osteopathy, or podiatry licensed by the board shall report all malpractice paid claims in the most recent 10-year period. Each report of a settlement or judgment shall indicate:~~

~~1. The year the claim was paid.~~

Proposed Regulations

2. *The specialty in which the doctor was practicing at the time the incident occurred that resulted in the paid claim.*

3. *The total amount of the paid claim in United States dollars.*

4. *The city, state, and country in which the paid claim occurred.*

B. The board shall use the information provided to determine the relative frequency of paid claims described in terms of the number of doctors in each specialty and the percentage who have made malpractice payments within the most recent 10-year period. The statistical methodology used will include any specialty with more than 10 paid claims. For each specialty with more than 10 paid claims, the top 16% of the paid claims will be displayed as above average payments, the next 68% of the paid claims will be displayed as average payments, and the last 16% of the paid claims will be displayed as below average payments.

18 VAC 85-20-300. Noncompliance or falsification of profile.

A. The failure to provide the information required by ~~subsection A of~~ 18 VAC 85-20-280 and 18 VAC 85-20-290 within 30 days of the request for information by the board or within 30 days of a change in the information on the profile may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

B. Intentionally providing false information to the board for the physician profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

VA.R. Doc. No. R02-215; Filed January 7, 2003, 11:38 a.m.



FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: 4 VAC 20-252. **Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-20, 4 VAC 20-252-130, 4 VAC 20-252-140, 4 VAC 20-252-150, and 4 VAC 20-252-160).**

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: January 1, 2003.

Summary:

The amendments (i) establish the definition of Chesapeake area, (ii) add the Chesapeake area fishery as requiring permits and describe eligibility to enter this fishery and the shares of quota these qualifying fishermen will receive, (iii) change the Chesapeake Bay and its tributaries and the Potomac River tributaries to the Chesapeake area, (iv) change the quota in the coastal area from 98,000 pounds to 129,397 pounds, (v) add a section that details the procedures for converting pounds of fish to numbers of fish in order to arrive at the required quota of fish and distribution of tags, and (vi) establish separate areas where the individual transferable shares or tags may be used for harvesting striped bass.

Agency Contact: Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2202, or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-252-20. Definitions.

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commission" means the Marine Resources Commission.

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Share" means a percentage of the striped bass commercial harvest quota of tags.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.
2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.
3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.
4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

*"Striped bass" means any fish of the species *Morone saxatilis*, including any hybrid of the species *Morone saxatilis*.*

4 VAC 20-252-130. Entry limits, permits, and reports.

A. There is established a special permit for engaging in *either* the *Chesapeake area* commercial fishery for striped bass *or* the *coastal area commercial fishery for striped bass*, and it shall be unlawful for any person to engage in ~~the~~ *either* commercial fishery for striped bass without first having obtained the permit from the commission and meeting the following conditions:

Final Regulations

1. The person shall be a licensed registered commercial fisherman.

2. The person shall have reported all prior fishing activity in accordance with 4 VAC 20-610 and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation.

B. Permits for the commercial harvest of striped bass in 1999 and each year thereafter in the Chesapeake area shall be issued to any registered commercial fishermen holding striped bass quota shares issued under the provisions of 4 VAC 20-252-160, except as provided by subsection C of this section.

C. Initially, permits for the 2003 commercial harvest of striped bass in the coastal area shall be issued as described in subdivisions 1 and 2 of this subsection.

1. Permits for the coastal area striped bass commercial fishery shall be limited to any registered commercial fishermen who landed a total of at least 1,000 pounds of striped bass from the coastal area in two years from 1993 through 1997 and harvested striped bass from the coastal area in either 2001 or 2002 as documented by the commission's mandatory reporting database, and chooses to surrender 247 tags of his Chesapeake area striped bass harvest quota.

2. If shares of coastal area quota remain, following the initial permitting process in 2003, as described in subdivision 1 of this subsection, subsequent permits issued for the 2003 coastal area commercial striped bass fishery shall be limited, sequentially, to those fishermen who landed the most striped bass beyond a minimum total landings amount of 1,000 pounds from the coastal area during the most number of years from 1993 through 1997 and landed striped bass from the coastal area in either 2001 or 2002 as documented by the commission's mandatory reporting database, and chooses to surrender 247 tags of his Chesapeake area striped bass harvest quota.

G. D. It shall be unlawful for any person to purchase striped bass taken from Virginia's tidal waters for the purpose of resale without first obtaining a permit from the commission.

D. E. Permits must be in the possession of the permittee while harvesting, selling or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter.

E. F. All commercial harvesters of striped bass shall report to the commission in accordance with 4 VAC 20-610-40 et seq.

F. G. All buyers of striped bass taken from Virginia's tidal waters shall provide written reports of daily purchases and sales for each commercial fishing season to the commission no later than 15 days following the last day of each commercial fishing season.

G. H. Failure of any person permitted to harvest, buy, or sell striped bass, to submit the required written report for any fishing day shall constitute a violation of this chapter.

4 VAC 20-252-140. Commercial seasons, areas, and size limits.

Except as may be adjusted pursuant to 4 VAC 20-252-150, the open commercial striped bass fishing seasons, areas, and applicable size limits shall be as follows:

1. In the Chesapeake Bay and its tributaries and the Potomac River tributaries area, the open commercial season shall be from February 1 through December 31, inclusive. The minimum size limit shall be 18 inches total length during the periods of February 1 through December 31. The maximum size limit shall be 28 inches from March 26 through June 15.

2. In the coastal area, the open commercial season shall be February 1 through December 31, inclusive, and the minimum size limit shall be 28 inches total length.

4 VAC 20-252-150. Commercial harvest quota; conversion to striped bass tags.

A. The commercial harvest quota for the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be 1,701,748 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia area is projected to reach 1,701,748 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission, as specified in this subsection. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be ~~98,000~~ 129,397 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach ~~98,000~~ 129,397 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning individual shares for commercial harvests in the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia area, as described in 4 VAC 20-252-160, the commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish based on the estimate of the average weight of striped bass harvested during the previous fishing year. One striped bass tag shall be provided for each striped bass in the total quota to arrive at the commercial harvest quota of tags.

D. For the purposes of assigning individual shares, for commercial harvests in the coastal area of Virginia as described in 4 VAC 20-252-160, the commercial harvest quota of striped bass in pounds shall be converted to a quota in

numbers of fish based on the estimate of the average weight of striped bass harvested during the previous fishing year. One striped bass tag shall be provided for each striped bass in the total quota, to arrive at the commercial harvest quota of tags.

4 VAC 20-252-160. Individual transferable shares; tagging.

A. For each person permitted under the provisions of 4 VAC 20-252-130 to harvest striped bass commercially, tags shall be distributed to permitted fishermen in amounts equal to the share of the *Chesapeake area and coastal area striped bass harvest quota* they hold. *Tags issued for Chesapeake area harvest quota shall only be used for striped bass harvests in the Chesapeake area, and tags issued for the coastal area harvest quota shall only be used for striped bass harvests in the coastal area.*

B. Shares of the commercial striped bass quota of tags held by any permitted fisherman may be transferred to any other person who is a licensed registered commercial fisherman; such transfer shall allow the transferee to harvest striped bass in a quantity equal to the share transferred. Any transfer of striped bass commercial shares shall be limited by the following conditions.

1. Commercial striped bass shares shall not be transferred in any quantity less than 20 tags.

2. No licensed registered commercial fisherman shall hold shares totaling more than 2.0% of the total annual *Chesapeake area commercial striped bass harvest quota of tags or more than 11% of the total annual coastal area commercial striped bass harvest quota of tags.*

3. No transfer of striped bass commercial harvest quota shares shall be authorized unless such transfer is documented on a form provided by the Marine Resources Commission, notarized by a lawful Notary Public, and approved by the commissioner.

C. Transfers of *Chesapeake area or coastal area striped bass commercial quota shares* from one person to another may be permanent or temporary. *Transferred tags from the Chesapeake area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the Chesapeake area, and transferred tags from the coastal area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the coastal area.* Permanent transfers of commercial quota shares shall grant to the transferee that transferred share of the quota of tags for future years, and the transferor loses that same transferred share of the quota of tags in future years. Temporary transfers of striped bass commercial harvest quota shares shall allow the transferee to harvest that transferred share of the quota of tags during the year in which the transfer is approved. Thereafter, any share of the transferred striped bass commercial quota of tags reverts back to the transferor.

D. The commission will issue striped bass tags to permitted striped bass commercial fishermen prior to the start of the fishing season.

E. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. The permittee shall be on board the boat or vessel when striped bass are harvested and tags

are applied. Nothing in this subsection shall prevent a permitted commercial hook-and-line fisherman from using three crew members who are not registered commercial fishermen to assist in the harvest of his allotment of striped bass.

F. At the place of capture, and as soon as possible after capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

G. It shall be unlawful to bring to shore any commercially caught striped bass that has not been marked by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession.

H. Altering or attempting to alter any tag for the purpose of reuse shall constitute a violation of this chapter.

I. Any tags issued and not used shall be returned to the commission by the permittee within 15 days after the close of the commercial fishery for the year.

VA.R. Doc. No. R03-103; Filed December 26, 2002, 10:31 a.m.

* * * * *

Title of Regulation: **4 VAC 20-280. Pertaining to Speckled Trout and Red Drum (amending 4 VAC 20-280-30 and 4 VAC 20-280-40).**

Statutory Authority: §§ 28.2-201 and 28.2-304 of the Code of Virginia.

Effective Date: January 1, 2003.

Summary:

The amendments change the maximum size limit for red drum to 26 inches in length. The amendments also change the possession limit from five red drum to three red drum and eliminate the allowance for one red drum that could exceed 27 inches in length.

Agency Contact: Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2202, or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-280-30. Size limits.

A. It shall be unlawful for any person to take, catch, or possess any speckled trout less than 14 inches in length provided however, the catch of speckled trout by pound net or haul seine may consist of up to 5.0%, by weight, of speckled trout less than 14 inches in length.

B. It shall be unlawful for any person to take, catch or possess any red drum less than 18 inches in length or ~~more than one red drum~~ greater than ~~27~~ 26 inches in length.

C. Length is measured in a straight line from tip of nose to tip of tail.

Final Regulations

4 VAC 20-280-40. Possession limits.

A. It shall be unlawful for any person fishing with hook-and-line, rod-and-reel, or hand-line to possess more than 10 speckled trout.

B. It shall be unlawful for any person to possess more than ~~five three~~ red drum, ~~only one of which may exceed 27 inches in length.~~

C. ~~It shall be unlawful for any person to possess more than one red drum in excess of 27 inches in length at any time.~~

VA.R. Doc. No. R03-104; Filed December 26, 2002, 10:29 a.m.

* * * * *

Title of Regulation: 4 VAC 20-530. Pertaining to American Shad (amending 4 VAC 20-530-10 and 4 VAC 20-530-20; adding 4 VAC 20-530-23, 4 VAC 20-530-26, and 4 VAC 20-530-29).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: January 1, 2003.

Summary:

The amendment adds a definition of "coastal area." Three new sections are added to (i) describe the coastal area for the shad fishery and establish the requirements that must be met in order to participate in the fishery, (ii) reduce the quota for American shad harvested from the coastal area to 168,039 pounds and close the American shad fishery as of December 31, 2004, and (iii) establish reporting requirements for those individuals who harvest American shad and are permitted by the Marine Resources Commission.

Agency Contact: Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2202, or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-530-10. Purpose.

The ~~purpose~~ purposes of this chapter ~~is~~ are to reduce fishing mortality in order to rebuild the Virginia stocks of American Shad and to comply with the requirements for ocean intercept commercial fisheries as specified by the Interstate Fishery Management Plan for Shad and River Herring.

4 VAC 20-530-20. Definition.

The following ~~word~~ words and ~~term~~ terms when used in this chapter, shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise.

"Chesapeake Bay" means the areas west of the Colregs Demarcation Line which runs from the Cape Henry Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island.

"Coastal area" means the areas east of the Colregs Demarcation Line which runs from the Cape Henry Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island.

4 VAC 20-530-23. Coastal area fishery permits and gear restrictions.

A. It shall be unlawful for any person to possess, harvest, land or sell more than 10 American shad without first qualifying for and obtaining a coastal area commercial American shad fishery permit from the commission as described in subsection B of this section.

B. A person shall be considered eligible for a coastal area commercial American shad fishery permit by satisfying the following eligibility criteria:

1. That person shall hold either a Commercial Fisherman Registration License or Seafood Landing License.

2. That person shall have landed and sold in Virginia at least 5,000 pounds of American shad in two or more years from 1993 through 2001.

C. The coastal area commercial American shad fishery permit described in this section must be in the possession of the permittee who is harvesting, possessing, or selling American shad. Failure of the permittee to have the appropriate permit in possession shall be a violation of this chapter.

D. It shall be unlawful for any person to sell American shad from the coastal area to any seafood buyer who is not permitted to buy American shad from the coastal area American shad fishery.

E. It shall be unlawful for any buyer to receive American shad from the coastal area commercial American shad fishery without first obtaining a permit from the commission.

F. It shall be unlawful for any person to take, possess or land any American shad from the coastal area using any gill net with mesh less than five inches or greater than six inches, stretched measure.

4 VAC 20-530-26. Commercial harvest quotas.

A. The 2003 and 2004 coastal area commercial American shad fishery quota is 168,039 pounds.

B. In either 2003 or 2004, when it has been announced that the coastal area commercial American shad fishery quota has been projected as reached and the fishery has been closed, it shall be unlawful for any person to possess aboard any vessel or land in Virginia any American shad.

C. It shall be unlawful for any person to possess aboard any vessel or land in Virginia any American shad harvested from the coastal area after December 31, 2004.

4 VAC 20-530-29. Reporting requirements.

A. It shall be unlawful for any person permitted for the coastal area commercial American shad fishery to fail to contact within one hour of landing, the Marine Resources Commission's Law Enforcement Operations Division to report his name and the name of the vessel, his permit number, the location where catch will be offloaded, and the estimated weight of the landing of American shad.

B. It shall be unlawful for any person permitted for the coastal area commercial American shad fishery to fail to contact within 24 hours of landing, the Marine Resources

Commission's interactive voice recording system to report his name and the name of the vessel, his permit number and the weight of American shad landed.

C. Any buyer of American shad from the coastal area commercial American shad fishery shall maintain records of all purchases for the current year and prior year and make those records available to VMRC upon request.

VA.R. Doc. No. R03-105; Filed December 26, 2002, 10:30 a.m.

Title of Regulation: 4 VAC 20-950. Pertaining to Black Sea Bass (amending 4 VAC 20-950-10, 4 VAC 20-950-40, and 4 VAC 20-950-45; adding 4 VAC 20-950-46, 4 VAC 20-950-47, 4 VAC 20-950-48, and 4 VAC 20-950-49).

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: January 1, 2003.

Summary:

The amendments establish eligibility requirement for obtaining directed or bycatch commercial black sea bass fisher permits.

In addition, the regulations establish the allowable level of harvest for this fishery for directed and bycatch fishermen who have qualified for these fisheries, provide the basis for allocating individual portions (quota) of the overall quotas for the directed and bycatch fisheries, make it unlawful to transfer black sea bass from one vessel to another while at sea, allow holders of multiple vessels who have qualified for the directed fishery to combine the collective vessels individual quotas as a single vessel quota, and establish the reporting requirements for directed or bycatch commercial black sea fishery permittees.

Agency Contact: Deborah Cawthon, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2202, or e-mail dcawthon@mrc.state.va.us.

4 VAC 20-950-10. Purpose.

The purposes of this chapter are to (i) reduce fishing mortality in the black sea bass fishery to assure ensure that overfishing does not occur, (ii) increase the spawning stock biomass, (iii) improve the yield from the fishery, and (iv) reduce the probability of quarterly overages and early closure of the commercial distribute shares of the black sea bass quota to those fishermen who demonstrate a previous history of participation in the fishery.

4 VAC 20-950-40. Gear restrictions.

It shall be unlawful for any person to place, set, or fish any fish pot in Virginia tidal waters for the purposes of harvesting black sea bass or to possess or to land in Virginia black sea bass harvested by fish pots which are not constructed as follows:

- 1. With an escape vent of 2-3/8 inches diameter circular dimension, 2 inches square dimension, or 1-3/8 inches by 5-3/4 inches rectangular dimension.

2. With hinges and or fasteners on one side panel or door made of the following materials:

- a. Untreated hemp, jute, or cotton string of 3/16 inches or less diameter;
- b. Magnesium alloy, timed float releases (pop-up devices), or similar magnesium alloy fasteners; or
- c. Ungalvanized or uncoated iron wire of 0.094 inches or less in diameter.

4 VAC 20-950-45. Recreational possession limits and harvest quotas.

A. During the period January 1 through March 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 7,000 pounds of black sea bass.

B. During the period April 1 through June 30 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than 1,500 pounds of black sea bass. When it is announced that 60% of the coastwide quota for this period is projected to have been taken, the provisions of subsection E of this section shall apply.

C. During the period July 1 through September 30 of each year, it shall be unlawful for any person to do any of the following:

- 1. Possess aboard any vessel in Virginia waters more than 3,000 pounds of black sea bass.
- 2. Land black sea bass in Virginia, for commercial purposes, more than four times within each consecutive seven day period, with the first seven day period beginning on July 1.
- 3. Land in Virginia more than a total of 3,000 pounds of black sea bass during each consecutive seven day period, with the first seven day period beginning on July 1.
- 4. Fail to contact within one hour of landing the Marine Resources Commission's Law Enforcement Operations Division to report the name of the vessel and fisherman, location where catch will be offloaded, and the estimated weight of each landing of black sea bass.
- 5. Fail to contact within 24 hours of landing the Marine Resources Commission's Interactive Voice Recording system to report the name of the vessel and fisherman and the actual weight of each landing of black sea bass.

D. During the period October 1 through December 31 of each year, it shall be unlawful for any person to do any of the following:

- 1. Possess aboard any vessel in Virginia waters more than 4,000 pounds of black sea bass;
- 2. Land black sea bass in Virginia for commercial purposes more than four times within each consecutive seven day period, with the first seven day period beginning on October 1;

Final Regulations

- ~~3. Land in Virginia more than a total of 4,000 pounds of black sea bass during each consecutive seven-day period, with the first seven-day period beginning on October 1;~~
 - ~~4. Fail to contact within one hour of landing the Marine Resources Commission's Law Enforcement Operations Division to report the name of the vessel and fisherman, location where catch will be offloaded, and the estimated weight of each landing of black sea bass.~~
 - ~~5. Fail to contact within 24 hours of landing the Marine Resources Commission's Interactive Voice Recording system to report the name of the vessel and fisherman and the actual weight of each landing of black sea bass.~~
- ~~E. When it is announced that 60% of the coastwide quota for the period designated in subsection B of this section has been taken, it shall be unlawful for any person to do any of the following:~~
- ~~1. Possess aboard any vessel in Virginia waters more than 1,000 pounds of black sea bass.~~
 - ~~2. Land black sea bass in Virginia, for commercial purposes, more than four times within each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 60% of the coastwide quota for the period has been taken.~~
 - ~~3. Land in Virginia more than a total of 1,000 pounds of black sea bass during each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 60% of the coastwide quota for the period has been taken.~~
 - ~~4. Fail to contact within one hour of landing the Marine Resources Commission's Law Enforcement Operations Division to report the name of the vessel and fisherman, location where catch will be offloaded, and the estimated weight of each landing of black sea bass.~~
 - ~~5. Fail to contact the Marine Resources Commission's Interactive Voice Recording system within 24 hours of landing to report the name of the vessel and fisherman and the actual weight of each landing of black sea bass.~~
- ~~F. When it is announced that 60% of the coastwide quota for any of the periods designated in subsections C and D of this section has been taken, it shall be unlawful for any person to do any of the following:~~
- ~~1. Possess aboard any vessel in Virginia waters more than 700 pounds of black sea bass.~~
 - ~~2. Land black sea bass in Virginia, for commercial purposes, more than four times within each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 60% of the coastwide quota for the period has been taken.~~
 - ~~3. Land in Virginia more than a total of 700 pounds of black sea bass during each consecutive seven-day period, with the first seven-day period beginning upon the announcement that 60% of the coastwide quota for the period has been taken.~~
- ~~4. Fail to contact within one hour of landing the Marine Resources Commission's Law Enforcement Operations Division to report the name of the vessel and fisherman, location where catch will be offloaded, and the estimated weight of each landing of black sea bass.~~
 - ~~5. Fail to contact within 24 hours of landing the Marine Resources Commission's Interactive Voice Recording system to report the name of the vessel and fisherman and the actual weight of each landing of black sea bass.~~
- ~~G. It shall be unlawful for any person to possess or to land any black sea bass for commercial purposes after the coastwide quota for the designated period as described in subsections A through D of this section has been attained and announced as such.~~
- ~~H. It shall be unlawful for any buyer of seafood to receive any black sea bass after any commercial harvest quota has been attained and announced as such.~~
- ~~I. A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for ~~the~~ that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 25. The captain or operator of the boat or vessel shall be responsible for any that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.~~
- ~~J. B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection I A of this section shall be presumed to be for commercial purposes.~~
- 4 VAC 20-950-46. Directed fishery and bycatch fishery permits.**
- A. It shall be unlawful for any person to participate in the commercial black sea bass fishery, or to possess, harvest, or sell black sea bass, without first qualifying for and obtaining either a directed fishery permit or a bycatch fishery permit from the commission, as described, respectively, in subsections B and C of this section.*
- B. A person shall be considered eligible for a directed commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:*
- 1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License in addition to a federal Black Sea Bass Moratorium Permit;*
 - 2. That person shall have landed and sold in Virginia at least 11,000 pounds of black sea bass from July 1, 1997 through December 31, 2001.*
- C. A person shall be considered eligible for a bycatch commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:*
- 1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License, in addition to a federal Black Sea Bass Moratorium Permit;*

2. That person shall have landed and sold in Virginia at least one pound of black sea bass from July 1, 1997 through December 31, 2001.

D. No person shall possess more than one black sea bass permit.

E. Any permit described in this section must be in the possession of the permittee who is harvesting, possessing, or selling black sea bass. Failure of the permittee to have the appropriate permit in possession shall be a violation of this chapter.

4 VAC 20-252-47. Commercial harvest quotas.

A. The 2003 directed commercial fishery black sea bass quota is 619,703 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The 2003 bycatch commercial fishery black sea bass quota is 46,697. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount the quota is exceeded shall be deducted from the following year's bycatch fishing quota.

4 VAC 20-252-48. Individual fishery quotas; bycatch limit; at sea harvesters.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. A person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997 through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002.

C. Each bycatch fishery permittee shall be limited to 100 pounds of black sea bass per vessel per trip. It shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel or to land in Virginia more than 100 pounds of black sea bass.

D. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

E. Any person who is the owner of more than one vessel on December 17, 2002, that qualifies for a directed commercial fishery black sea bass permit, may combine the vessels' individual fishery quotas onto one of the vessels. Such declaration to combine quotas shall be made prior to the start of the fishing season.

4 VAC 20-950-49. Reporting requirements.

A. It shall be unlawful for any person permitted for the directed fishery to fail to contact, within one hour of landing, the Marine Resources Commission's Law Enforcement Operations Division to report his name and the name of the vessel, his permit number, the location where catch will be offloaded, and the estimated weight of the landing of black sea bass.

B. It shall be unlawful for any person permitted for the directed fishery or the bycatch fishery to fail to contact, within 24 hours of landing, the Marine Resources Commission's Interactive Voice Recording System to report his name and the name of the vessel, date of landing, his permit number and the weight of black sea bass landed.

C. Any buyer of black sea bass from a directed fishery permittee or a bycatch fishery permittee shall maintain records of all purchases for the current year and prior year and make those records available to the Marine Resources Commission upon request.

VA.R. Doc. No. R03-106; Filed December 26, 2002, 10:31 a.m.

TITLE 8. EDUCATION

BOARD OF EDUCATION

Title of Regulation: 8 VAC 20-650. Regulation Governing the Determination of Critical Teacher Shortage Areas (adding 8 VAC 20-650-10 [and,] 8 VAC 20-650-20 [, and 8 VAC 20-650-30]).

Statutory Authority: § 22.1-212.2:1 of the Code of Virginia.

Effective Date: March 1, 2003.

Summary:

The regulation establishes criteria for determining critical teacher shortage areas used for awarding scholarships to students who are preparing to teach in the critical teacher shortage area.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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

Final Regulations

CHAPTER 650.

REGULATIONS GOVERNING THE DETERMINATION OF CRITICAL TEACHER SHORTAGE AREAS.

8 VAC 20-650-10. Survey of local school divisions.

Beginning in school year 2001-2002, to obtain the data necessary for establishing critical teacher shortage areas, an annual survey of instructional personnel and administrative personnel licensed by the Board of Education shall be conducted as follows:

1. The Department of Education shall be responsible for the administration of the annual survey and shall:

a. Distribute to each local school division an annual survey of instructional and administrative personnel for the purpose of determining critical teacher shortages. The department may distribute the survey through electronic means; and

b. Post the results of the survey in a manner that will permit access by local school divisions, approved teacher preparation programs, other state agencies, and the public through an electronic process.

2. Each local school division shall be required to submit a completed survey within the timeframe established by the department. If the survey is distributed through electronic means, then the survey shall be completed and submitted to the department through electronic means as identified by the department.

3. To obtain information about the differences in the supply and demand among Virginia school divisions, the survey will require, but will not be limited to, the following data:

a. Number of teaching positions by subject area;

b. Number of teaching positions by endorsement (teaching) area; number of teaching positions not filled by endorsement area; and number of teaching positions filled without the appropriate teaching endorsement;

c. Number of teachers employed without a regular five-year renewable license for their teaching assignment; and

d. Number of teaching position vacancies for which a school division receives three or fewer qualified candidates (licensed or eligible for a license).

8 VAC 20-650-20. Establishing critical shortage areas.

A. Utilize the data collected through the annual survey to establish critical teacher shortage areas as follows:

1. Shortages by subject matter will be designated from the top 10 academic disciplines identified as having shortages through the superintendent's annual survey of school divisions.

2. ~~[School divisions may identify shortages;]~~ In addition to the top 10 academic disciplines identified statewide, ~~[designated in school divisions may designate]~~ a subject area ~~[. Any teaching position vacancy for which a]~~ as having a shortage if the ~~]~~ school division receives three or fewer qualified candidates (licensed or eligible for a license) ~~[may~~

~~be designated as a critical shortage for any teaching vacancy for that subject] area.~~

3. Any Virginia school division, including rural or urban school divisions, where 10% of the teachers are not fully licensed for their teaching assignment may be designated as a geographic critical shortage area.

B. For the purpose of administering the Virginia Teaching Scholarship Loan Program, an individual may meet the teaching obligation, regardless of teaching discipline, by agreeing to teach in a school with a high concentration (50% or more) of students eligible for free or reduced lunch.

[8 VAC 20-650-30. Virginia Teaching Scholarship Loan Program requirements and selection procedures.

A. Annually, the teacher preparation institutions in Virginia that have approved teacher preparation programs shall be invited to nominate individuals to receive loans through the Virginia Teaching Scholarship Loan Program. Subject to available appropriations, each nominating institution shall be guaranteed at least one scholarship loan that is designated as the Commonwealth Scholarship in Teacher Education. Scholarships shall be awarded to undergraduate students in the sophomore, junior, or senior year of college, and to graduate students at an accredited public or private four-year institution of higher education in the Commonwealth.

B. To be nominated by the college or university, students must (i) be enrolled full-time or part-time in an approved teacher education program or in a critical teacher shortage discipline, or employed as paraprofessionals and enrolled full-time or part-time to complete an approved teacher education program to become fully licensed teachers; (ii) have and maintain a cumulative grade point average of at least 2.7 on a 4.0 scale or its equivalent; (iii) be nominated for the scholarship by the institution where they are enrolled; and (iv) be identified as a Virginia domiciliary resident. Students enrolled in any area of an approved teacher education program who are seeking endorsements in elementary or middle education who meet the program requirements may be eligible for the award.

C. Scholarship recipients shall be selected by a panel appointed by the Superintendent of Public Instruction representing the various critical teacher shortage areas, geographic regions of the state, and members of professional organizations. The selection panel shall be composed of representatives from the following categories:

1. Teachers;
2. College and university faculty;
3. Members of professional organizations; and
4. Department of Education personnel.

The panel shall select recipients for the teaching scholarship loan from the eligible applicants. Efforts should be made to have an appropriate distribution of scholarships among the identified critical teacher shortage areas.]

VA.R. Doc. No. R01-245; Filed January 7, 2003, 4:30 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The following regulations (9 VAC 25-120, 9 VAC 25-195 and 9 VAC 25-196) filed by the State Water Control Board are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007 B, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007 F, and (iv) conducts at least one public hearing on the proposed general permit.

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

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

Effective Date: February 26, 2003.

Summary:

The amendments reissue the existing general permit, which expires on February 24, 2003. The general permit establishes limitations and monitoring requirements for point source discharges of wastewater from the clean up of sites contaminated by petroleum products and discharges of hydrostatic test waters. The general permit regulation is being reissued in order to continue to make it available after that date.

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

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:25 VA.R. 3428-3443 August 26, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

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

9 VAC 25-120-10. [No change from proposed.]

9 VAC 25-120-20. [No change from proposed.]

9 VAC 25-120-31. [No change from proposed.]

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

This general permit will become effective on February [24 26], ~~4998~~ 2003. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-120-60 and the receipt of this general permit.

9 VAC 25-120-60. [No change from proposed.]

9 VAC 25-120-70. [No change from proposed.]

9 VAC 25-120-80. General permit.

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

General Permit No.: VAG83

Effective Date: [February 26, 2003]

Expiration Date: [February 25, 2008]

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

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

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant thereto, the owner is authorized to discharge to surface waters at the locations identified in the accepted registration statement within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters specifically named in other board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I--Effluent Limitations and Monitoring Requirements and Part II--Conditions Applicable to All VPDES Permits, as set forth herein.

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

PART I

A. EFFLUENT LIMITATIONS AND MONITORING
REQUIREMENTS.

1. GASOLINE CONTAMINATION--FRESHWATER
RECEIVING WATERS.

Final Regulations

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number XXXX. Samples taken in compliance with the monitoring

requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Benzene (µg/l)	NA	50	1/Month	Grab*
Toluene (µg/l)	NA	175	1/Month	Grab*
Ethylbenzene (µg/l)	NA	320	1/Month	Grab*
Total xylenes (µg/l)	NA	82	1/Month	Grab*
MTBE (methyl tert-butyl ether) (µg/l)	NA	NL	1/Month	Grab*
pH (standard units)	6.0	9.0	1/Month	Grab
Total recoverable lead* (µg/l)	NA	$e^{(1.273(\ln \text{hardness}^{**})) - 4.705}$	1/Month	Grab***
Hardness (mg/l as CaCO ₃)*	NL	NA	1/Month	Grab***

NL = No Limitation, monitoring required

NA = Not Applicable

* Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to EPA Method 602 (40 CFR Part 136, 1996) or EPA SW 846 Method 8021B (1995 1998).

** ~~Hardness of the effluent~~ pH may be determined in the field using EPA Method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

*** Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be according to EPA Method 239.2 (40 CFR Part 136, 1996) or EPA SW 846 Method 7421 (1986 1998). *There are no limits for hardness. The minimum hardness concentration that will be used to determine the lead effluent limit is [45 25] mg/l.*

NOTICE: No further changes were made to this section; therefore, the remainder of 9 VAC 25-120-80 is not set out.

VA.R. Doc. No. R01-265; Filed January 8, 2003, 10:44 a.m.

Title of Regulation: 9 VAC 25-195. **General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concentrated Aquatic Animal Production Facilities ([amending 9 VAC 25-195-50; repealing 9 VAC 25-195-60 REPEALED]).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia and § 402 of the Clean Water Act, 40 CFR Parts 122, 123 and 124.

Effective Date: March 4, 2003.

Summary:

The regulation established a general permit for fish farms that set forth guidelines for the permitting of wastewater discharges from fish farms and hatcheries and established limitations and monitoring requirements for flow, total suspended solids and settleable solids. The regulation also set forth the minimum information requirements for all requests for coverage under the general permit.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Michael Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4065, FAX (804) 698-4032 or e-mail mbgregory@deq.state.va.us.

NOTICE: The proposed action to reissue this general permit was published in 18:21 VA.R. 2720-2729 July 1, 2002. Subsequent to review of the regulation and public comments, the State Water Control Board has repealed 9 VAC 25-195, VPDES General Permit for Concentrated Aquatic Animal Production Facilities.

VA.R. Doc. No. R01-272; Filed January 8, 2003, 10:44 a.m.

Title of Regulation: 9 VAC 25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Cooling Water Discharges (amending 9 VAC 25-196-40 through 9 VAC 25-196-70; repealing 9 VAC 25-196-80).

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

Effective Date: March 2, 2003.

Summary:

This regulatory action reissues the existing general permit, which expires on March 2, 2003. The general permit establishes limitations and monitoring requirements for point source discharges of noncontact cooling water.

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

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:25 VA.R. 3444-3453 August 26, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

9 VAC 25-196-40. Effective date of the permit.

This general permit will become effective on March [4 2], ~~1998~~ 2003. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9 VAC 25-196-50 and the receipt of this general permit.

9 VAC 25-196-50. [No change from proposed.]

9 VAC 25-196-60. [No change from proposed.]

9 VAC 25-196-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation 9 VAC 25-31.

General Permit No: VAG25
Effective Date: [March 2, 2003]
Expiration Date: [March 1, 2008]

NOTICE: No further changes were made to this section; therefore, the remainder of 9 VAC 25-196-70 is not set out.

9 VAC 25-196-80. [No change from proposed.]

DOCUMENTS INCORPORATED BY REFERENCE

[No change from proposed.]

VA.R. Doc. No. R01-273; Filed January 8, 2003, 10:44 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-31. Virginia Emergency Medical Services Regulations (withdrawing 12 VAC 5-31-970; suspending 12 VAC 5-31-610, 12 VAC 5-31-620, 12 VAC 5-31-730, 12 VAC 5-31-940, 12 VAC 5-31-1030, and 12 VAC 5-31-1140).

The Department of Health has withdrawn 12 VAC 5-31-970, Weapon possession, which was published in 19:3 VA.R. 503 October 21, 2002.

In addition, the regulatory process has been suspended on the following sections, which were published in 19:3 VA.R. 478-529 October 21, 2002, and which were scheduled to become effective on January 15, 2003. Therefore, the following sections did not become effective on January 15, 2003. Any readoption action taken on the following sections will be published in the Virginia Register as provided in § 2.2-4015 B of the Code of Virginia:

1. 12 VAC 5-31-610, Designated emergency response agency standards;
2. 12 VAC 5-31-620, Designated emergency response agency staffing capability;
3. 12 VAC 5-31-730, EMS vehicle operational readiness;
4. 12 VAC 5-31-940, Drugs and substance use;
5. 12 VAC 5-31-1030, Sexual harassment; and
6. 12 VAC 5-31-1140, Provision of patient care documentation.

The remainder of 12 VAC 5-31 that was published in 19:3 VA.R. 478-529 October 21, 2002, became effective January 15, 2003, as noticed in 19:9 VA.R. 1345 January 13, 2003.

Agency Contact: Dave Cullen, Compliance Manager, Office of Emergency Medical Services, Department of Health, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500, ext. 3512, toll-free 1-800-523-6019, FAX (804) 371-3543 or e-mail dcullen@vdh.state.va.us

VA.R. Doc. No. R01-71; Filed January 14, 2003, 4:30 p.m.



Final Regulations

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

Title of Regulation: **16 VAC 25-10. Public Participation Guidelines (amending 16 VAC 25-10-10, 16 VAC 25-10-20, 16 VAC 25-10-40, 16 VAC 25-10-50, 16 VAC 25-10-80, 16 VAC 25-10-90, 16 VAC 25-10-100, and 16 VAC 25-10-120).**

Statutory Authority: §§ 2.2-4007 and 40.1-22 of the Code of Virginia.

Effective Date: March 1, 2003.

Summary:

This regulation sets out procedures to be followed by the Safety and Health Codes Board and the Department of Labor and Industry to ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate at every stage. The regulation is amended to conform the language to the current requirements of the Administrative Process Act. Also, with the advances in information technology, amendments include the agency website and other Internet resources.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Bonnie R. Hopkins, Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail brh@doli.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:25 VA.R. 3525-3529 August 26, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-17; Filed January 6, 2003, 2:36 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

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.

Title of Regulation: **18 VAC 5-21. Board of Accountancy Regulations (amending 18 VAC 5-21-20).**

Statutory Authority: §§ 54.1-4403, 54.1-4409, and 54.1-4422 A of the Code of Virginia.

Effective Date: February 28, 2003.

Summary:

The amendment adds a \$25 fee for an initial application for the Uniform CPA Examination. This application fee is restricted to those initially applying for examination, and is not to be assessed on those seeking re-examination. The board deemed this fee necessary to cover the costs for the work performed by Board of Accountancy staff to assist in the processing of applications for examination.

Agency Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174 or e-mail boa@boa.state.va.us.

18 VAC 5-21-20. Fees.

A. All fees are nonrefundable and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. The following fees shall apply:

Initial examination application fee	\$25
Original CPA certificate application	\$24
CPA certificate by endorsement application	\$24
Registration certificate application	\$24
CPA certificate renewal	\$24
Registration certificate renewal	\$24
CPA certificate late renewal	\$25
Registration certificate late renewal	\$25
CPA certificate reinstatement	\$60
Registration certificate reinstatement	\$60
Noninteractive processing fee	\$ 5

If the renewal fee is not received by the board within 30 days after the expiration date printed on the CPA certificate or the registration certificate, the regulant shall pay the renewal and the late renewal fees. Regulants applying for reinstatement shall pay all unpaid renewal fees in addition to the late renewal and the reinstatement fees.

C. The late filing fee for CPA certificate holders who fail to complete or report their CPE as required by this chapter shall be:

1. If received by the board up to four months late, \$25.
2. If received by the board more than four months late but not more than six months late, \$50.
3. If received by the board more than six months late, \$75.

D. The fee for a replacement wall certificate shall be \$25.

E. A fee of \$25 will be charged in addition to the fees established in this section for submitting a check to the board which is dishonored by the institution upon which it is drawn.

F. A noninteractive processing fee will be assessed when the online payment option is not chosen by the applicant or regulant.

G. The fee for the examination provided for in 18 VAC 5-21-30 C shall consist of the contract charges. *An administrative fee of \$25 will be assessed at the time of initial application for examination. No administrative fee will be assessed for re-examination.* Examination service contracts shall be established through competitive negotiation in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The examination fee shall not exceed \$1,000.

VA.R. Doc. No. R03-109; Filed January 8, 2003, 9:13 a.m.

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

Title of Regulation: **18 VAC 10-10. Public Participation Guidelines (amending 18 VAC 10-10-10 through 18 VAC 10-10-90).**

Statutory Authority: §§ 2.2-4007 and 54.1-404 of the Code of Virginia.

Effective Date: March 1, 2003.

Summary:

The amendments allow the board to accept requests to be placed on a notification list and to notify PPG list members via electronic means. Currently, only written requests and mailed notifications are permitted. The amendments also update statutory references and make grammatical changes.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, or e-mail apelscidla@dpor.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:24 VA.R. 3210-3213 August 12, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

18 VAC 10-10-10. [No change from proposed.]

18 VAC 10-10-20. [No change from proposed.]

18 VAC 10-10-30. Placement on the mailing list; deletion.

Any person or organization wishing to be placed on the mailing a notification list may do so by electronic notification or by writing the agency. In addition, the agency, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. ~~Persons~~ Each person and organization on the list will be provided all information stated in 18 VAC 10-10-20. ~~Individuals and organizations~~ A person or organization periodically may be

requested to indicate their desire to continue to receive documents or be deleted from the list. When mail [is ~~or electronic notifications are~~] returned as undeliverable, ~~individuals and organizations~~ the person or organization will be deleted from the list. [*When electronic notifications are returned as undeliverable over two 24-hour periods at least one week apart, individuals and organizations will be deleted from the list.*]

18 VAC 10-10-40 through 18 VAC 10-10-90. [No change from proposed.]

VA.R. Doc. No. R02-6; Filed January 8, 2003, 10:11 a.m.

BOARD FOR BARBERS AND COSMETOLOGY

Title of Regulation: **18 VAC 41-10. Public Participation Guidelines (adding 18 VAC 41-10-10 through 18 VAC 41-10-90).**

Statutory Authority: §§ 2.2-4007 and 54.1-201 of the Code of Virginia.

Effective Date: March 1, 2003.

Summary:

The Board for Barbers and Cosmetology Public Participation Guidelines (PPGs) mandate public participation in the promulgation process of regulations. The agency will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents or provide notification of how to obtain a copy electronically of a "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPGs outline the necessary procedures for being placed on or deleted from the mailing list. The Notice of Intended Regulatory Action will provide for a comment period of at least 30 days and will state whether a public hearing will be held. The PPGs give specific instances on when the agency must hold a comment period and when the agency must reevaluate the regulations. The PPGs establish the procedures to be taken when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are established in the PPGs. The PPGs specify what meetings and notices will be published in The Virginia Register of Regulations.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

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

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:23 VA.R. 3016-3018 July 29, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R01-240; Filed January 3, 2003, 2:47 p.m.

Final Regulations

BOARD OF DENTISTRY

Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-10; adding 18 VAC 60-20-250 through 18 VAC 60-20-331).

Statutory Authority: §§ 54.1-2400, 54.1-2709.1, and 54.1-2709.2 of the Code of Virginia.

Effective Date: February 26, 2003.

Summary:

The Board of Dentistry has taken action to replace emergency regulations in compliance with Chapter 662 of the 2001 Acts of Assembly requiring the board to promulgate regulations establishing rules for the registration and profiling of oral and maxillofacial surgeons and for the certification of such persons to perform certain cosmetic procedures.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:26 VA.R. 3783-3789 September 9, 2002, without change; however, the forms have been amended as shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

NOTICE: The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, 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 Dentistry, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full Time Faculty License, and Temporary Permit ([~~eff. 11/98~~ rev. 12/02]).

Application for Licensure to Practice Dentistry ([~~eff. 3/98~~ rev. 12/02]).

Application for Restricted Volunteer Licensure to Practice Dentistry and Dental Hygiene (eff. 7/98).

Form A, Certification of Dental/Dental Hygiene School (rev. [~~3/98~~ 12/02]).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. 7/98).

Form B, Chronology (rev. [~~3/98~~ 12/02]).

Form C, Certification of Dental/Dental Hygiene Boards (rev. [~~3/98~~ 12/02]).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. [~~11/98~~ 12/02]).

Application for Licensure to Practice Dental Hygiene (rev. [~~3/98~~ 12/02]).

[*Instructions for Reinstatement* (rev. 12/02).]

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. [~~3/98~~ 12/02]).

[~~Expiration letter to licensee~~ (rev. 7/98).]

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application [(~~Active licensure~~), 0401 Dentist] (rev. [~~3/00~~ 12/02]).

Renewal Notice and Application [(~~Inactive licensure~~), 0402 Dental Hygienist] (rev. [~~3/00~~ 12/02]).

[*Renewal Notice and Application, 0438 Cosmetic Procedure Certification* (rev. 12/02).]

Renewal Notice and Application, 0439 Oral and Maxillofacial (rev. 12/02).]

Application for Certification to Perform Cosmetic Procedures (rev. [~~7/02~~ 12/02]).

Rhinoplasty/similar Procedures (rev. 7/02).

Blepharoplasty/similar Procedures (rev. 7/02).

Rhytidectomy/similar Procedures (rev. 7/02).

Submental liposuction/similar Procedures (rev. 7/02).

Browlift/either open or endoscopic technique/similar Procedures (rev. 7/02).

Otoplasty/similar Procedures (rev. 7/02).

Laser Resurfacing or Dermabrasion/similar Procedures (rev. 7/02).

Platysmal muscle plication/similar Procedures (rev. 7/02).

Application Review Worksheet (rev. 7/02).

Practitioner Questionnaire (rev. [~~7/02~~ 12/02]).

Oral and Maxillofacial Surgeon Registration of Practice (rev. [~~7/02~~ 12/02]).

VA.R. Doc. No. R02-55; Filed January 7, 2003, 11:43 a.m.

* * * * *

Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-20 and 18 VAC 60-20-30).

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

Effective Date: February 26, 2003.

Summary:

The amendments revise the fee schedule for the regulants of the Board of Dentistry. For example, the annual renewal fee for a dentist is increased from \$100 to \$150 and for a dental hygienist from \$40 to \$50. Although most other fees are increased correspondingly, some fees are reduced, for example, the application fee for licensure as a dental hygienist is reduced from \$160 to \$135 and the maximum reinstatement fees are reduced for dentists and dental hygienists.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

18 VAC 60-20-20. License renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license, a full-time faculty license, or a restricted volunteer license to practice dentistry or dental hygiene shall, on or before March 31, renew his license. Every person holding a teacher's license or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, renew his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be ~~\$100 for dentists~~ \$150, and ~~\$40 for dental hygienists~~ the fee for renewal of an active license or permit to practice or teach dental hygiene shall be \$50.

2. The fee for renewal of an inactive license shall be ~~\$65~~ \$75 for dentists and \$25 for dental hygienists.

3. The fee for renewal of a restricted volunteer license shall be \$15.

B. [~~Penalty Late~~] fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional [~~penalty late~~] fee of \$50 for dentists and ~~\$35~~ \$20 for dental hygienists. The board shall renew a license if the renewal form, renewal fee, and [~~penalty late~~] fee are received within ~~30 days~~ one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license of any person who does not return the completed renewal form and fees ~~within 30 days of~~ by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dentistry/dental hygiene shall be illegal.

~~Upon such expiration, the board shall immediately notify the affected person of the expiration and the reinstatement procedures.~~

1. Any person whose license has expired [*for more than one year and*] who wishes to reinstate such license shall submit to the board a reinstatement application, the renewal fee and the ~~penalty reinstatement~~ fee of ~~\$50~~ \$225 for dentists and ~~\$35~~ \$135 for dental hygienists ~~per month for each month or part of a month the license has been expired for a maximum amount of \$600 for dentists and \$420 for dental hygienists.~~

2. Practicing in Virginia with an expired license may subject the licensee to disciplinary action and additional fines by the board.

3. The executive director ~~shall~~ may reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18 VAC 60-20-170 to deny said reinstatement, and that the applicant has paid ~~all~~ the unpaid renewal fees fee, the reinstatement fee and any fines or assessments.

D. Reinstatement of a license previously revoked or indefinitely suspended. Any person whose license has been revoked shall submit to the board for its approval a reinstatement application and fee of \$750 for dentists and \$500 for dental hygienists. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of \$350 for dentists and \$250 for dental hygienists.

18 VAC 60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license, a license to teach dentistry, a *full-time faculty license*, or a temporary permit as a dentist shall be \$225.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be ~~\$460~~ \$135.

C. Duplicate wall certificate. Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of ~~\$45~~ \$25.

D. Duplicate license. Licensees desiring a duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of \$10. If a licensee maintains more than one office, a notarized photocopy of a license may be used.

E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of \$25 for each endorsement or certification.

F. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of ~~\$100~~ \$150.

G. Endorsement license. License by endorsement issued in accordance with 18 VAC 60-20-80 for dental hygienists shall be at a fee of ~~\$225~~ \$135.

Final Regulations

H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be \$25.

I. Returned check. The fee for a returned check shall be \$25.

NOTICE: The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, 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 Dentistry, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full Time Faculty License, and Temporary Permit (eff. 11/98 rev. [6/02 12/02]).

Application for Licensure to Practice Dentistry ([eff. 3/98 rev. 12/02]).

Outline and Explanation of Documentation Required for Volunteer Dental License (rev. 6/02).

Application for Restricted Volunteer Licensure to Practice Dentistry and Dental Hygiene (eff. 7/98).

Form A, Certification of Dental/Dental Hygiene School (rev. [3/98 12/02]).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. 7/98).

Form B, Chronology (rev. [3/98 12/02]).

Form C, Certification of Dental/Dental Hygiene Boards (rev. [3/98 12/02]).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. 11/98 [6/02 12/02]).

Application for Licensure to Practice Dental Hygiene (rev. [3/98 12/02]).

Instructions for Reinstatement (rev. [6/02 12/02]).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. [3/98 12/02]).

[Expiration letter to licensee (rev. 7/98).]

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application [(Active licensure), 0401 Dentist] (rev. [3/00 12/02]).

Renewal Notice and Application [(Inactive licensure), 0402 Dental Hygienist] (rev. [3/00 12/02]).

[Renewal Notice and Application, 0404 Dental Teacher (rev. 12/02).

Renewal Notice and Application, 0406 Dental Hygiene Teacher (rev. 12/02).

Renewal Notice and Application, 0411 Full-time Faculty (rev. 12/02).]

VA.R. Doc. No. R02-24; Filed January 7, 2003, 11:40 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: 18 VAC 65-30. Regulations for Preneed Funeral Planning (amending 18 VAC 65-30-10 and 18 VAC 65-30-80).

Statutory Authority: §§ 54.1-2400, 54.1-2803, and 54.1-2820 of the Code of Virginia.

Effective Date: February 26, 2003.

Summary:

The changes clarify the definition of two terms used in preneed funeral planning regulations and delete the requirement for preneed contracts to contain a contract number.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Funeral Directors and Embalmers, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:24 VA.R. 3231-3233 August 12, 2002, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R02-46; Filed January 7, 2003, 11:39 a.m.

Title of Regulation: 18 VAC 65-40. Resident Trainee Program for Funeral Service (amending 18 VAC 65-40-340).

Statutory Authority: §§ 54.1-2400 and Chapter 28 (§ 54.1-2800 et seq.) of the Code of Virginia.

Effective Date: February 26, 2003.

Summary:

The amendments require funeral service supervisors to provide training to resident trainees in making preneed funeral arrangements and instruction on rules related to preneed contracts and disclosures.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Funeral Directors and Embalmers, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-

9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

18 VAC 65-40-340. Supervisors' responsibilities.

A. The supervisor shall provide the trainee with all applicable laws and regulations or sections of regulations relating to the funeral industry.

B. The supervisor shall provide the trainee with copies of and instruction in the use of all forms and price lists employed by the funeral establishment.

C. The supervisor shall provide the trainee with instruction in all aspects of funeral services and shall allow the trainee under direct supervision to conduct all necessary arrangements for a minimum of 25 funerals.

D. The embalming supervisor shall provide instruction on all necessary precautions, embalming functions, and reporting forms and shall allow the trainee under direct supervision to perform a minimum of 25 embalmings.

E. The supervisor shall provide the trainee with [~~experience~~ instruction] in making preneed funeral arrangements and instruction on the laws and regulations pertaining to preneed funeral contracts and disclosures.

NOTICE: The forms used in administering 18 VAC 65-40, Resident Trainee Program for Funeral Service, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Board of Funeral Directors and Embalmers, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Resident Trainee Program (rev. [~~7~~] 4/ [~~98~~ 12/02]).

Application for [~~Resident Trainee Program Change of~~ Supervisor [: Resident Trainee Program] (rev. ~~7/1/98~~ [~~9/04~~ 12/02]).

Renewal Notice and Application, ~~C-46454~~ [0505 Funeral Trainees] (rev. ~~7/1/97~~ 2002).

VA.R. Doc. No. R02-47; Filed January 7, 2003, 11:40 a.m.

BOARD OF MEDICINE

Title of Regulation: 18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists (amending 18 VAC 85-110-10, 18 VAC 85-110-50, 18 VAC 85-110-60, 18 VAC 85-110-80, 18 VAC 85-110-150, 18 VAC 85-110-155, and 18 VAC 85-110-160; repealing 18 VAC 85-110-30 and 18 VAC 85-110-70).

Statutory Authority: §§ 54.1-2400 and 54.1-2956.9 of the Code of Virginia.

Effective Date: February 26, 2003.

Summary:

The amendments (i) require acupuncture programs in which applicants are enrolled on or after July 1, 1999, to be accredited by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM); (ii) establish educational requirements, which mirror the current educational requirements of the NCCAOM, for applicants enrolled in a program on or after July 1, 1999; (iii) change the licensure requirements for individuals who attend acupuncture school in a foreign country; (iv) remove the prohibition of part-time study of more than five years; (v) eliminate a requirement that individuals wishing to reactivate their inactive license provide information on any practice and licensure in other jurisdictions for the period in which the license was inactive; and (vi) make several clarifying changes.

Amendments to the proposed regulation clarify that the applicant trained in an unapproved educational program, whether foreign or U.S., must have a credential evaluation service verify that there is equivalency in education as required by the board.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:1 VA.R. 89-93 September 23, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out length; however, the changes from the proposed regulation are printed below.

18 VAC 85-110-10. [No change from proposed.]

18 VAC 85-110-30. [No change from proposed.]

18 VAC 85-110-50. [No change from proposed.]

18 VAC 85-110-60. Requirements of graduates of nonapproved educational programs in acupuncture.

A. An applicant who has completed an educational course of study in a school or college that is not approved or accredited by ACAOM or any other board-approved accrediting agency shall:

1. Submit ~~evidence of successful completion of not less than two years of acupuncture study~~ a transcript from his educational course of study in acupuncture to a [~~foreign~~] credential evaluation service approved by the board to determine equivalency in education and training to that required [~~for certification by the NCCAOM in 18 VAC 85-110-50~~].

2. Have not less than four years of practice in the previous seven years as a licensed acupuncturist in another jurisdiction without evidence of disciplinary action.

Final Regulations

3. 2. Meet the examination requirements as prescribed in 18 VAC 85-110-80 and 18 VAC 85-110-90.

B. All documents submitted to the board which are not in English must be translated into English and certified by the embassy of the issuing government.

18 VAC 85-110-70 through 18 VAC 85-110-160. [No change from proposed.]

NOTICE: The forms used in administering 18 VAC 85-110, Regulations Governing the Practice of Licensed Acupuncturists, are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Board of Medicine, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

[Instructions for Completing the Application for Licensed Acupuncturist, ~~American Graduates~~ for Graduates of Approved Institutions (rev. ~~8/99~~ 12/02).

Instructions for Completing the Application for Licensed Acupuncturist, ~~Non-American Graduates~~ for Graduates of Nonapproved Educational Programs (rev. ~~8/99~~ 12/02).

Application for a License to Practice as an Acupuncturist (rev. ~~7/98~~ 12/02).

Form #A, Claims History Sheet (rev. ~~4/98~~ 12/02).

Form #B, Activity Questionnaire (rev. ~~4/98~~ 12/02).

Form #C, Clearance from Other State Boards (rev. ~~4/98~~ 12/02).

Form #L, Certification of Professional Education (rev. 12/02).

Verification of NCCAOM Certification (rev. ~~7/98~~ 12/02).

Renewal Notice and Application, 0121 (rev. ~~2/00~~ 12/02).

Recommendation for Examination by a Physician (eff. 12/01).]

VA.R. Doc. No. R02-141; Filed January 7, 2003, 11:44 a.m.

BOARD OF PHARMACY

Title of Regulation: 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-20 and 18 VAC 110-20-270; adding 18 VAC 110-20-101 through 18 VAC 110-20-106, and 18 VAC 110-20-111).

Statutory Authority: §§ 54.1-2400, 54.1-3321, and 54.1-3322 of the Code of Virginia.

Effective Date: February 26, 2003.

Summary:

The amendments add miscellaneous licensing fees for pharmacy technicians. Other amendments establish criteria for the training program, examination and evidence of continued competency for registration of technicians. Further, amendments specify that current certification from

the Pharmacy Technician Certification Board qualifies a person for registration.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9114 or e-mail scotti.russell@dhp.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:26 VA.R. 3789-3797 September 9, 2002. The following text for 18 VAC 110-20-20 and the list of forms reflect amendments published in 19:4 689-691 November 4, 2002, which became effective December 4, 2002. Pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

18 VAC 110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Fee for initial pharmacist licensure.

1. The application fee for a pharmacist license shall be \$180.

2. The fees for taking all required examinations shall be paid directly to the examination service as specified by the board.

3. The application fee for a person whose license has been revoked or suspended indefinitely shall be \$500.

C. Renewal of pharmacist license.

1. The annual fee for renewal of an active pharmacist license shall be \$90.

2. The annual fee for renewal of an inactive pharmacist license shall be \$45.

3. If a pharmacist fails to renew his license within the Commonwealth by the renewal date, he must pay the back renewal fee and a \$30 late fee within 60 days of expiration.

4. Failure to renew a pharmacist license within 60 days following expiration shall cause the license to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of \$70.

D. Other licenses, permits or facility registrations.

1. The following fees shall be required upon submission of a new facility application, change of ownership of an existing facility, or annual renewal:

a. Pharmacy permit	\$270
b. Permitted physician to dispense drugs	\$270
c. Nonrestricted manufacturing permit	\$270
d. Restricted manufacturing permit	\$180

e. Wholesale distributor license	\$270
f. Warehouser permit	\$270
g. Medical equipment supplier permit	\$180
h. Licensed humane society permit	\$20
i. Nonresident pharmacy	\$270
j. Nonresident wholesale distributor	\$270

2. The following fees shall be required for facility changes:

a. Application for a change of the pharmacist-in-charge	\$50
b. Application for a change of location or a remodeling which requires an inspection	\$150

3. The following fees shall be required for late renewals or reinstatement.

a. If a facility fails to renew a required license, permit or registration prior to the expiration date, a late fee shall be assessed as follows:

(1) For a resident or nonresident pharmacy, permitted physician, nonrestricted manufacturer, resident or nonresident wholesale distributor, or warehouser, the late fee shall be \$90.

(2) For a restricted manufacturer or medical equipment supplier, the late fee shall be \$60.

b. If a required license, permit or facility registration is not renewed within 60 days after its expiration, the license or permit shall lapse, and continued practice or operation of business with a lapsed license or permit shall be illegal. Thereafter, reinstatement shall be at the discretion of the board upon submission of an application accompanied by all unpaid renewal fees and a delinquent fee of \$150.

E. Controlled substances registration.

1. The application and annual fee for a controlled substances registration as required by § 54.1-3422 of the Code of Virginia shall be \$90.

2. If a registration is not renewed within 60 days of the expiration date, the back renewal fee and a \$30 late fee shall be paid prior to renewal.

3. If a controlled substance registration has been allowed to lapse for more than 60 days, all back renewal fees and a \$35 delinquent fee must be paid before a current registration will be issued. Engaging in activities requiring a controlled substance registration without holding a current registration is illegal and may subject the registrant to disciplinary action by the board. Reinstatement of a lapsed registration is at the discretion of the board and may be granted by the executive director of the board upon completion of an application and payment of all fees.

F. Other fees.

1. A request for a duplicate wall certificate shall be accompanied by a fee of \$25.

2. The fee for a returned check shall be \$25.

3. The fee for board approval of an individual CE program is \$100.

4. The fee for board approval of a robotic pharmacy system shall be \$150.

5. The fee for a board-required inspection of a robotic pharmacy system shall be \$150.

G. Approval of new process or procedure in pharmacy.

1. The fee for filing an application for board review of a new process, procedure or pilot project in pharmacy pursuant to § 54.1-3407.2 of the Code of Virginia shall be \$250. The initial application shall specify each pharmacy location in which the pilot is to be implemented.

2. The fee for an inspection of a pilot process or procedure, if required by the informal conference committee, shall be \$150 per location.

3. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall be paid by the applicant.

4. The fee for a change in the name of the pharmacist responsible for the pilot program shall be \$25.

5. Continued approval.

a. In the initial order granting approval, the informal conference committee shall also set an approval period with a schedule for submission of reports and outcome data. The frequency for submission of required reports shall not exceed four times per year.

b. The committee shall determine the appropriate fee for continued approval, which shall be based on the requirements for review and monitoring but which shall not exceed \$200 per approval period.

H. Pharmacy technicians.

1. *The application fee for initial registration as a pharmacy technician is \$25.*

2. *The application fee for a person whose registration has been suspended or revoked is \$125.*

3. *The annual fee for renewal of a pharmacy technician registration is \$25.*

4. *If a pharmacy technician fails to renew his registration within the Commonwealth by the renewal date, he must pay the back renewal fee and a \$10 late fee within 60 days of expiration.*

5. *Failure to renew a pharmacy technician registration within 60 days following expiration shall cause the registration to lapse and shall require the submission of a reinstatement application, payment of all unpaid renewal fees, and a delinquent fee of \$25.*

6. *The application fee for approval of a training program for pharmacy technicians shall be \$150.*

Final Regulations

*PART III.
REQUIREMENTS FOR PHARMACY TECHNICIAN
REGISTRATION.*

18 VAC 110-20-101 through 18 VAC 110-20-111. [No change from proposed.]

NOTICE: The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Board of Pharmacy, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Application for Registration as a Pharmacy Intern (rev. [~~42/98~~ 12/02]).

Affidavit of Practical Experience, Pharmacy Intern (rev. [~~42/98~~ 12/02]).

Application for Licensure as a Pharmacist by Examination (rev. 10/02).

Application to Reactivate Pharmacist License (rev. 10/02).

Application for Approval of a Continuing Education Program (rev. [~~3/99~~ 11/02]).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. [~~40/00~~ 11/02]).

Application for License to Dispense Drugs (permitted physician) (rev. 10/02).

Application for a Pharmacy Permit (rev. 10/02).

Application for a Nonresident Pharmacy Registration (rev. 10/02).

Application for a Permit as a Medical Equipment Supplier (rev. 10/02).

Application for a Permit as a Restricted Manufacturer (rev. 10/02).

Application for a Permit as a Nonrestricted Manufacturer (rev. 10/02).

Application for a Permit as a Warehouseman (rev. 10/02).

Application for a License as a Wholesale Distributor (rev. 10/02).

Application for a Nonresident Wholesale Distributor Registration (rev. 10/02).

Application for a Controlled Substances Registration Certificate (rev. 10/02).

[~~License~~] Renewal Notice and Application [~~for Facilities,~~ 0201 Pharmacist] (rev. [~~44/00~~ 12/02]).

[~~License~~] Renewal Notice and Application [~~for Pharmacist,~~ 0202 Pharmacist] (rev. [~~44/00~~ 12/02]).

[~~Renewal Notice and Application, 0205 Permitted Physician~~ (rev. 12/02).

~~Renewal Notice and Application, 0206 Medical Equipment Supplier~~ (rev. 12/02).

~~Renewal Notice and Application, 0207 Restricted Manufacturer~~ (rev. 12/02).

~~Renewal Notice and Application, 0208 Non-Restricted Manufacturer~~ (rev. 12/02).

~~Renewal Notice and Application, 0209 Humane Society~~ (rev. 12/02).

~~Renewal Notice and Application, 0214 Non-Resident Pharmacy~~ (rev. 12/02).

~~Renewal Notice and Application, 0215 Wholesale Distributor~~ (rev. 12/02).

~~Renewal Notice and Application, 0216 Warehouseman~~ (rev. 12/02).

~~Renewal Notice and Application, 0219 Non-Resident Wholesale Distributor~~ (rev. 12/02).

~~Renewal Notice and Application, 0220 Business CSR~~ (rev. 12/02).

~~Renewal Notice and Application, 0228 Practitioner CSR~~ (rev. 12/02).

Application to Reinstate a Pharmacist License (rev. [~~40/02~~ 11/02]).

Application for a Permit as a Humane Society (rev. 10/02).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. [~~42/98~~ 11/02]).

Closing of a Pharmacy (rev. [~~3/99~~ 11/02]).

Application for Approval of a Robotic Pharmacy System ([~~8/00~~ rev. 11/02]).

Notice of Inspection Fee Due for Approval of Robotic Pharmacy System ([~~8/00~~ rev. 11/02]).

Application for Approval of an Innovative (Pilot) Program ([~~eff. 1/04~~ rev. 11/02]).

~~Application for Registration as a Pharmacy Technician~~ ([~~8/02~~ 12/02]).

~~Application for Approval of a Pharmacy Technician Training Program~~ ([~~8/02~~ 12/02]).

VA.R. Doc. No. R02-7; Filed January 7, 2003, 11:41 a.m.

BOARD OF COUNSELING

Title of Regulation: 18 VAC 115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (adding 18 VAC 115-60-55).

Statutory Authority: §§ 54.1-2400 and 54.1-3508 of the Code of Virginia.

Effective Date: February 26, 2003.

Summary:

The amendments provide for a one-year waiver of the licensure requirements in the current regulations for individuals who hold certain combinations of education and work experience in substance abuse. This is in compliance with a statutory mandate that the board provide for a time period of not less than one year whereby individuals who possess qualifications, education or experience acceptable to the board will be granted the license.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Ben Foster, Deputy Executive Director, Board of Counseling, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-7250, or e-mail ben.foster@dhp.state.va.us.

18 VAC 115-60-55. Time-limited waiver of certain licensure requirements.

Until [~~insert date for one year following effective date of regulation~~] February 26, 2004, individuals who do not meet the licensure requirements set forth in 18 VAC 115-60-50 and 18 VAC 115-60-60 through 18 VAC 115-60-90 may be eligible for licensure if they submit a completed application [7 and] processing fee [7] and provide evidence that they meet the following criteria:

[~~1. A current Virginia board certification as a substance abuse counselor in good standing;~~

~~2. 1.] A passing score on a board-approved examination;~~

[~~3. 2. A minimum of three] comprehensive reports from [a minimum of three:~~

a. At least two] licensed mental health professionals, [~~of which~~] one [of whom] must be licensed in Virginia, that affirm competence in all areas outlined in 18 VAC 115-60-80 C 1 and attest to the applicant's ability to practice autonomously; and

[b. One or more clinical supervisors who have provided supervision, as defined in 18 VAC 115-60-10, of the applicant for a total of one year within the applicant's most recent five years of practice. If supervision was provided in an exempt setting, the report may be submitted by an unlicensed mental health professional; and]

[~~4. 3.] One of the following:~~

a. Five years full-time experience in substance abuse treatment plus a master's degree in a mental health field from a regionally accredited institution of higher learning with a total of 36 graduate hours covering mental health content to include three graduate semester hours or 4.5 graduate quarter hours in each area of the following:

- (1) Counseling and psychotherapy techniques;
- (2) Appraisal, evaluation and diagnostic procedures;
- (3) Abnormal behavior and psychopathology;
- (4) Group counseling and psychotherapy, theories and techniques; and
- (5) Research.

The remaining graduate semester hours shall include content in the following areas:

- (1) Assessment, appraisal, evaluation and diagnosis specific to substance abuse;
- (2) Treatment planning models, client case management, interventions and treatments to include relapse prevention, referral process, step models and documentation process;
- (3) Understanding addictions: The biochemical, socio-cultural and psychological factors of substance use and abuse;
- (4) Addictions and special populations, including, but not limited to, adolescents, women, ethnic groups and the elderly; and
- (5) Client and community education; or

b. Ten years full-time experience in substance abuse treatment plus a bachelor's degree from a regionally accredited institution of higher learning, plus 30 graduate hours covering mental health content to include three graduate semester hours or 4.5 graduate quarter hours in each area of the following:

- (1) Counseling and psychotherapy techniques;
- (2) Appraisal, evaluation and diagnostic procedures;
- (3) Abnormal behavior and psychopathology;
- (4) Group counseling and psychotherapy, theories and techniques; and
- (5) Research.

The remaining graduate hours shall include content in the following areas:

- (1) Assessment, appraisal, evaluation and diagnosis specific to substance abuse;
- (2) Treatment planning models, client case management, interventions and treatments to include relapse prevention, referral process, step models and documentation process;
- (3) Understanding addictions: the biochemical, socio-cultural and psychological factors of substance use and abuse;

Final Regulations

(4) Addictions and special populations, including, but not limited to, adolescents, women, ethnic groups and the elderly; and

(5) Client and community education.

VA.R. Doc. No. R01-34; Filed January 8, 2003, 11:36 a.m.

BOARD OF PSYCHOLOGY

Title of Regulation: **18 VAC 125-20. Regulations Governing the Practice of Psychology (amending 18 VAC 125-20-30, 18 VAC 125-20-120, 18 VAC 125-20-121, and 18 VAC 125-20-130).**

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

Effective Date: February 26, 2003.

Summary:

Amendments to the regulation increase certain fees for the regulants of the board, including clinical psychologists, applied psychologists, school psychologists and school psychologists-limited, as necessary to provide sufficient funding for the licensing and disciplinary functions of the board. The renewal fee for clinical psychologists, applied psychologists, and school psychologists increases from \$225 each biennium to \$140 per year and for a school psychologist-limited from \$100 biennially to \$70 annually. There is also a one-time debt-reduction fee in 2003 to reduce the deficit so the board can begin to bring its revenue and expenditures into balance.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 18:26 VA.R. 3797-3800 September 9, 2002, with the additional changes shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out at length; however, the changes from the proposed regulation are printed below.

18 VAC 125-20-30 through 18 VAC 125-20-130. [No change from proposed.]

NOTICE: The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, are not being published due to the number of pages; however, the name of each form is listed below. The forms are available for public inspection at the Board of Pharmacy, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

[*Instructions for Virginia Board of Psychology Application for Licensure by Examination (rev. 1/03).*

Instructions for Virginia Board of Psychology Application of Licensure by Endorsement (rev. 1/03).

NOTICE: The forms used in administering 18 VAC 115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners, are not being published due to the number of pages; 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, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

[Substance Abuse Treatment Practitioner Licensure Application, **SATPAPP Form 1** (rev. 4/04 1/03).

General Information for Licensure as a Substance Abuse Treatment Practitioner (eff. 1/03).

Verification of Competency for Independent Practice of Substance Abuse Treatment (TLW) (eff. 1/03).

Licensure/Certification Verification of Applicant, **SATPAPP Form 2** (~~eff. 8/99~~ rev. 1/03).

Verification of Supervision for Substance Abuse Treatment Practitioner License Licensure, **SATPAPP Form 3** (~~eff. 8/99~~ rev. 1/03).

Supervisor's Experience and Education, **SATPAPP Form 3A** (~~eff. 8/99~~ rev. 1/03).

Licensure Verification of Out-of-State Supervisor, **SATPAPP Form 4** (~~eff. 8/99~~ rev. 1/03).

Courses Outline Form for Substance Abuse Treatment Practitioner Licensure, **SATPAPP Form 5** (~~eff. 8/99~~ rev. 1/03).

Verification of Internship, **SATPAPP Form 6** (~~eff. 8/99~~ rev. 1/03).

Verification of Internship Hours Toward the Residency, **SATPAPP Form 7** (~~eff. 8/99~~ rev. 1/03).

Registration of Supervision for Substance Abuse Treatment Practitioner Licensure, **SATPREG Form A** (rev. 4/04 1/03).

~~Licensure Verification of Out-of-State Supervisor, **SATPREG B** (eff. 8/99).~~

Quarterly Evaluation Form, **SATPREG Form C** (~~eff. 8/99~~ rev. 1/03).

Supervision Outline Form for Substance Abuse Treatment Practitioner Endorsement Applicants, **SATPAPP8 Form 8** (~~eff. 4/99~~ rev. 1/03).

Renewal Notice and Application (rev. 4/04 1/03).

Substance Abuse Treatment Practitioner Application for Reinstatement of a Lapsed License, **SATPREIN** (~~eff. 4/04~~ rev. 1/03).

Substance Abuse Treatment Practitioner Application for Reinstatement Following Disciplinary Action, **SATPREDISC** (~~eff. 4/04~~ rev. 1/03).]

Psychologist Application for Licensure by Examination, ~~PSYEX4~~ Form 1 (rev. ~~2/00~~ 1/03).

Application for Licensure as a School Psychologist-Limited, ~~SCHLTD4~~ (eff. ~~8/00~~ rev. 1/03).

Employment Verification Form, ~~SCHLTD2~~ (eff. ~~8/00~~ rev. 1/03).

Registration of Residency - Post-Graduate Degree Supervised Experience, ~~PSY2~~ Form 2 (rev. ~~2/00~~ 1/03).

Psychologist Application for Licensure by Endorsement, ~~PSYEN4~~ Form 1 (rev. ~~2/00~~ 1/03).

Psychologist Application for Reinstatement of a Lapsed License, ~~PSYREIN~~ (eff. ~~2/00~~ rev. 1/03).

Psychologist Application for Reinstatement Following Disciplinary Action, ~~PSYREDISC~~ (eff. ~~2/00~~ rev. 1/03).

Verification of Post-Degree Supervision, ~~PSY3~~ Form 3 (rev. ~~6/99~~ 1/03).

Internship Verification, ~~PSY4~~ Form 4 (rev. ~~6/99~~ 1/03).

Licensure/Certification Verification, ~~PSY5~~ Form 5 (rev. ~~6/99~~ 1/03).

Areas of Graduate Study, ~~PSY6~~ Form 6 (rev. ~~6/99~~ 1/03).

Renewal Notice and Application, 0803, 0810, 0811 (rev. ~~4/04~~ 1/03).

Renewal Notice and Application, 0814 (rev. 1/03).]

V.A.R. Doc. No. R02-25; Filed January 8, 2003, 11:35 a.m.

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TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with (i) § 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, and (ii) § 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 Department of State Police will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 19 VAC 30-20. Motor Carrier Safety Regulations (amending 19 VAC 30-20-10, 19 VAC 30-20-50, and 19 VAC 30-20-80).

Statutory Authority: § 52-8.4 of the Code of Virginia.

Effective Date: March 1, 2003.

Summary:

Amendment 12 (i) incorporates by reference changes made by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, to 49 CFR Parts 390 through 397 promulgated and in effect as of January 2, 2003; (ii) conforms the definition of "commercial motor vehicle" with the definition as enacted by Chapter 828 of the 2002 Acts of Assembly; and (iii) updates the name of the Federal Highway Administration, Office of Motor Carriers, to Federal Motor Carrier Safety Administration.

The amendments to the federal regulations are as follows:

1. Amend 49 CFR Parts 390, 391, 392, 393, 395, 396, 397 and Appendix G to make technical corrections to various rules containing outdated references to organization structure, contacts, and addresses. It removes obsolete and unnecessary references and makes minor editorial corrections. This action updates the regulations to reflect the formation of the Federal Motor Carrier Safety Administration and its current processes and requirements but does not make substantive changes to the affected rules.

2. Amend 49 CFR Part 390 to require all interstate motor carriers to file a new MCS-150 every 24 months.

3. Amend the definition of driving a commercial motor vehicle while under the influence of alcohol in 49 CFR Part 390 as mandated by Congress in the Motor Carrier Safety Improvement Act of 1999.

4. Amend 49 CFR Part 392 to require that a motor carrier subject to the registration requirements under 49 USC § 13902 may not operate a motor vehicle in interstate commerce unless it has registered with the Federal Motor Carrier Safety Administration nor operate beyond the scope of their registration. It permits the placing out-of-service of carriers found to be violating these regulations.

5. Amend 49 CFR Part 393 to establish pass/fail criteria for use with performance-based brake testers, which measure brake performance of commercial motor vehicles.

6. Amend 49 CFR Part 393 denying petitions to continue overloading beyond the rating of tires on manufactured homes. Motor carriers are prohibited from transporting manufactured homes built on or after January 1, 2002, in commerce on overloaded tires.

7. Amend 49 CFR Parts 392 and 393 by revising regulations concerning protection against shifting and falling cargo for commercial motor vehicles in commerce. The new rules require motor carriers to change the way they use cargo securement devices to prevent articles from shifting on or within, or falling from, commercial motor vehicles. The rule generally does not prohibit the use of tie-downs or cargo securement devices currently in use; therefore, motor carriers are not required to purchase new cargo securement equipment to comply. The purpose of this revision is to reduce accidents caused by shifting or falling cargo and harmonize U.S., Canadian, and Mexican cargo securement regulations.

Final Regulations

8. Amend 49 CFR Part 397 to eliminate an outdated requirement for certain motor vehicle operators to stop periodically to check their tires. This will enhance the security of hazardous materials shipments.

Agency Contact: Lieutenant Herbert B. Bridges, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3489, FAX (804) 378-3487 or e-mail mcsu@vsp.state.va.us.

19 VAC 30-20-10. Definitions.

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

"Commercial motor vehicle" means any self-propelled or towed vehicle used on the highways in commerce to transport passengers or property if such vehicle (i) has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight, whichever is greater, of more than 10,000 pounds when operated interstate or more than 26,000 pounds when operated intrastate; (ii) is designed or used to transport more than 15 passengers, including the driver, regardless of weight; or (iii) is used to transport hazardous materials in a quantity requiring placards by regulations issued under authority of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

"Commissioner" means the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Motor carrier" means a common carrier by motor vehicle, a contract carrier by motor vehicle or a private carrier of property or passengers by motor vehicle. This term also encompasses any agent, officer, representative or employee who is responsible for hiring, supervision, training, assignment or dispatching of drivers.

"Planting and harvesting season" means January 1 to December 31 of each calendar year as it relates to these regulations only.

"Safety inspections" means the detailed examination of a vehicle for compliance with safety regulations promulgated under § 52-8.4 of the Code of Virginia and includes a determination of the qualifications of the driver and his hours of service.

"Superintendent" means the Superintendent of the Department of State Police of the Commonwealth of Virginia.

"Transport vehicle" means any vehicle owned or leased by a motor carrier used in the transportation of goods or persons.

19 VAC 30-20-50. Enforcement.

The Department of State Police, together with all other law-enforcement officers certified to perform vehicle safety inspections as defined by § 46.2-1001 of the Code of Virginia who have satisfactorily completed 40 hours of on-the-job training and a course of instruction as prescribed by the U.S. Department of Transportation, Federal Highway Motor Carrier Safety Administration, ~~Office of Motor Carriers~~, in federal motor carrier safety regulations, safety inspection procedures, and out-of-service criteria shall enforce the regulations and

other requirements promulgated pursuant to § 52-8.4 of the Code of Virginia. Those law-enforcement officers certified to enforce the regulations and other requirements promulgated pursuant to § 52-8.4 shall annually receive in-service training in current federal motor carrier safety regulations, safety inspection procedures, and out-of-service criteria.

19 VAC 30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of January 2, 2004 2003, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 390 through 397, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

VA.R. Doc. No. R03-107; Filed January 6, 2003, 1:41 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22 VAC 40-680. Virginia Energy Assistance Program -- Low Income Home Energy Assistance Program (LIHEAP) (amending 22 VAC 40-680-20; adding 22 VAC 40-680-63 and 22 VAC 40-680-67).

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

Effective Date: February 26, 2003.

Summary:

The amendments allow flexibility in adjusting the maximum eligibility income limit for applicants, establish a cooling assistance component within the Virginia Energy Assistance Program, and require mandatory participation in the cooling assistance component by all local departments.

One substantive change is made to the proposed regulation. The eligibility criterion for alien status is changed to comply with changes in the federal law.

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: Margaret Friedenberg, Energy Assistance Program Manager, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1728, FAX (804) 692-1469, or e-mail mjf900@dcse.ss.state.va.us.

CHAPTER 680.
VIRGINIA ENERGY ASSISTANCE PROGRAM -- LOW
INCOME HOME ENERGY ASSISTANCE PROGRAM
(LIHEAP).

PART II.
FUEL ASSISTANCE.

22 VAC 40-680-20. Eligibility criteria.

A. The purpose of the fuel assistance component is to provide heating assistance to eligible households to offset the costs of home heating energy that are excessive in relation to household income.

B. Eligibility criteria ~~is~~ are set out in this subsection.

1. Income limits. Maximum income limits shall ~~be at or below 130% of the poverty guidelines not exceed the maximum allowed by federal law.~~ In order to be eligible for fuel assistance, a household's income must be at or below the maximum income limits.

2. Alien status. ~~[Any alien who has obtained the status of an alien lawfully admitted for temporary residence is ineligible for a period of five years from the date such status was obtained. This shall not apply to a Cuban or Haitian entrant or to an alien who is an aged, blind or disabled individual. An alien who meets a qualified status as defined by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, regardless of when he entered the United States, is eligible to receive assistance and services under the Low Income Home Energy Assistance Program (LIHEAP) if he meets other program requirements.]~~

3. Ineligible households. The households that are ineligible to receive fuel assistance are:

- a. Subsidized households whose total heating costs are included in their rent.
- b. Persons living in institutions.
- c. Persons living in temporary shelters or group homes who have no heating expense or who pay a nominal fee to live there.
- d. Persons who reside in only one room within a larger dwelling.
- e. Subsidized households who are responsible for payment of individual excess fuel usage charges even though heating expenses are included in their rent.

PART IV.
COOLING ASSISTANCE.

22 VAC 40-680-63. Eligibility criteria; benefits.

A. The purpose of the cooling assistance component is to assist low-income households with their cooling needs when other resources cannot meet those needs. Assistance provided through the program must continue or provide cooling services.

B. In order to be eligible for cooling assistance, a household shall:

- 1. Meet all of the fuel assistance criteria as set forth in 22 VAC 40-680-20;
- 2. Have at least one vulnerable household member as set forth in 22 VAC 40-680-10;
- 3. Be unable to meet the emergency requirements through applicant or community resources; and
- 4. Not have received the cooling assistance maximum benefit during the current year.

C. The benefit amount for each type of assistance offered is the average cost as determined by a statewide survey and the availability of federal block grant funding. Various types of assistance, contingent upon funds available, [shall may] be provided.

22 VAC 40-680-67. Application period.

Cooling assistance will be offered when sufficient federal funding is available. The application period shall begin on June 15 and end no later than August 15 unless funds are depleted earlier. Applications shall be accepted by all local departments.

PART V.
ADMINISTRATIVE COSTS.

VA.R. Doc. No. R02-3; Filed January 8, 2003, 9:59 a.m.

Title of Regulation: 22 VAC 40-700. Child Protective Services Central Registry Information (amending 22 VAC 40-700-10 and 22 VAC 40-700-30).

Statutory Authority: §§ 63.2-217 and 63.2-1515 of the Code of Virginia.

Effective Date: February 26, 2003.

Summary:

The amendments change the definitions of "founded" and "central registry" making them consistent with other Child Protective Services regulations, delete the definition of "reason to suspect," and delete the requirement that identifying information in reports of child abuse be maintained in the central registry for one year past the date of complaints determined by the investigating agency to be reason to suspect.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Agency Contact: Jesslyn Cobb, Program Specialist, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1255, FAX (804) 225-2215 or e-mail jqc900@email1.dss.state.va.us.

22 VAC 40-700-10. Definitions.

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

"Central registry" means [a subset of the child abuse and neglect information system and is] the name index [with

Final Regulations

~~identifying information] of individuals [involved in 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 [Virginia Department of Social Services department].~~

"Child protective services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, or providing social casework and other services for the child, his family, and the alleged abuser.

"Complaint" means a valid report of suspected child abuse or neglect which shall be investigated by the local department of social services.

"Founded" means that a review of all the facts shows ~~clear and convincing by a preponderance of the evidence~~ that child abuse or neglect has occurred.

"Identifying information" means name, race, sex, and date of birth of the subject.

"Investigating agency" means the local department of social services responsible for conducting investigations of child abuse or neglect complaints pursuant to ~~§ 63.1-248.6~~ 63.2-1503 of the Code of Virginia.

~~"Reason to suspect" means that a review of the facts shows no clear and convincing evidence that child abuse and neglect has occurred. However, the situation gives the worker reason to believe that abuse or neglect has occurred.~~

"Unfounded" means that a review of the facts shows no reason to believe that abuse or neglect occurred.

22 VAC 40-700-30. Maintenance of identifying information.

Identifying information in reports of child abuse and neglect shall be maintained in the central registry as follows:

1. Eighteen years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 1.
2. Seven years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 2.
3. Three years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 3.
- ~~4. One year past the date of the complaint for all complaints determined by the investigating agency to be reason to suspect.~~

If an individual is involved in more than one complaint, the information from all complaints will be maintained until the last deletion date has been reached.

VA.R. Doc. No. R02-147; Filed January 8, 2003, 9:58 a.m.



EMERGENCY REGULATIONS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: 6 VAC 20-210. Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries (adding 6 VAC 20-210-10 through 6 VAC 20-210-110).

Statutory Authority: §§ 9.1-102, 19.2-310.2:1, and 19.2-310.3:1 of the Code of Virginia.

Effective Dates: January 7, 2003, through January 6, 2004.

Preamble:

This emergency regulation is necessary because without it an imminent threat to public safety would exist. Sections 19.2-310.2:1 and 19.2-310.3:1 of the Code of Virginia require the Department of Criminal Justice Services, Division of Forensic Science, to adopt regulations for their implementation. These regulations are in the process of being promulgated under the Administrative Process Act; however, in the interim, an emergency regulation must be adopted to provide instruction as to when a DNA sample may be collected, how the samples will be collected, and who is responsible for collecting the samples. Without this emergency regulation, the law will not be properly implemented and many samples required to be collected from arrested persons will not be collected, the DNA profiles from arrested persons will not be searched against the DNA Data Bank, and individuals will be released from custody without having been linked to unsolved crimes. Thus, public safety will be directly and imminently threatened without promulgation of this emergency regulation.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-8003, FAX (804) 786-0410 or e-mail jkirkendall@dcjs.state.va.us.

CHAPTER 210.

REGULATIONS FOR THE IMPLEMENTATION OF THE LAW PERMITTING DNA ANALYSIS UPON ARREST FOR ALL VIOLENT FELONIES AND CERTAIN BURGLARIES.

PART I.

DEFINITIONS AND GENERAL PROVISIONS.

6 VAC 20-210-10. Definitions.

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

"Arrestee" means a person arrested for a qualifying offense under Virginia Code § 19.2-310.2:1.

"Buccal sample" means a sample taken by swabbing the cheek inside an arrestee's mouth.

"Buccal sample kit" means a kit specified by the Division for the collection of buccal cell samples.

"CCRE" means the Central Criminal Records Exchange operated by the Virginia State Police.

"Chief law enforcement officer(s)" means the Sheriff and any appointed chief of police for any city or county in the Commonwealth.

"Clerk" means the clerk of court of any general district, juvenile and domestic relations or circuit court in the Commonwealth, and includes deputy clerks.

"Data Bank" means the database of DNA profiles from biological samples maintained by the Division for convicted felons and arrestees.

"Division" means the Division of Forensic Science, Department of Criminal Justice Services.

"DNA" means deoxyribonucleic acid.

"DNA analysis" means analysis conducted on saliva or tissue samples to obtain a genetic profile of identification characteristics.

"DNA sample" means a biological sample taken for DNA analysis.

"DNA sample tracking application" means an application that can be queried to determine whether an arrestee has a sample in the Data Bank.

"Document control number" means the number that is pre-printed on the fingerprint card (CCRE arrest forms SP179 and SP180) or assigned by Live-Scan.

"LIDS" means the Local Inmate Data System administered by the State Compensation Board.

"Magistrate" means a judicial or quasi-judicial officer authorized to issue arrest warrants, commit arrested persons to jail or admit them to bail.

"Qualifying offense" means an offense requiring a saliva or tissue sample to be taken upon arrest as described in Virginia Code § 19.2-310.2:1.

6 VAC 20-210-20. Substantial compliance.

These regulations and the procedures set forth herein relating to the taking, handling and identification of saliva or tissue samples, and the completion or filing of any form or record prescribed by these regulations, are procedural in nature and not substantive. Substantial compliance therewith shall be deemed sufficient.

PART II.

QUALIFYING OFFENSE WARRANTS.

6 VAC 20-210-30. Qualifying Offense Warrants.

All warrants for qualifying offenses shall contain the following language: "Take buccal sample if LIDS shows no DNA sample in Data Bank."

Emergency Regulations

PART III.
DNA SAMPLE TRACKING APPLICATION.

6 VAC 20-210-40. Use of LIDS.

An Internet accessible DNA sample tracking application, developed by the State Compensation Board through LIDS, shall be accessible through the State Compensation Board's website at www.scb.state.va.us. Access to the DNA sample tracking application shall be located under the website's "Restricted Access" section. User identifications and passwords shall be assigned to all law enforcement agencies responsible for taking saliva or tissue samples from arrestees.

6 VAC 20-210-50. Screening for Duplicates.

Prior to taking the saliva or tissue sample, the LIDS DNA sample tracking application, or any such other DNA sample tracking application approved by the Division and permitted by the Code of Virginia, shall be queried to determine if there is a DNA sample already in the Data Bank for the arrestee. If the DNA sample tracking application indicates that a sample previously has been taken from the arrestee, no additional sample shall be taken. If the DNA sample tracking application indicates no sample has been taken from the arrestee, a saliva or tissue sample shall be taken in accordance with the procedures outlined in this Chapter.

PART IV.
PROCEDURES FOR TAKING SALIVA OR TISSUE SAMPLE.

6 VAC 20-210-60. Designated place for taking samples.

The chief magistrate for each jurisdiction shall coordinate with the chief law enforcement officer(s) in the jurisdiction to designate the place(s) where saliva and tissue samples are to be taken when persons are arrested for qualifying offenses. The samples shall be collected during booking by the sheriff's office, police department or regional jail responsible for booking upon arrest.

6 VAC 20-210-70. Buccal sample kits.

Saliva and tissue samples shall be collected using buccal sample kits specified by the Division. Each buccal sample kit shall contain a submission form, at least one buccal sample collection device and instructions on the procedure for using the device. These instructions shall be followed when collecting the buccal samples.

6 VAC 20-210-80. When buccal sample kits are unavailable.

In circumstances where a buccal sample kit is unavailable, the Division may accept samples collected without using the buccal sample collection devices contained in the buccal sample kits. These samples shall be collected through the use of sterile swabs and satisfy the sealing and labeling requirements of 6 VAC 20-210-90.

6 VAC 20-210-90. Sealing and labeling samples.

All saliva and tissue samples collected shall be placed in sealed, tamper resistant containers. Samples shall be submitted with the following identifying information: the arrestee's name, social security number, date of birth, race and gender; the name of the person collecting the samples;

the date and place of collection; information identifying the arresting or accompanying officer; the qualifying offense; and the document control number (DCN).

6 VAC 20-210-100. Transportation of samples to the Division.

Samples shall be transported to the Division in sealed containers not more than fifteen days following collection. A copy of the arrest warrant shall be included with the sample when it is transported to the Division. Samples may be hand-delivered or mailed to the Division.

PART V.
NOTIFICATION OF FINAL DISPOSITION.

6 VAC 20-210-110. Notification of final disposition.

Timely submission of the final disposition of a qualifying offense to CCRE by the clerk shall satisfy the requirement that the clerk notify the Division of final disposition of the criminal proceedings under Virginia Code § 19.2-310.2:1.

/s/ Mark R. Warner

Governor

Date: January 6, 2003

VA.R. Doc. No. R03-110; Filed January 8, 2003, 10:52 a.m.



GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 23, 2002

CASE NO. PUE-2002-00645

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning the provision of default service to retail customers under the provisions of the Virginia Electric Utility Restructuring Act

ORDER ESTABLISHING INVESTIGATION

Section 56-585 of the Virginia Electric Utility Restructuring Act ("Restructuring Act" or "Act"), (§ 56-576 et seq. of Title 56 of the Code of Virginia), directs the State Corporation Commission ("Commission") to determine the components of default service and establish one or more programs making such services available to retail customers, effective upon commencement of customer choice for all retail customers.¹ Default service, as defined in the Act, means service made available to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

The Commission is of the opinion that the Staff of the Commission ("Staff") should invite representatives of incumbent electric utilities, competitive service providers, retail customers and other interested parties to participate in a work group that will assist the Staff in developing recommendations to the Commission regarding the components of default service and the establishment of one or more programs making such services available to retail customers in furtherance of our statutory obligations under § 56-585 of the Act.

While the Staff and work group members may identify a number of issues for consideration, we particularly seek input and recommendations on the following in order to frame the work group discussion:

- (1) What should be the specific components of default service;
- (2) Whether, given the virtual absence of competition in Virginia's retail generation market, incumbent electric utilities should continue to provide default service at capped rates at the present time; if so, what changes in statute, policy, infrastructure, market conditions, and/or other circumstances are necessary to allow for the practical provision of default service by an entity other than the incumbent?
- (3) What should be the geographic scope of a default service provider's territory, i.e. statewide, incumbent utility service territory, regions served by specific regional transmission

¹ Pursuant to the provisions of § 56-577 A 4, retail customer choice of generation provider must be available in the service territories of all Virginia electric utilities by January 1, 2004. It should also be noted that pursuant to § 56-585 C 1, when default service is provided by incumbent utilities, rates for that service will be such incumbents' capped rates under § 56-582 of the Act until the expiration or termination of such capped rates.

entities; divisions with an incumbent utility's service territory; major metropolitan and surrounding areas, etc.;

(4) Whether default service, as contemplated by § 56-585 of the Act, should be limited to unregulated services, i.e. is it necessary to designate distribution service as a default service;

(5) For generation-related default service, whether the separate components of generation service to retail customers (capacity or resource reservation, energy, transmission, and ancillary services) should be treated as separate default services or bundled into a single service;

(6) For generation-related default service, whether the service should be delivered to the retail customer or to the incumbent utility;

(7) Whether the language of the statute prohibits the provision of default service to an incumbent utility on behalf of a group of customers, i.e. could a third party provide service to an incumbent utility for indirect service to retail customers (service to satisfy load growth, specific localities, or to customer subgroups);

(8) Whether the provision of default services should differ by customer class;

(9) Whether different components of default service can be provided by different suppliers;

(10) Whether default service has the same meaning for different classes of customers, i.e., those who do not affirmatively select a supplier, those who are unable to obtain service from an alternative supplier, or those who have contracted with an alternative supplier who fails to perform;

(11) How should charges for default service be collected;

(12) Whether metering, billing and collecting services should be deemed components of default service; and

(13) What implications would the alternative provision of default service have for the determination of wires charges?

We recognize that the issues enumerated above predominantly address the determination of the components of default service pursuant to § 56-585 A of the Restructuring Act. Once these components have been established, we will solicit input from interested parties on the designation of providers of default service pursuant to § 56-585 B of the Act.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUE-2002-00645.

(2) The Commission Staff shall forthwith invite representatives of incumbent electric utilities, competitive suppliers, retail customers and other interested parties to participate in a work group to assist the Staff in determining the components of default service in furtherance of the Commission's obligations under § 56-585 of the Restructuring Act. The first work group session shall be held in the Commission's third floor training room on March 4, 2003, at 9:30 a.m. The Staff may schedule further work group meetings as necessary and appropriate.

General Notices/Errata

(3) On or before January 21, 2003, persons with an interest in this proceeding, including those already on the service list for this Order, who desire to remain on or be added to the service list for future filings and orders in this docket shall file with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a statement of such interest.

(4) On or before February 7, 2003, interested parties may file with the Clerk of the Commission in this docket an original and fifteen (15) copies of any comments on the Commission's determination of the components of default service. Comments shall, at a minimum, address the questions enumerated in this Order.

(5) On or before May 1, 2003, the Staff shall file a report including recommendations on the determination of the components of default service and for establishing appropriate programs for making such services available to retail customers.

(6) On or before May 16, 2003, interested parties may file any comments or requests for hearing on the Staff's Report.

(7) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

Summary of Order
PUE-2002-00645

On December 23, 2002, the State Corporation Commission ("Commission") entered an Order Establishing Investigation in Case No. PUE-2002-00645. The Order directs the Staff of the Commission to invite representatives of incumbent electric utilities, competitive suppliers, retail customers and other interested parties to participate in a work group to assist the Staff in determining the components of default service in furtherance of the Commission's obligations under § 56-585 of the Virginia Electric Utility Restructuring Act. The first work group will be held on March 4, 2003, at 9:30 a.m. In the Order, the Commission also seeks input on specific questions relating to the provision of default service in order to frame the work group discussion.

Agency Contact: Allison L. Held, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218, (804) 371-9671, aheld@scc.state.va.us.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Quail Run

The Department of Environmental Quality (DEQ) seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for Quail Run. This stream is listed on the 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's

water quality standards for the General Standard (Benthics). The Quail Run stream segment is located in Rockingham County. It is 4.89 miles in length and begins at the Massanutten STP discharge and continues downstream to the confluence with Boone Run.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The first and final public meeting on the development of the Quail Run TMDL will be held on Monday, February 10, 2003, 4 p.m. at Spotswood High School located at 368 Blazer Drive in Penn Laird, Virginia.

A copy of the draft TMDL documents addressing the Quail Run impairment will be ready for review on February 3, 2003. The public comment period will run from February 3, 2003 to March 5, 2003. Questions or information requests should be addressed to Sandra Mueller. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Sandra T. Mueller, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23240, telephone (804) 698-4324, FAX (804) 698-4116, or e-mail stmueller@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

STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

March 13, 2003 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor, Board
Room, Richmond, Virginia.♿

The board will meet to discuss issues related to Virginia agriculture and consumer services. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Board Secretary, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail jknight@vdacs.state.va.us.

March 13, 2003 - 10 a.m. -- Public Hearing
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.

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.

March 13, 2003 - 10 a.m. -- Public Hearing
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.

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
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.

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

Calendar of Events

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
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.

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
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.

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

May 13, 2003 - 10 a.m. -- Public Hearing
Department of Agriculture and Consumer Services,
Washington Building, 1100 Bank Street, 2nd Floor Board
Room, Richmond, Virginia.

May 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 Department of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-20. Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including amending the regulation to satisfy the statutory amendment made by Chapter 705 of the 2001 Acts of Assembly. Under that provision, localities are authorized to waive, with respect to real estate devoted to the production of crops that require more than two years from initial planting until commercially feasible harvesting, any requirement contained in the regulation that requires the real estate to have been used for a particular purpose for minimum length of time before qualifying as real estate devoted to agricultural or horticultural use. The Commissioner of Agriculture and Consumer Services is to promulgate regulations to carry out the provisions of the act.

Statutory Authority: § 58.1-3230 of the Code of Virginia; Chapter 705 of the 2001 Acts of Assembly.

Contact: Lawrence H. Redford, Regulatory Coordinator, Department of Agriculture and Consumer Services, 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 371-8067, FAX (804) 371-2945, or e-mail lredford@vdacs.state.va.us.

Virginia Cattle Industry Board

† February 4, 2003 - 10 a.m. -- Open Meeting
Holiday Inn Golf and Conference Center, Woodrow Wilson
Parkway, Staunton, Virginia. ☎

A regular business meeting in which the board will approve minutes from the September 2002 meeting, in addition to reviewing the financial statement for the period October 1 through February 1. Financial statements will be reviewed

for fiscal year 2001 - 2002, ending September 30, 2002. Staff will give program updates for the state and national level. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632.

Virginia Corn Board

February 12, 2003 - 8 a.m. -- Open Meeting
Wyndham Hotel and Conference Center, 4700 South Laburnum Avenue, Richmond, Virginia. ☎

The board will discuss checkoff revenues resulting from sales of the 2002 corn crop and approve previous meeting minutes. The board will hear FY 2002-2003 projects reports and will receive FY 2003-2004 project proposals. Following all the presentations, the group will make funding decisions for the fiscal year beginning on July 1, 2003. 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.

Virginia Cotton Board

March 10, 2003 - 9:15 a.m. -- Open Meeting
Tidewater Agriculture Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. ☎

The board's agenda will include discussions and approval of contractual arrangements with national and regional organizations, reports of programs and projects funded over the past year, hearing of Project Proposal Grant Requests on cotton by VPI and SU, VSU, and other groups for the year 2003-04. During the meeting, financial reports will be heard and approved. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Gail Moody Milteer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody Milteer, Program Director, Virginia Cotton Board, 1100 Armory Dr., Suite 120, Franklin, VA 23851, telephone (757) 569-1100, FAX (757) 562-6104.

Virginia Horse Industry Board

February 4, 2003 - 9 a.m. -- Open Meeting
Virginia Department of Forestry, 900 Natural Resources Drive, Second Floor, Charlottesville, Virginia. ☎

The board will review the minutes of the last meeting, the board's current financial status, and on-going projects. The board will also discuss the printing of promotional materials for 2003 and hear presentations from several guest speakers. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 1100 Bank St., 9th Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, e-mail ahead@vdacs.state.va.us.

Virginia Plant Pollination Advisory Board

† February 14, 2003 - 10 a.m. -- Open Meeting
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Second Floor Board Room, Richmond, Virginia. ☎

The annual meeting of the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Keith R. Tignor, Board Secretary, Virginia Plant Pollination Advisory Board, 1100 Bank Street, Room 703, Richmond, VA 23219, telephone (804) 786-3515, FAX (804) 371-7793, (800) 828-1120/TTY ☎.

Virginia Soybean Board

March 6, 2003 - 8 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. ☎

The board will discuss checkoff revenues resulting from sales of the 2002 soybean crop and approve previous meeting minutes. As well, the board will hear project reports for FY 2002-2003 and project proposals for FY 2003-2004. Then, funding decisions will be made for the fiscal year which begins July 1, 2003. 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

Calendar of Events

1005, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail phickman@vdacs.state.va.us.

3402, (804) 662-9333/TTY ☎, e-mail jlhoneycutt@vdh.state.va.us.

STATE AIR POLLUTION CONTROL BOARD

† **February 12, 2003 - 9 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A meeting to receive comments on the State Air Pollution Control Board's notice of intended regulatory action, the purpose of which is to enlarge the scope of volatile organic compound (VOC) emissions control areas in order to include potential new ozone nonattainment areas (Rev. C03). This action is being taken to implement a program established by the U.S. Environmental Protection Agency (EPA) for areas potentially designated as nonattainment under the 8-hour ozone standard. This program enables such areas to avoid the nonattainment designation through early reduction credits. By avoiding the nonattainment designation, these areas will thus avoid new source review for major sources, including the requirement to make offsets, and conformity review.

Contact: Karen G. Sabasteanski, State Air Pollution Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, (804) 698-4021/TTY ☎, e-mail kgsabastea@deq.state.va.us.

ALCOHOLIC BEVERAGE CONTROL BOARD

January 27, 2003 - 9 a.m. -- Open Meeting
February 10, 2003 - 9 a.m. -- Open Meeting
February 24, 2003 - 9 a.m. -- Open Meeting
March 10, 2003 - 9 a.m. -- Open Meeting
March 24, 2003 - 9 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ♿

A meeting for receipt and discussion of reports and activities from staff members. Other matters are not yet determined.

Contact: W. Curtis Coleburn, III, 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, e-mail wccolen@abc.state.va.us.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

February 7, 2003 - Noon -- Open Meeting
Virginia Department for the Aging, 1600 Forest Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Alzheimer's Disease and Related Disorders Commission, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 552-

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

January 29, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Architects Section to conduct board business.

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) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail courtney@dpor.state.va.us.

February 4, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Professional Engineers Section to conduct board business.

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) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail courtney@dpor.state.va.us.

February 6, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Landscape Architect Section 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) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail courtney@dpor.state.va.us.

February 11, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Land Surveyors Section to conduct board business.

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) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail courtney@dpor.state.va.us.

February 13, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting of the Interior Designers Section to conduct board business.

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) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail courtney@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

† **February 7, 2003 - 10 a.m.** -- Open Meeting

† **March 7, 2003 - 10 a.m.** -- Open Meeting

† **April 4, 2003 - 10 a.m.** -- Open Meeting

Science Museum of Virginia, 2500 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting to review projects submitted by state agencies. 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 Street, #221, Richmond, VA 23219, telephone (804) 643-1977, FAX (804) 643-1981, (804) 786-6152/TTY ☎, e-mail rlfia@aol.com.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

March 25, 2003 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business.

Contact: David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.state.va.us.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

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.

BOARD FOR BARBERS AND COSMETOLOGY

February 3, 2003 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business including adoption of tattoo and body-piercing proposed regulations.

Contact: William H. Ferguson, II, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.state.va.us.

BOARD FOR BRANCH PILOTS

February 4, 2003 - 8:30 a.m. -- Open Meeting
Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia. ☎

A meeting to conduct examinations.

Contact: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8515, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

February 5, 2003 - 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, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.state.va.us.

Calendar of Events

CEMETERY BOARD

February 26, 2003 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Contact: Christine Martine, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail cemetery@dpor.state.va.us.

STATE CERTIFIED SEED BOARD

February 19, 2003 - 1:30 p.m. -- Open Meeting
Williamsburg Hospitality House, 415 Richmond Road, Lower Level, Berkley Room, Williamsburg, Virginia. 

A meeting to consider the ramifications of 2002 summer drought and fall rains on peanut and soybean seed quality for 2003 spring planting and temporarily amend any regulations if warranted, and to review program structure and the relationship between this board, Virginia Tech, and Virginia Crop Improvement Association.

Contact: David L. Whitt, Liaison Officer, State Certified Seed Board, 9142 Atlee Station Rd., Mechanicsville, VA 23116, telephone (804) 746-4884, FAX (804) 746-9447, e-mail dwhitt@vt.edu.

CHARITABLE GAMING COMMISSION

† January 28, 2003 - 10 a.m. -- Open Meeting
James Monroe Building, 101 N. 14th Street, Conference Room C, Richmond, Virginia. 

A regular meeting. The agenda for the meeting will be posted at <http://www.state.va.us/cgchome/>.

Contact: Frances C. Jones, Administrative Staff Assistant, Charitable Gaming Commission, 101 N. 14th Street, 17th Floor, Richmond, VA 23219, telephone (804) 786-3014, FAX (804) 786-1079, e-mail jones@cgc.state.va.us.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† February 18, 2003 - 10 a.m. -- Open Meeting
James Monroe Building, 101 N. 14th St., 17th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A general business meeting of the Northern Area Review Committee that will include review of local Chesapeake Bay Preservation Area programs for the Northern Area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Building, 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.

† February 18, 2003 - 2 p.m. -- Open Meeting
James Monroe Building, 101 N. 14th St., 17th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A general business meeting of the Southern Area Review Committee that will include review of local Chesapeake Bay Preservation Area programs for the Southern Area.

Contact: Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Board, James Monroe Building, 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.

STATE BOARD FOR COMMUNITY COLLEGES

January 29, 2003 - 12:30 p.m. -- Open Meeting
Godwin-Hamel Board Room, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The State Board for Community Colleges will hold a seminar for its members on public and media relations. This is a working session and no board action will be taken.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

January 29, 2003 - 1:30 p.m. -- Open Meeting
Godwin-Hamel Board Room, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The following committees will meet:

Academic and Student Affairs Committee - 1:30 p.m.
Audit Committee - 1:30 p.m.
Budget and Finance Committee - 1:30 p.m.
Facilities and the Personnel Committees - 3 p.m.
Executive Committee - 4:30 p.m.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Building, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

January 30, 2003 - 9 a.m. -- Open Meeting
Godwin-Hamel Board Room, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular meeting. Public comment may be received at the beginning of the meeting upon notification of at least five working days prior to the meeting.

Contact: D. Susan Hayden, Public Relations Manager, State Board for Community Colleges, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

COMPENSATION BOARD

† **February 19, 2003 - 11 a.m.** -- Open Meeting
Ninth Street Office Building, 202 N. 9th Street, 10th Floor,
Richmond, Virginia. 

A monthly board meeting.

Contact: Cindy P. Waddell, Administration 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.

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Cave Board

February 22, 2003 - 11 a.m. -- Open Meeting
Endless Caverns, New Market, Virginia.  (Interpreter for the
deaf provided upon request)

Committee meetings will begin at 11 a.m. A regular meeting
of the board will begin at 1 p.m.

Contact: Larry Smith, Natural Area Protection Manager,
Department of Conservation and Recreation, 203 Governor
St., Richmond, VA 23219, telephone (804) 371-6205, FAX
(804) 371-2674, e-mail lsmith@dcr.state.va.us.

Falls of the James Scenic River Advisory Board

February 13, 2003 - Noon -- Open Meeting
Richmond City Hall, 900 East Broad Street, 5th Floor,
Planning Commission Conference Room, Richmond,
Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Derral Jones, Planning Bureau Manager,
Department of Conservation and Recreation, 203 Governor
St., Suite 326, Richmond, VA 23219, telephone (804) 786-
9042, FAX (804) 371-7899, e-mail djones@dcr.state.va.us.

BOARD FOR CONTRACTORS

† **January 28, 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)

† **January 31, 2003 - 2 p.m.** -- Open Meeting
Fairfax Government Center, 12055 Government Center
Parkway, Room 122, Fairfax, Virginia.  (Interpreter for the
deaf provided upon request)

† **February 12, 2003 - 1:30 p.m.** -- Open Meeting
† **February 19, 2003 - 9 a.m.** -- Open Meeting
† **February 25, 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)

† **February 27, 2003 - 10 a.m.** -- Open Meeting
Town of Wytheville, Government Center, 150 E. Main Street,
Wytheville, Virginia.  (Interpreter for the deaf provided upon
request)

† **March 11, 2003 - 9 a.m.** -- Open Meeting
† **March 25, 2003 - 9 a.m.** -- Open Meeting
† **April 1, 2003 - 9 a.m.** -- Open Meeting
† **April 8, 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)

Informal fact-finding conferences. Persons desiring to
participate in the meeting and requiring special
accommodations or interpretive services should contact the
department at 804-367-0946 at least 10 days prior to this
meeting so that suitable arrangements can be made for
appropriate accommodations. The department fully
complies with the Americans with Disabilities Act.

Contact: Earlyne Perkins, Legal Assistant, Department of
Professional and Occupational Regulation, 3600 W. Broad St.,
Richmond, VA 23230, telephone (804) 367-0946, FAX (804)
367-0194, (804) 367-9753/TTY , e-mail
perkins@dpor.state.va.us.

BOARD OF COUNSELING

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,
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.

February 7, 2003 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
6603 West Broad Street, 5th Floor, Richmond, Virginia. 

An informal conference to hear possible violations of Board
of Counseling regulations and statutes. No public comment
will be heard.

Calendar of Events

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 counseling@dhp.state.va.us.

BOARD OF DENTISTRY

January 31, 2003 - 9:30 a.m. -- Open Meeting

February 14, 2003 - 9 a.m. -- Open Meeting

February 28, 2003 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

The Special Conference Committee will 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 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail CEmma-Leigh@dhp.state.va.us.

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February 28, 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 Dentistry intends to amend regulations entitled: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.** The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state dentists or dental hygienists and for temporary permits for dentists.

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

Public comments may be submitted until February 28, 2003, to Sandra K. Reen, Executive Director, Board of Dentistry, 6603 W. Broad St., Richmond, VA 23230-1712.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, or e-mail elaine.yeatts@dhp.state.va.us.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

† **February 20, 2003 - 11 a.m.** -- Open Meeting

† **March 20, 2003 - 11 a.m.** -- Open Meeting

† **April 17, 2003 - 11 a.m.** -- Open Meeting

8th Street Office Building, 3rd Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review requests submitted by localities to use D-B or Construction Management type contracts. Please contact Div. of Engineering and Buildings to confirm 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., Rm. 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎, e-mail fadcock@dgs.state.va.us.

BOARD OF EDUCATION

February 26, 2003 - 9 a.m. -- Open Meeting

March 26, 2003 - 9 a.m. -- Open Meeting

James Monroe Building, 101 N. 14th Street, Rooms C and D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency 72 hours 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.

Advisory Board on Teacher Education and Licensure

January 27, 2003 - 9 a.m. -- Open Meeting

† **April 21, 2003 - 9 a.m.** -- Open Meeting

Hilton Garden Inn, Richmond Innsbrook, 4050 Cox Road, Glen Allen, Virginia. ♿ (Interpreter for the deaf provided upon request)

March 17, 2003 - 9 a.m. -- Open Meeting

George Mason University, Fairfax, Virginia.

A regular meeting. 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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 27, 2003 - 7 p.m. -- Open Meeting

Patrick Henry High School, 31437 Hillman Highway, Auditorium, Glade Spring, Virginia. ♿

A public meeting on the development of a TMDL for aquatic life on Hutton, Hall/Byers and Cedar Creeks. The creeks are located in Washington County and are part of the Middle Fork Holston River Watershed. The public comment period ends on January 27, 2003.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24210, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.state.va.us.

January 28, 2003 - 7 p.m. -- Open Meeting
The Community and Hospitality Center, 52 Franklin Street,
Rocky Mount, Virginia. 

The first public meeting on the development of a TMDL for approximately 37 miles of the Blackwater River in Franklin County. The public comment period closes on January 28, 2003.

Contact: Jason Hill, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6724, e-mail jrhill@deq.state.va.us.

† February 6, 2003 - 10:30 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street,
Richmond, Virginia. 

A meeting of the Litter Control and Recycling Fund Advisory Board to be conducted via teleconference. Persons wishing to participate may attend at the department's offices at 629 East Main Street in Richmond.

Contact: G. Steven Coe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4029, FAX (804) 698-4224, e-mail gscoe@deq.state.va.us.

† February 10, 2003 - 4 p.m. -- Open Meeting
Spotswood High School, 368 Blazer Drive, Penn Laird,
Virginia. 

The first and final public meeting on the development of a TMDL for benthics for an approximately 4.89-mile segment of Quail Run in Rockingham County. The comment period closes on March 5, 2003.

Contact: Sandra Mueller, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4324, FAX (804) 698-4116, e-mail stmueller@deq.state.va.us.

† February 19, 2003 - 7 p.m. -- Open Meeting
Varina Branch Henrico Public Library, 2001 Library Road (off Laburnum Avenue in eastern Henrico County), Richmond,
Virginia. 

A public meeting to receive comment on the technical aspects of the Charles City Road Sanitary Landfill facility's ground water monitoring program that sets standard procedures for the sampling, analysis and statistical review of ground water data. The public comment period closes on March 6, 2003.

Contact: Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail gxchriste@deq.state.va.us.

† February 20, 2003 - 7 p.m. -- Open Meeting
Goochland Public Library, 2931 River Road, Goochland,
Virginia. 

A public meeting to receive comments on the technical aspects of the Goochland County Sanitary Landfill facility's ground water monitoring program that sets standard procedures for the sampling, analysis and statistical review of ground water data. The public comment period closes on March 7, 2003.

Contact: Geoff Christe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4283, e-mail gxchriste@deq.state.va.us.

VIRGINIA FIRE SERVICES BOARD

† February 20, 2003 - 9 a.m. -- Open Meeting
Virginia Beach Pavilion, 1900 Pavilion Drive, Virginia Beach,
Virginia.  (Interpreter for the deaf provided upon request)

Committee on Fire Education and Training (FEandT) --
9 a.m.

Committee on Administration and Policy (AandP) --
10 minutes after conclusion of FEandT

Committee on Fire Prevention and Control (FPandC) --
10 minutes after conclusion of AandP

Committee on Finance -- 10 minutes after conclusion of
FPandC.

NOTE: VFSB Members will attend a reception hosted by the Virginia Fire Chiefs Executive Committee on the evening of Thursday, February 20, 2003, from 5 p.m. until 7 p.m. No official business will be discussed during this reception.

Contact: Christy L. King, VFSB Clerk, Virginia Fire Services Board, 101 North 14th Street, 18th Floor, Richmond, VA 23219, telephone (804) 371-0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.

† February 21, 2003 - 9 a.m. -- Open Meeting
Virginia Beach Pavilion, 1900 Pavilion Drive, Virginia Beach,
Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the board to be held in conjunction with the Virginia Fire Chiefs Association's Mid-Atlantic Expo and Symposium. During the Expo, VFSB members will be attending training classes and events, but NO official public business will be discussed. A schedule of events can be found on the Virginia Fire Chiefs web site (www.sfcav.org). The Expo will run from February 19th through February 23rd. For more information, please contact Christy King.

Contact: Christy L. King, VFSB Clerk, Virginia Fire Services Board, 101 North 14th Street, 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

January 28, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

The Board of Funeral Directors and Embalmers will convene to hear possible violations of the laws and regulations governing the practice of funeral service.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.state.va.us.

Calendar of Events

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February 4, 2003 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ☎

February 28, 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 Funeral Directors and
Embalmers intends to amend regulations entitled: **18 VAC
65-20. Regulations of the Board of Funeral Directors
and Embalmers.** The purpose of the proposed action is to
establish criteria for locating a branch establishment, to
update requirements for a preparation room, and to provide
greater assurance that all state and federal rules related to
the provision of funeral services are being followed.

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

Public comments may be submitted until February 28, 2003,
to Elizabeth Young, Executive Director, Board of Funeral
Directors and Embalmers, 6603 West Broad Street,
Richmond, VA 23230-1717.

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.

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February 28, 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 Funeral Directors and
Embalmers intends to amend regulations entitled: **18 VAC
65-20. Regulations of the Board of Funeral Directors
and Embalmers.** The purpose of the proposed action is to
comply with Chapter 270 of the 2002 Acts of Assembly
mandating the board to promulgate regulations to establish
continuing education requirements for renewal of a license
to ensure competency of the practitioners.

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

Public comments may be submitted until February 28, 2003,
to Elizabeth Young, Executive Director, Board of Funeral
Directors and Embalmers, 6603 West Broad Street,
Richmond, VA 23230-1717.

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.

BOARD OF GAME AND INLAND FISHERIES

† **March 6, 2003 - 9 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad
Street, Richmond, Virginia. ☎ (Interpreter for the deaf
provided upon request)

The board will meet and intends to propose amendments to
regulations governing game wildlife, hunting and trapping.
This is the regular biennial review for these regulations, with
the resulting amended regulations intended to be in effect
July 2003 through June 2005. The board is exempted from
the Administrative Process Act (§ 2.2-4000 et seq. of the
Code of Virginia) in promulgating wildlife management
regulations, including the length of seasons, bag limits and
methods of take set on the wildlife resources within the
Commonwealth of Virginia. Under board procedures,
regulatory actions occur over two sequential board
meetings. At the March 6 meeting, Department of Game
and Inland Fisheries' staff will present recommendations for
regulatory amendments, the board will solicit and hear
comments from the public in a public hearing, and the board
then intends to propose regulations or regulation
amendments. Any proposed regulatory actions will be
published in the Virginia Register of Regulations, posted on
the internet at www.dgif.state.va.us, and summaries
advertised in newspapers. A public comment period on any
proposed regulations begins March 6 and closes May 1,
2003. Adoption of any regulations or regulation
amendments as final will take place at the subsequent
board meeting, to be held May 1, 2003. The board is
required by § 2.2-4031 of the Code of Virginia to publish all
proposed and final regulations. The board also may:
discuss general and administrative issues; hold a closed
session at some time during the March 6 meeting; and elect
to hold a dinner Wednesday evening, March 5, 2003, at a
location and time to be determined.

Contact: Phil Smith, Policy Analyst, Department of Game and
Inland Fisheries, 4010 West Broad Street, Richmond VA
23230, telephone (804) 367-1000, FAX (804) 367-0488, e-
mail Regcomments@dgif.state.va.us.

GEORGE MASON UNIVERSITY

January 30, 2003 - 9 a.m. -- Open Meeting
George Mason University, Mason Hall, Lower Level, Room
D23, Fairfax, Virginia. ☎

Committee meetings will begin at 9 a.m. The Board of
Visitors will meet at 2 p.m. The agenda will be posted 10
days prior to the meeting date.

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.

STATE HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

† **February 19, 2003 - 1 p.m.** -- Open Meeting
Doubletree Hotel, 1900 Pavilion Drive, Virginia Beach,
Virginia. ☎

A meeting of the Training Committee to discuss hazardous
materials training curriculum.

Contact: Ron Hargrave, Training Director, Department of Emergency Management, 10501 Trade Court, Richmond, VA, telephone (804) 897-6500-6573.

STATE BOARD OF HEALTH

NOTE: CHANGE IN MEETING DATE

January 31, 2003 - 9 a.m. -- Open Meeting

† **April 25, 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.

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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.

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† **April 1, 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 adopt regulations entitled: **12 VAC 5-218. Rules and Regulations Governing Outpatient Health Data Reporting.** The purpose of the proposed action is to establish requirements and procedures for the reporting of outpatient patient level data.

Statutory Authority: §§ 32.1-12 and 32.1-276.6 of the Code of Virginia.

Contact: Calvin Reynolds, Director, Health Statistics, Department of Health, 1601 Willow Lawn Drive, Suite 237, Richmond, VA 23230, telephone (804) 662-6276, FAX (804) 662-7261 or e-mail: creynolds@vdh.state.va.us.

DEPARTMENT OF HEALTH

State Emergency Medical Services Advisory Board

February 7, 2003 - 1 p.m. -- Open Meeting

The Place at Innsbrook, 4036-C Cox Road, Glen Allen, Virginia. 

A quarterly meeting.

Contact: Gary R. Brown, Director, Department of Health, 1538 E. Parham Rd., Richmond, VA 23228, telephone (804) 371-3500, FAX (804) 371-3543, toll-free (800) 523-6019, e-mail gbrown@vdh.state.va.us.

DEPARTMENT OF HEALTH PROFESSIONS

February 21, 2003 - 9 a.m. -- Open Meeting

† **April 18, 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.

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February 28, 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 Department of Health Professions intends to adopt regulations entitled: **18 VAC 76-30. Public Participation Guidelines.** The purpose of the proposed action is to provide guidelines for public participation in the process of developing and promulgating regulations to implement programs under the authority of the Director of the Department of Health Professions. These regulations are also intended to enable electronic communication, notification and comment in the development of regulations and to provide for involvement and advice from persons with specialized interest and knowledge.

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

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.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

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**

Calendar of Events

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.

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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.

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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: (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 and (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.

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.

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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.** 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.

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.

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.

STATE BOARD OF JUVENILE JUSTICE

February 28, 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 Juvenile Justice intends to adopt regulations entitled: **6 VAC 35-160. Regulations Governing Juvenile Record Information and the Virginia Juvenile Justice Information System.** The purpose of the proposed action is to establish standards governing the form and content of juvenile record information submitted to the Virginia Juvenile Justice Information System, ensuring the integrity of the data, protecting the confidentiality of the juvenile record

information, and governing the dissemination of information in accordance with law.

Statutory Authority: §§ 16.1-223 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

Virginia Migrant and Seasonal Farmworkers Board

January 29, 2003 - 10 a.m. -- Open Meeting

Tyler Building, 1300 East Main Street, Court Room B, Second Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular quarterly meeting.

Contact: Betty B. Jenkins, Board Administrator, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2391, FAX (804) 371-6524, (804) 786-2376/TTY , e-mail bbj@doli.state.va.us.

STATE LIBRARY BOARD

March 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.

Calendar of Events

LONGWOOD UNIVERSITY

Board of Visitors

† **February 6, 2003 - 9:30 a.m.** -- Open Meeting
9030 Stony Point Parkway, Richmond, Virginia.

A meeting to conduct routine business of the Board of Visitors' Executive Committee.

Contact: Jeanne Hayden, Administrative Staff Assistant, Longwood University, 201 High Street, Farmville, VA 23909, telephone (434) 395-2004, e-mail jhayden@longwood.edu.

MARINE RESOURCES COMMISSION

January 28, 2003 - 9:30 a.m. -- Open Meeting
February 25, 2003 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. (Interpreter for the deaf provided upon request)

A monthly commission meeting.

Contact: Ginny Chappell, Commissioner's Secretary, Marine Resources Commission, 2600 Washington Ave., 1st Floor, Newport News, VA 23607, telephone (757) 247-2206, FAX (757) 247-2020, toll-free (800) 541-4646, (757) 247-2292/TTY, e-mail gchappell@mrc.state.va.us.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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 Department of Medical Assistance Services intends to adopt regulations entitled: **12 VAC 30-110. Eligibility and Appeals.** The purpose of the proposed action is to promulgate state regulations concerning which individuals are authorized to sign Medicaid applications to ensure that applications are only filed with the full knowledge and consent of the applicant or be someone legally acting on his behalf.

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

Contact: Pat Sykes, Policy Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680, or e-mail psykes@dmas.state.va.us.

† **March 28, 2003** - Public comments may be submitted until 5 p.m. on this date.

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

Methods and Standards for Establishing Payment Rates; Other Types of Care. The purpose of the proposed action is to retain the outpatient hospital reimbursement methodology prior to Medicare's conversion to its current APC methodology and to promulgate a Graduate Medical Education methodology to provide an appropriate apportionment of these costs related to interns and residents at the state teaching hospitals.

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

Contact: Peterson Epps, Reimbursement Analyst, Division of Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4591, FAX (804) 786-1680, or e-mail pepps@dmas.state.va.us.

† **March 28, 2003** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to comply with the legislative mandate contained in Chapter 899 of the 2002 Acts of Assembly, Item 3325 FF and JJ(2), to modify the reimbursement methodology for pharmacy services. These changes entail discounting the average wholesale price (AWP) by 10.25% and redefining Virginia Maximum Allowable Cost methodology to include all products that participate in pharmaceutical manufacturers' rebate programs.

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

Contact: Alissa Nashwinter, Manager, Division of Program Operations, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-2973, FAX (804) 786-1680 or e-mail anashwinter@dmas.state.va.us.

† **March 28, 2003** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to provide supplemental payments to Type I physicians who are members of group practices affiliated with either a state academic health system or an academic health system that operates under a state authority.

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

Contact: William Lessard, Analyst, Division of Reimbursement, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or e-mail wlessard@dmas.state.va.us.

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† **March 28, 2003** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care.** The purpose of the proposed action is to comply with the legislative mandate of Chapter 899, Item 325 HH to decrease the indirect patient care operating ceiling and eliminate increase for inflation for indirect patient case rates and peer group ceilings for indirect costs in SFY 2003. This action also proposes to institute the requirement that nursing facilities file reports when they have credit balances.

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

Contact: James Branham, Analyst, Division of Reimbursement, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4587, FAX (804) 786-1680 or e-mail jbranham@dmas.state.va.us.

BOARD OF MEDICINE

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.

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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 (§ 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.

February 6, 2003 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A general business meeting, including consideration of regulatory and disciplinary matters as may be presented on the agenda. Public comment will be accepted at the beginning of the meeting on agenda items.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.state.va.us.

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February 6, 2003 - 8:15 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

February 28, 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; 18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners; 18 VAC 85-80. Regulations Governing the**

Calendar of Events

Practice of Occupational Therapy; 18 VAC 85-101. Regulations Governing the Practice of Radiologic Technology; 18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists; and 18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers. The purpose of the proposed action is to establish criteria for registration of out-of-state practitioners to practice in Virginia on a voluntary basis.

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

Public comments may be submitted until February 28, 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.

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† **February 6, 2003 - 8:15 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

† **March 28, 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 amend the regulations to comply with a statutory mandate found in § 54.1-2910.1 as amended by Chapter 38 of the 2002 Acts of the Assembly. The statute requires certain changes to the practitioner profile system for doctors of medicine, osteopathy and podiatry to include the addition of telephone numbers, e-mail and FAX numbers for dissemination of emergency information and information on felony convictions.

Statutory Authority: §§ 54.1-2400 and 54.1-2910.1 of the Code of Virginia.

Public comments may be submitted until March 28, 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.

February 7, 2003 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

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 which may come before the committee.

Contact: William L. Harp, MD, Executive Director, Board of Medicine, 6603 W. Broad St, 5th Floor, Richmond, VA 23230, telephone (804) 662-7423, FAX (804) 662-9517, (804) 662-7197/TTY ☎

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March 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 Board of Medicine intends to amend regulations entitled: **18 VAC 85-50. Regulations Governing the Practice of Physician Assistants.** The purpose of the proposed action is to set forth the information and documentation that must be provided prior to such service to ensure compliance with Chapter 740 of the 2002 Acts of Assembly, which mandates that the board promulgate regulations for an out-of-state practitioner to be exempt from licensure or certification to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. Chapter 387 of the 2002 Acts of Assembly mandates that the board promulgate regulations to implement provisions related to the supervision of a physician assistant and the protocol between the assistant and the physician. In accordance with the statute, regulations provide for continuous supervision but do not require the physical presence of the physician.

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

Public comments may be submitted until March 14, 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.

Informal Conference Committee

January 29, 2003 - 9:30 a.m. -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

January 30, 2003 - 9 a.m. -- Open Meeting
February 27, 2003 - 9:15 a.m. -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, 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 Dixson, 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.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

February 5, 2003 - 10 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, 202 North 9th Street, 9th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Qualified Providers 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) 371-8977/TTY , e-mail fsadler@dmhmrsas.state.va.us.

February 7, 2003 - 11 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Waivers 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) 371-8977/TTY , e-mail fsadler@dmhmrsas.state.va.us.

March 7, 2003 - 9 a.m. -- Open Meeting
Department for the Deaf and Hard-of-Hearing, Ratcliffe Building, 1602 Rolling Hills Drive, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Steering Committee 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) 371-8977/TTY , e-mail fsadler@dmhmrsas.state.va.us.

STATE MILK COMMISSION

February 12, 2003 - 10:30 a.m. -- Open Meeting
Compensation Board, Ninth 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. Those persons requiring special accommodations should notify the agency meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 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 MINES, MINERALS AND ENERGY

† February 14, 2003 - 1 p.m. -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, 3405 Mountain Empire Road, Conference Room #116, Big Stone Gap, Virginia.  (Interpreter for the deaf provided upon request)

A meeting to give interested persons an opportunity to be heard in regard to the FY2003 Abandoned Mine Land Consolidated Grant Application to be submitted to the Office of Surface Mining. Special accommodations for the disabled will be made available at the public meeting or hearing on request. Anyone needing special accommodations should contact the Department of Mines, Minerals and Energy at least seven days prior to the meeting or hearing date.

Contact: Roger Williams, Abandoned Mine Land Services Manager, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8208, FAX (276) 523-8247, (800) 828-1120/TTY , e-mail rlw@mme.state.va.us.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

March 12, 2003 - 8 a.m. -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Jacquelin Branche, R. N., Assistant Division Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-0531, FAX (804) 367-1604, e-mail dmvj3b@dmv.state.va.us.

VIRGINIA MUSEUM OF FINE ARTS

February 4, 2003 - 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 the Executive Committee. Public comment will not be received.

Contact: Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, Virginia 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , e-mail sbroyles@vmfa.state.va.us.

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
March 17, 2003 - 9 a.m. -- Open Meeting
March 19, 2003 - 9 a.m. -- Open Meeting
March 20, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

Calendar of Events

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.

January 28, 2003 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A general business meeting, including consideration of regulations and disciplinary matters as may be presented on the agenda. Public comment will be received at the open forum scheduled at 11 a.m.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail nancy.durrett@dhp.state.va.us.

January 28, 2003 - 1:30 p.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

February 28, 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 intends to amend regulations entitled: **18 VAC 90-20. Regulations Governing the Practice of Nursing.** The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state nurses.

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

Public comments may be submitted until February 28, 2003, to Jay Douglas, R.N., Deputy Executive Director, Board of Nursing, 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.

Special Conference Committee

† **February 5, 2003 - 9 a.m.** -- Open Meeting
† **February 11, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

† **February 13, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

† **February 18, 2003 - 9 a.m.** -- Open Meeting
† **February 24, 2003 - 9 a.m.** -- Open Meeting
† **February 25, 2003 - 9 a.m.** -- Open Meeting
† **April 2, 2003 - 9 a.m.** -- Open Meeting
† **April 7, 2003 - 9 a.m.** -- Open Meeting
† **April 8, 2003 - 9 a.m.** -- Open Meeting
† **April 14, 2003 - 9 a.m.** -- Open Meeting
† **April 22, 2003 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ♿

A Special Conference Committee, comprised of two or three members of the Virginia Board of Nursing, will conduct informal conferences with licensees and/or certificate holders. Public comment will not be received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 West Broad Street, 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 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.

February 19, 2003 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, 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 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail CEmma-Leigh@dhp.state.va.us.

OLD DOMINION UNIVERSITY

Board of Visitors

† **January 31, 2003 - 9 a.m.** -- Open Meeting
Old Dominion University, Webb University Center, Board Room, Norfolk, Virginia. 

A special meeting called by the Rector for a Workshop on University Research in Science and Engineering. Public comment will not be received by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

† **February 17, 2003 - 3 p.m.** -- Open Meeting
† **March 17, 2003 - 3 p.m.** -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. 

Regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President. Public comment will not be received by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

† **April 11, 2003 - 1:30 p.m.** -- Open Meeting
Old Dominion University, Webb University Center, Norfolk, Virginia. 

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President. Public comment will not be received. Standing committees will meet on April 10 and 11 prior to the full board meeting.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD OF OPTOMETRY

February 28, 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 Optometry intends to amend regulations entitled: **18 VAC 105-20. Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state optometrists.

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

Public comments may be submitted until February 28, 2003, to Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 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.

BOARD OF PHARMACY

February 10, 2003 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

February 28, 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 Pharmacy intends to amend regulations entitled: **18 VAC 110-20. Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to replace emergency regulations for voluntary practice by out-of-state pharmacists.

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

Public comments may be submitted until February 28, 2003, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 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.

February 10, 2003 - 9:15 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A general business meeting, including consideration of regulatory, legislative, and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting following adoption of the agenda.

Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, (804) 662-7197/TTY , e-mail scottl.russell@dhp.state.va.us.

VIRGINIA PORT AUTHORITY

January 28, 2003 - 9:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.  (Interpreter for the deaf provided upon request)

The meeting will begin at 9:30 a.m. and the board will immediately enter into a closed session conducted pursuant to Virginia law. At 11 a.m. the board will reconvene in open session. Public comment, if any, will be received at the open session toward the end of the meeting.

Contact: Robert R. Merhige, III, Deputy Executive Director and General Counsel, Virginia Port Authority, 600 World Trade Center, Norfolk, VA 23510, telephone (757) 683-8000, FAX (757) 683-2166, toll-free (800) 446-8098, e-mail dmcnulty@portofvirginia.com.

Calendar of Events

BOARD OF PSYCHOLOGY

February 25, 2003 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

Informal administrative hearings to hear possible violations of Board of Psychology regulations and statutes. No public comment will be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.state.va.us.

REAL ESTATE APPRAISER BOARD

February 18, 2003 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct board business.

Contact: Christine Martine, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail reappraisers@dpor.state.va.us.

REAL ESTATE BOARD

† February 5, 2003 - 1 p.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: Ilona LaPaglia, Legal Assistant, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2394, FAX (804) 367-0194, (804) 367-9753/TTY , e-mail laPaglia@dpor.state.va.us.

February 19, 2003 - 9 a.m. -- Open Meeting

February 20, 2003 - 9 a.m. -- Open Meeting

April 9, 2003 - 9 a.m. -- Open Meeting

April 10, 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.

VIRGINIA RESOURCES AUTHORITY

February 11, 2003 - 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 bonds; (vi) review the results of 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 bmcray@vra.state.va.us.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

January 28, 2003 - 11 a.m. -- Open Meeting
Department of Business Assistance, 707 East Main Street,
3rd Floor, Richmond, Virginia. 

A meeting to review applications for loans submitted to the authority for approval and to conduct general business of the board. Meeting time is subject to change depending upon the agenda of the board.

Contact: Scott E. Parsons, Executive Director, Department of Business Assistance, P.O. Box 446, Richmond, VA 23218-0446, telephone (804) 371-8256, FAX (804) 225-3384, e-mail sparsons@dba.state.va.us.

STATE BOARD OF SOCIAL SERVICES

† January 30, 2003 - 9 a.m. -- Open Meeting
Department of Social Services, 730 E. Broad Street, LL1,
Richmond, Virginia. 

A formal business/legislative meeting of the board. Public comment will be heard at 1:30 p.m.

Contact: Patricia Rengnerth, State Board Liaison, Division of Legislative Affairs, State Board of Social Services, 730 East

Broad Street, Room 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.

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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

March 20, 2003 - 1:30 p.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Virginia. ♿

New board member orientation for the Family and Children's Trust Fund Board.

Contact: Nan McKenney, Executive Director, Department of Social Services, 760 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1823, FAX (804) 692-1869, e-mail fct900@dss.state.va.us.

March 21, 2003 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street, Richmond, Virginia. ♿

A regular meeting of the Family and Children's Trust Fund Board.

Contact: Nan McKenney, Executive Director, Department of Social Services, 760 E. Broad Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-1823, FAX (804) 692-1869, e-mail fct900@dss.state.va.us.

April 12, 2003 - 10 a.m. -- Open Meeting
Hotel Roanoke, Roanoke, Virginia.

A quarterly meeting of the Virginia Commission on National and Community Service. The commission will discuss issues regarding the commission's federal mandate from the Governor, the Corporation for National and Community Service, and the Commission Chair.

Contact: Felicia Jones, Administrative Assistant, Department of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1998, FAX (804) 692-1999, toll-free (800) 638-3839.

DEPARTMENT OF TECHNOLOGY PLANNING

Virginia Geographic Information Network Advisory Board

March 6, 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 Research and Technology Advisory Commission

March 10, 2003 - 2 p.m. -- Open Meeting
Washington, DC; location to be determined.

A quarterly meeting to coincide with Capitol Hill Day.

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.

Wireless E-911 Services Board

† **February 26, 2003 - 10 a.m.** -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 3rd Floor Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular monthly meeting.

Contact: Steven Marzolf, Public Safety Communications Coordinator, Department of Technology Planning, 110 South 7th Street, Richmond, VA, telephone (804) 371-0015, e-mail smarzolf@ntp.state.va.us.

COUNCIL ON TECHNOLOGY SERVICES

February 6, 2003 - 3 p.m. -- Open Meeting

March 6, 2003 - 2 p.m. -- Open Meeting

April 3, 2003 - 2 p.m. -- Open Meeting

Department of Information Technology, 110 South 7th Street, 3rd Floor, Executive Conference Room, Richmond, Virginia.

A regular monthly meeting of the Executive Committee. Agenda and meeting information available at www.cots.state.va.us.

Contact: Jenny Hunter, COTS Executive Director, Council on Technology Services, Department of Technology Planning, 110 S. 7th St., Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

February 12, 2003 - 9:30 a.m. -- Open Meeting

March 12, 2003 - 9:30 a.m. -- Open Meeting

April 9, 2003 - 9:30 a.m. -- Open Meeting

Department of Motor Vehicles, 2300 West Broad Street, 7th Floor, Executive Conference Room, Richmond, Virginia. ♿

Calendar of Events

A regular monthly meeting of the Change Management Workgroup. Agenda and details available at www.cots.state.va.us.

Contact: Jenny Hunter, COTS Executive Director, Council on Technology Services, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

February 20, 2003 - 3 p.m. -- Open Meeting

March 20, 2003 - 3 p.m. -- Open Meeting

† April 17, 2003 - 3 p.m. -- Open Meeting

Department of Rehabilitative Services, 8004 Franklin Farms Drive, Lee Building, Rooms 101, 103, and 105, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular monthly meeting of the Security Workgroup. Agenda and more details can be found at www.cots.state.va.us.

Contact: Jenny Hunter, Executive Director, Council on Technology Services, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

March 13, 2003 - 1:30 p.m. -- Open Meeting

Virginia Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A regular bimonthly meeting. Agenda and meeting details available at www.cots.state.va.us

Contact: Jenny Hunter, Executive Director, Council on Technology Services, Department of Technology Planning, 110 S. 7th St., Suite 135, Richmond, VA 23219, telephone (804) 786-9579, FAX (804) 786-9584, e-mail jhunter@gov.state.va.us.

VIRGINIA TOBACCO SETTLEMENT FOUNDATION

† January 29, 2003 - 3 p.m. -- Open Meeting

American Cancer Society, 124 Park Street, SE, Vienna, Virginia.

A meeting of the Northern Virginia Regional Advisory Board.

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.

March 18, 2003 - 1:30 p.m. -- Open Meeting

VCU Siegel Center, 1200 West Broad Street, Richmond, Virginia.

A meeting of the Board of Trustees to receive program updates.

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

February 19, 2003 - 2 p.m. -- Open Meeting

Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. 

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: Sandra M. Mills, Assistant Legislative Coordinator, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail Sandee.Mills@VirginiaDOT.org.

February 20, 2003 - 9 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 Coordinator, Commonwealth Transportation Board, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 225-4701, FAX (804) 225-4700, e-mail Sandee.Mills@VirginiaDOT.org.

DEPARTMENT OF THE TREASURY

† February 20, 2003 - 9 a.m. -- Open Meeting

James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Room, Richmond, Virginia. 

A meeting of the Treasury Board.

Contact: Melissa Mayes, Treasury Board Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Treasury Board Room, Richmond VA 23219, telephone (804) 371-6011, e-mail melissa.mayes@trs.state.va.us.

BOARD OF VETERINARY MEDICINE

February 12, 2003 - 9:15 a.m. -- Public Hearing

Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

March 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 Board of Veterinary Medicine intends to amend regulations entitled: **18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to establish requirements for registration of out-of-state

practitioners to engage in voluntary practice of veterinary medicine.

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

Public comments may be submitted until March 14, 2003, to Elizabeth Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6603 West Broad Street, Richmond, VA 23230-1717.

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.

VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

† **February 27, 2003 - Noon** -- Open Meeting
Library of Virginia, 800 East Broad Street, Richmond, Virginia.


A general meeting of the board. There will be a teleconferencing site available in Northern Virginia at Dolly Oberoi's office, C2 Technologies, 7700 Leesburg Pike, Suite 219, Falls Church, VA 22043-2615, telephone (703) 748-2780.

Contact: Will Prible, Assistant to the Director, Virginia Information Providers Network Authority, 110 S. 7th Street, Suite 135, Richmond, VA 23219, telephone (804) 786-4583, FAX (804) 371-2795, e-mail wprible@vipnetboard.state.va.us.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **February 6, 2003 - 1 p.m.** -- Open Meeting
† **February 7, 2003 - 7:30 a.m.** -- Open Meeting
Virginia Military Institute, Smith Hall and Moody Hall, Meeting Rooms, Lexington, Virginia

The following committees will meet: Academic Affairs, Leadership Development, Governmental Relations, Military Affairs, Audit Finance and Planning, External Development, Appeals, Nominating, Intercollegiate Athletics, Information Technology.

Contact: Colonel Michael M. Strickler, Secretary, Superintendents' Office, Virginia Military Institute, Lexington, VA 24450, telephone (540) 464-7206.

† **February 8, 2003 - 8 a.m.** -- Open Meeting
Virginia Military Institute, Preston Library, Turman Room, Lexington, Virginia

A regular meeting of the board to discuss committee reports and other business. Public comment is reserved for the August meeting.

Contact: Colonel Michael M. Strickler, Secretary, Superintendents' Office, Virginia Military Institute, Lexington, VA 24450, telephone (540) 464-7206.

VIRGINIA WASTE MANAGEMENT BOARD

† **March 6, 2003 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

† **March 28, 2003** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-60. Virginia Hazardous Waste Management Regulations.** The purpose of the proposed action (Amendment 16) is to increase the permit application fees for transporters, new TSD facilities, permit modifications, minor permit modifications and emergency permits.

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Contact: Robert G. Wickline, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213 or e-mail rgwickline@deq.state.va.us.

† **March 6, 2003 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

† **March 28, 2003** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **9 VAC 20-90. Solid Waste Management Facility Permit Fees.** The purpose of the proposed action is to increase fees for solid waste management facilities.

Statutory Authority: §§ 10.1-1402 and 10.1-1402.1 of the Code of Virginia

Contact: Melissa Porterfield, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4238 or e-mail msporterfi@deq.state.va.us.

STATE WATER CONTROL BOARD

† **March 6, 2003 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

† **March 28, 2003** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **9 VAC 25-20. Fees for Permits and Certificates.** The purpose of the proposed action is to increase the fees charged for processing applications for permits and certificates issued by the State Water Control Board.

Calendar of Events

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Contact: Jon G. Van Soestbergen, State Water Control Board, Department of Environmental Quality, P.O. Box 10009 Richmond, VA 23240, telephone (804) 698-4117 or e-mail jvansoest@deq.state.va.us.

COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

State Executive Council

January 29, 2003 - 9 a.m. -- Open Meeting

February 26, 2003 - 9 a.m. -- Open Meeting

March 26, 2003 - 9 a.m. -- Open Meeting

Department of Social Services, 730 East Broad Street, Lower Level Room 3, Richmond, Virginia. ☎

The meeting is generally held the last Wednesday of each month at the Department of Social Services, Lower Level Room 3. For traveling directions, please call (804) 692-1100.

Contact: Alan G. Saunders, Director, Office of Comprehensive Services, Comprehensive Services for Youth and Families, 1604 Santa Rosa Rd., Richmond, VA 23229, telephone (804) 662-9815, FAX (804) 662-9831, e-mail ags992@central.dss.state.va.us.

INDEPENDENT

STATE LOTTERY BOARD

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.

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.

VIRGINIA RETIREMENT SYSTEM

† **February 18, 2003 - Noon** -- 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 - 11 a.m. -- Open Meeting

March 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.

February 19, 2003 - 3 p.m. -- Open Meeting

VRS Headquarters, 1200 East Main Street, Richmond, Virginia. 

The following committees will meet:

3 p.m. - Benefits and Actuarial Committee

4 p.m. - Audit and Compliance

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.

February 20, 2003 - 9 a.m. -- Open Meeting

March 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.

Calendar of Events

VIRGINIA WORKERS' COMPENSATION COMMISSION

February 20, 2003 - 10 a.m. -- Public Hearing
Virginia Workers' Compensation Commission, 1000 DMV Drive, Courtroom A, Richmond, Virginia. 

March 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 Virginia Workers' Compensation Commission intends to amend regulations entitled: **16 VAC 30-50. Rules of the Virginia Workers' Compensation Commission.** The purpose of the proposed action is comply with the General Assembly's mandate (Chapter 538 of the 2002 Acts of Assembly), directing that it promulgate rules and regulations by July 1, 2003, "instituting an expedited calendar for the administration of claims under the Virginia Workers' Compensation Act in which the employer's denial of benefits satisfies criteria establishing that delays will cause an injured employee to incur severe economic hardship."

Statutory Authority: § 65.2-201 of the Code of Virginia; Chapter 538 of the 2002 Acts of Assembly.

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

Contact: Mary Ann Link, Chief Commissioner, Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8664, FAX (804) 367-9740, or e-mail: maryann.link@vwc.state.va.us.

LEGISLATIVE

Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempted from publication in *The Virginia Register of Regulations*. You may call Legislative Information for information on standing committee meetings. The number is (804) 698-1500.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 27

Alcoholic Beverage Control Board
Education, Board of
- Advisory Board on Teacher Education and Licensure
Environmental Quality, Department of
Nursing, Board of

January 28

† Charitable Gaming Commission
† Contractors, Board for
Environmental Quality, Department of
Funeral Directors and Embalmers, Board of
Marine Resources Commission

Nursing, Board of
Port Authority, Virginia
- Board of Commissioners
Small Business Financing Authority, Virginia

January 29

Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Architects Section
Community Colleges, State Board for
- Academic and Student Affairs Committee
- Audit Committee
- Budget and Finance Committee
- Executive Committee
- Facilities and Personnel Committee
Labor and Industry, Department of
- Virginia Migrant and Seasonal Farmworkers Board
Medicine, Board of
- Informal Conference Committee
Nursing, Board of
† Tobacco Settlement Foundation, Virginia
- Northern Virginia Regional Advisory Board
Youth and Families, Comprehensive Services for At-Risk
- State Executive Council

January 30

Community Colleges, State Board for
George Mason University
- Board of Visitors
Medicine, Board of
- Informal Conference Committee
Nursing, Board of
† Social Services, State Board of

January 31

† Contractors, Board for
Dentistry, Board of
- Special Conference Committee
Health, State Board of
† Old Dominion University

February 3

Barbers and Cosmetology, Board for

February 4

Agriculture and Consumer Services, Department of
† - Virginia Cattle Industry Board
- Virginia Horse Industry Board
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
- Professional Engineers Section
Branch Pilots, Board for
- Examination Administrators Committee
Museum of Fine Arts, Virginia
- Executive Committee

February 5

Branch Pilots, Board for
Mental Health, Mental Retardation and Substance Abuse Services, Department of
† Nursing, Board of
† Real Estate Board

February 6

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for
 - Landscape Architect Section
 † Environmental Quality, Department of
 † Longwood University
 Medicine, Board of
 Technology Services, Council
 - Executive Committee
 † Virginia Military Institute

February 7

Alzheimer's Disease and Related Disorders Commission
 † Art and Architectural Review Board
 Counseling, Board of
 Health, Department of
 - State Emergency Medical Services Advisory Board
 Medicine, Board of
 - Credentials Committee
 Mental Health, Mental Retardation and Substance Abuse
 Services, Department of
 † Virginia Military Institute

February 8

† Virginia Military Institute

February 10

Alcoholic Beverage Control Board
 † Environmental Quality, Department of
 Pharmacy, Board of

February 11

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for
 - Land Surveyors Section
 † Nursing, Board of
 Resources Authority, Virginia
 - Board of Directors

February 12

Agriculture and Consumer Services, Department of
 - Virginia Corn Board
 † Air Pollution Control Board, State
 † Contractors, Board for
 Milk Commission, State
 Technology Services, Council on
 - Change Management Workgroup

February 13

Architects, Professional Engineers, Land Surveyors,
 Certified Interior Designers and Landscape Architects,
 Board for
 - Interior Designers Section
 Conservation and Recreation, Department of
 - Falls of the James Scenic River Advisory Board
 † Nursing, Board of

February 14

† Agriculture and Consumer Services, Department of
 - Virginia Plant Pollination Advisory Board
 Dentistry, Board of
 - Special Conference Committee
 † Mines, Minerals and Energy, Department of

February 17

† Old Dominion University

February 18

† Chesapeake Bay Local Assistance Board

† Nursing, Board of
 Real Estate Appraiser Board
 † Retirement System, Virginia

February 19

† Compensation Board
 † Contractors, Board for
 † Environmental Quality, Department of
 † Hazardous Materials Emergency Response Advisory
 Council, State
 Nursing Home Administrators, Board of
 - Special Conference Committee
 Real Estate Board
 Retirement System, Virginia
 - Audit and Compliance Committee
 - Benefits and Actuarial Committee
 - Investment Advisory Committee
 Seed Board, State Certified
 Transportation Board, Commonwealth

February 20

† Design-Build/Construction Management Review Board
 † Environmental Quality, Department of
 † Fire Services Board, Virginia
 Real Estate Board
 Retirement System, Virginia
 - Board of Trustees
 Technology Services, Council on
 - Security Workgroup
 Transportation Board, Commonwealth
 † Treasury Board

February 21

† Fire Services Board, Virginia
 Health Professions, Department of
 - Intervention Program Committee

February 22

Conservation and Recreation, Department of
 - Virginia Cave Board

February 24

Alcoholic Beverage Control Board
 † Nursing, Board of

February 25

† Contractors, Board for
 Marine Resources Commission
 † Nursing, Board of
 Psychology, Board of

February 26

Cemetery Board
 Education, Board of
 † Technology Planning, Department of
 - Wireless E-911 Services Board
 Youth and Families, Comprehensive Services for At-Risk
 - State Executive Council

February 27

† Contractors, Board for
 Medicine, Board of
 - Informal Conference Committee
 † Virginia Information Providers Network Authority

February 28

Dentistry, Board of
 - Special Conference Committee

March 6

Agriculture and Consumer Services, Department of
 - Virginia Soybean Board

Calendar of Events

† Game and Inland Fisheries, State Board of
Technology Planning, Department of
- Virginia Geographical Information Network Advisory
Board
Technology Services, Council on
- Executive Committee

March 7
† Art and Architectural Review Board
Mental Health, Mental Retardation and Substance Abuse
Services, Department of

March 10
Agriculture and Consumer Services, Department of
- Virginia Cotton Board
Alcoholic Beverage Control Board
Technology Planning, Department of
- Virginia Research and Technology Advisory
Commission

March 11
† Contractors, Board for

March 12
Motor Vehicles, Department of
- Medical Advisory Board
Technology Services, Council on
- Change Management Workshop

March 13
Agriculture and Consumer Services, Board of
Technology Services, Council on

March 17
Education, Board of
- Advisory Board on Teacher Education and Licensure
Library Board, State
- 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
Nursing, Board of
† Old Dominion University

March 18
Tobacco Settlement Foundation, Virginia
- Board of Trustees

March 19
Nursing, Board of
Retirement System, Virginia
- Investment Advisory Committee

March 20
† Design-Build/Construction Management Review Board
Nursing, Board of
Retirement System, Virginia
- Board of Trustees
Social Services, Department of
- Family and Children's Trust Fund Board
Technology Services, Council on
- Security Workgroup

March 21
Social Services, Department of
- Family and Children's Trust Fund Board

March 24
Alcoholic Beverage Control Board

March 25
Asbestos, Lead, and Home Inspectors, Virginia Board for

† Contractors, Board for

March 26
Education, Board of
Youth and Families, Comprehensive Services for At-Risk

April 1
† Contractors, Board for

April 2
† Nursing, Board of

April 3
Technology Services, Council on
- Executive Committee

April 4
† Art and Architectural Review Board

April 7
† Nursing, Board of

April 8
† Contractors, Board for
† Nursing, Board of

April 9
Real Estate Board
Technology Services, Council on
- Change Management Workshop

April 10
Real Estate Board

April 11
† Old Dominion University

April 12
Social Services, Department of
- Virginia Commission on National and Community
Service

April 14
† Nursing, Board of

April 17
† Design-Build/Construction Management Review Board
† Technology Services, Council on
- Security Workgroup

April 18
† Health Professions, Department of
- Intervention Program Committee

April 21
† Education, Board of
- Advisory Board on Teacher Education and Licensure

April 22
† Nursing, Board of

April 25
† Health, State Board of

PUBLIC HEARINGS

January 28
Nursing, Board of

February 4
Funeral Directors and Embalmers, Board of

February 6
Medicine, Board of

February 10
Pharmacy, Board of

February 12
Veterinary Medicine, Board of

February 20
Workers' Compensation Commission, Virginia

March 5

Lottery Board, State

March 6

† Waste Management Board, Virginia

† Water Control Board, State

March 13

Agriculture and Consumer Services, State Board of

May 13

Agriculture and Consumer Services, Department of