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The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2003 VAC Supplement includes final regulations published through *Virginia Register* Volume 19, Issue 11, dated February 10, 2003). 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
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-36-50	Amended	19:16 VA.R. 2370	5/21/03
4 VAC 5-36-60	Amended	19:16 VA.R. 2373	5/21/03
4 VAC 5-36-70	Amended	19:16 VA.R. 2375	5/21/03
4 VAC 5-36-90	Amended	19:12 VA.R. 1881	3/27/03
4 VAC 5-36-100	Amended	19:12 VA.R. 1883	3/27/03
4 VAC 5-36-110 through 4 VAC 5-36-140	Amended	19:16 VA.R. 2376-2379	5/21/03
4 VAC 5-36-170 through 4 VAC 5-36-210	Amended	19:16 VA.R. 2379-2392	5/21/03
4 VAC 15-430-40	Erratum	19:14 VA.R. 2176	--
4 VAC 15-430-210	Erratum	19:14 VA.R. 2177	--
4 VAC 20-252-130 emer	Amended	19:12 VA.R. 1905	1/31/03-2/28/03
4 VAC 20-252-130	Amended	19:14 VA.R. 2086	3/1/03
4 VAC 20-252-150 emer	Amended	19:12 VA.R. 1906	1/31/03-2/28/03
4 VAC 20-252-150	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-10	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-30	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-50	Amended	19:14 VA.R. 2087	3/1/03
4 VAC 20-380-60	Amended	19:14 VA.R. 2088	3/1/03
4 VAC 20-563-10 through 4 VAC 20-563-50 emer	Added	19:16 VA.R. 2417	3/26/03-4/24/03
4 VAC 20-620-50	Amended	19:14 VA.R. 2088	3/1/03
4 VAC 20-620-70	Amended	19:14 VA.R. 2089	3/1/03
4 VAC 20-720-20 emer	Amended	19:12 VA.R. 1906	2/1/03-3/3/03
4 VAC 20-720-40 emer	Amended	19:12 VA.R. 1907	2/1/03-3/3/03
4 VAC 20-720-50 emer	Amended	19:12 VA.R. 1907	2/1/03-3/3/03
4 VAC 20-720-70 emer	Amended	19:12 VA.R. 1908	2/1/03-3/3/03
4 VAC 20-720-80	Erratum	19:12 VA.R. 1915	--
4 VAC 20-720-80 emer	Amended	19:12 VA.R. 1909	2/1/03-3/3/03
4 VAC 20-910-45 emer	Amended	19:12 VA.R. 1911	1/31/03-2/28/03
4 VAC 20-910-45	Amended	19:14 VA.R. 2089	3/1/03
4 VAC 20-950-30	Amended	19:14 VA.R. 2090	3/1/03
4 VAC 20-950-45	Amended	19:14 VA.R. 2090	3/1/03
4 VAC 20-1050-10	Added	19:16 VA.R. 2392	3/26/03
4 VAC 20-1050-20	Added	19:16 VA.R. 2392	3/26/03
4 VAC 20-1050-30	Added	19:16 VA.R. 2392	3/26/03
4 VAC 20-1060-10	Added	19:16 VA.R. 2393	3/26/03
4 VAC 20-1060-20	Added	19:16 VA.R. 2393	3/26/03
4 VAC 20-1060-30	Added	19:16 VA.R. 2393	3/26/03
4 VAC 25-40 (Forms)	Amended	19:17 VA.R. 2589	--
4 VAC 25-150-120	Amended	19:18 VA.R. 2663	7/1/03
4 VAC 25-160-30	Amended	19:18 VA.R. 2664	7/1/03
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-210-10 through 6 VAC 20-210-110 emer	Added	19:10 VA.R. 1511-1512	1/7/03-1/6/04
<b>Title 8. Education</b>			
8 VAC 20-440-10	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-90	Amended	19:12 VA.R. 1886	3/28/03

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8 VAC 20-440-110	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-120	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-140	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-150	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440-160	Amended	19:12 VA.R. 1886	3/28/03
8 VAC 20-440 Appendix A	Amended	19:12 VA.R. 1887	3/28/03
8 VAC 20-440 Appendix B	Amended	19:12 VA.R. 1890	3/28/03
<b>Title 9. Environment</b>			
9 VAC 5-20-204	Amended	19:17 VA.R. 2486	6/4/03
9 VAC 5-20-310	Amended	19:17 VA.R. 2486	6/4/03
9 VAC 5-40-6000 through 9 VAC 5-40-6150	Amended	19:17 VA.R. 2487-2494	7/1/03
9 VAC 5-40-6180	Amended	19:17 VA.R. 2494	7/1/03
9 VAC 5-40-6190	Amended	19:17 VA.R. 2499	7/1/03
9 VAC 5-40-6220	Amended	19:17 VA.R. 2500	7/1/03
9 VAC 5-40-7950	Amended	19:17 VA.R. 2501	7/1/03
9 VAC 5-40-7960	Amended	19:17 VA.R. 2502	7/1/03
9 VAC 5-40-8090	Amended	19:17 VA.R. 2505	7/1/03
9 VAC 5-40-8100	Amended	19:17 VA.R. 2505	7/1/03
9 VAC 5-40-8110 through 9 VAC 5-40-8160	Amended	19:17 VA.R. 2507-2519	7/1/03
9 VAC 5-40-8180	Amended	19:17 VA.R. 2519	7/1/03
9 VAC 20-60-18	Amended	19:12 VA.R. 1891	3/26/03
9 VAC 20-60-17	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-40	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-70	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-124	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-261	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-262	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-264	Amended	19:18 VA.R. 2665	7/1/03
9 VAC 20-60-265	Amended	19:18 VA.R. 2668	7/1/03
9 VAC 20-60-270	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-305	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-315	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-328	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-420	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-440	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-450	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-490	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1260	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1280	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1285	Amended	19:18 VA.R. 2670	7/1/03
9 VAC 20-60-1370	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-60-1380	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-60-1390	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-60-1420	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-90-10	Amended	19:18 VA.R. 2672	7/1/03
9 VAC 20-90-20	Repealed	19:18 VA.R. 2672	7/1/03
9 VAC 20-90-30 through 9 VAC 20-90-100	Amended	19:18 VA.R. 2672-2675	7/1/03
9 VAC 20-90-110	Added	19:18 VA.R. 2675	7/1/03
9 VAC 20-90-120	Added	19:18 VA.R. 2675	7/1/03
9 VAC 20-130 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 20-170-70	Added	19:18 VA.R. 2678	<sup>1</sup>
9 VAC 20-170-195	Added	19:18 VA.R. 2679	<sup>1</sup>
9 VAC 25-20-10	Amended	19:18 VA.R. 2680	7/1/03
9 VAC 25-20-110	Amended	19:18 VA.R. 2681	7/1/03

<sup>1</sup> Section suspended in 19:18 VA.R. 2680.

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-20-120	Amended	19:18 VA.R. 2681	7/1/03
9 VAC 25-20-130	Amended	19:18 VA.R. 2681	7/1/03
9 VAC 25-70	Repealed	19:14 VA.R. 2090	4/23/03
9 VAC 25-71-10 through 9 VAC 25-71-70	Added	19:14 VA.R. 2090	4/23/03
9 VAC 25-120 (Forms)	Amended	19:18 VA.R. 2739	--
9 VAC 25-210 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-210 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-260-140	Amended	18:24 VA.R. 3289	<sup>2</sup>
9 VAC 25-260-155	Amended	18:24 VA.R. 3289	<sup>2</sup>
9 VAC 25-260-310	Amended	18:20 VA.R. 2659	<sup>2</sup>
9 VAC 25-260-390	Amended	18:20 VA.R. 2661	<sup>2</sup>
9 VAC 25-420	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-430	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-440	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-450	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-452	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-460	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-470	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-480	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-490	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-500	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-510	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-520	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-530	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-540	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-550	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-560	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-570	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-572	Repealed	19:14 VA.R. 2091	4/24/03
9 VAC 25-660 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-660 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-670 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-680 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-680 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-690 (Forms)	Amended	19:12 VA.R. 1912	--
9 VAC 25-690 (Forms)	Added	19:16 VA.R. 2418	--
9 VAC 25-720-10 through 9 VAC 25-720-140	Added	19:14 VA.R. 2091-2138	4/24/03
9 VAC 25-720-50	Erratum	19:18 VA.R. 2746-2747	--
9 VAC 25-720-80	Erratum	19:18 VA.R. 2747	--
9 VAC 25-720-120	Erratum	19:18 VA.R. 2747	--
9 VAC 25-720-130	Erratum	19:18 VA.R. 2747	--
9 VAC 25-730	Repealed	19:14 VA.R. 2090	4/23/03
<b>Title 11. Gaming</b>			
11 VAC 5-10-10 through 11 VAC 5-10-70	Amended	19:15 VA.R. 2264	5/7/03
11 VAC 5-10-80	Added	19:15 VA.R. 2264	5/7/03
11 VAC 5-20-10	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-60	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-70	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-80	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-90	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-100	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-110	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-120 through 11 VAC 5-20-180	Amended	19:15 VA.R. 2265	5/7/03
11 VAC 5-20-420	Amended	19:15 VA.R. 2265	5/7/03

<sup>2</sup> Effective 30 days after notice in the Virginia Register of EPA approval.

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 5-30	Repealed	19:15 VA.R. 2265	5/7/03
11 VAC 5-31-10 through 11 VAC 5-31-200	Added	19:15 VA.R. 2266	5/7/03
11 VAC 5-40	Repealed	19:15 VA.R. 2266	5/7/03
11 VAC 5-41-10 through 11 VAC 5-41-340	Added	19:15 VA.R. 2266-2269	5/7/03
<b>Title 12. Health</b>			
12 VAC 5-31-610	Added	19:3 VA.R. 493	<sup>3</sup>
12 VAC 5-31-620	Added	19:3 VA.R. 494	<sup>3</sup>
12 VAC 5-31-730	Added	19:3 VA.R. 516	<sup>3</sup>
12 VAC 5-31-940	Added	19:3 VA.R. 503	<sup>3</sup>
12 VAC 5-31-1030	Added	19:3 VA.R. 504	5/6/03 <sup>4</sup>
12 VAC 5-31-1140	Added	19:3 VA.R. 505	5/6/03 <sup>4</sup>
12 VAC 5-90-80 emer	Amended	19:13 VA.R. 1971	2/11/03-2/10/04
12 VAC 5-90-80 emer	Amended	19:18 VA.R. 2737	4/24/03-4/23/04
12 VAC 5-585-10	Amended	19:14 VA.R. 2138	4/23/03
12 VAC 5-585-40	Amended	19:14 VA.R. 2140	4/23/03
12 VAC 5-585-50	Amended	19:14 VA.R. 2141	4/23/03
12 VAC 5-585-270	Amended	19:14 VA.R. 2141	4/23/03
12 VAC 5-585-660 through 12 VAC 5-585-750	Added	19:14 VA.R. 2141-2145	4/23/03
12 VAC 5-590-10	Amended	19:17 VA.R. 2520	6/4/03
12 VAC 5-590-370	Amended	19:17 VA.R. 2526	6/4/03
12 VAC 5-590-420	Amended	19:17 VA.R. 2549	6/4/03
12 VAC 5-590-440	Amended	19:17 VA.R. 2565	6/4/03
12 VAC 5-590-530	Amended	19:17 VA.R. 2568	6/4/03
12 VAC 5-590 Appendix M	Amended	19:17 VA.R. 2575	6/4/03
12 VAC 30-20-80	Amended	19:18 VA.R. 2682	7/1/03
12 VAC 30-20-150	Amended	19:18 VA.R. 2682	7/1/03
12 VAC 30-20-160	Amended	19:18 VA.R. 2683	7/1/03
12 VAC 30-50-140	Amended	19:18 VA.R. 2684	7/1/03
12 VAC 30-50-150	Amended	19:18 VA.R. 2685	7/1/03
12 VAC 30-50-160	Amended	19:18 VA.R. 2686	7/1/03
12 VAC 30-50-460	Repealed	19:18 VA.R. 2686	7/1/03
12 VAC 30-60-70	Amended	19:18 VA.R. 2687	7/1/03
12 VAC 30-70-221	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-70-281	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-70-351	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-80-20	Amended	19:18 VA.R. 2699	7/1/03
12 VAC 30-80-40	Amended	19:18 VA.R. 2701	7/1/03
12 VAC 30-90-41	Amended	19:18 VA.R. 2702	7/1/03
12 VAC 30-90-257	Added	19:18 VA.R. 2702	7/1/03
12 VAC 30-110-1210	Repealed	19:18 VA.R. 2689	7/1/03
12 VAC 30-110-1350 through 12 VAC 30-110-1410	Added	19:18 VA.R. 2703	6/19/03
12 VAC 30-120-50	Amended	19:18 VA.R. 2690	7/1/03
12 VAC 30-120-140 emer	Amended	19:15 VA.R. 2270	3/17/03-3/16/04
12 VAC 30-120-150 emer	Amended	19:15 VA.R. 2273	3/17/03-3/16/04
12 VAC 30-120-160 emer	Amended	19:15 VA.R. 2274	3/17/03-3/16/04
12 VAC 30-120-165 emer	Added	19:15 VA.R. 2276	3/17/03-3/16/04
12 VAC 30-120-170 emer	Amended	19:15 VA.R. 2281	3/17/03-3/16/04
12 VAC 30-120-180 emer	Amended	19:15 VA.R. 2282	3/17/03-3/16/04
12 VAC 30-120-190 emer	Amended	19:15 VA.R. 2284	3/17/03-3/16/04
12 VAC 30-120-490	Amended	19:18 VA.R. 2692	7/1/03
12 VAC 30-120-500	Amended	19:18 VA.R. 2693	7/1/03
12 VAC 30-120-520 through 12 VAC 30-120-550	Amended	19:18 VA.R. 2694-2699	7/1/03
12 VAC 30-130-50	Amended	19:18 VA.R. 2699	7/1/03

<sup>3</sup> Section withdrawn in 19:16 VA.R. 2393.

<sup>4</sup> Section readopted in 19:16 VA.R. 2393.

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 13. Housing</b>			
13 VAC 10-40-110	Amended	19:12 VA.R. 1892	1/24/03
13 VAC 10-40-220	Amended	19:12 VA.R. 1892	1/24/03
13 VAC 10-40-230	Amended	19:12 VA.R. 1892	1/24/03
13 VAC 10-180-10	Amended	19:16 VA.R. 2394	4/2/03
13 VAC 10-180-50	Amended	19:16 VA.R. 2394	4/2/03
13 VAC 10-180-60	Amended	19:16 VA.R. 2394	4/2/03
13 VAC 10-180-60	Amended	19:16 VA.R. 2404	1/1/04
<b>Title 14. Insurance</b>			
14 VAC 5-200-20	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-30	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-40	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-60	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-75	Amended	19:12 VA.R. 1893	4/1/03
14 VAC 5-200-77	Added	19:12 VA.R. 1894	4/1/03
14 VAC 5-200-150	Amended	19:12 VA.R. 1894	4/1/03
14 VAC 5-200-153	Added	19:12 VA.R. 1894	4/1/03
14 VAC 5-200-200	Amended	19:12 VA.R. 1894	4/1/03
14 VAC 5-260 (Forms)	Amended	19:14 VA.R. 2169	--
<b>Title 15. Judicial</b>			
15 VAC 5-80-50	Amended	19:17 VA.R. 2579	4/11/03
<b>Title 16. Labor and Employment</b>			
16 VAC 30-50-30	Amended	19:18 VA.R. 2703	7/1/03
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-21-20	Amended	19:12 VA.R. 1895	3/26/03
18 VAC 15-40-10 through 18 VAC 15-40-190	Added	19:18 VA.R. 2706-2712	7/1/03
18 VAC 41-20-10 through 18 VAC 41-20-280	Added	19:18 VA.R. 2712-2714	7/1/03
18 VAC 60-20-90	Amended	19:18 VA.R. 2714	6/18/03
18 VAC 60-20-106	Added	19:18 VA.R. 2714	6/18/03
18 VAC 85-20-225	Added	19:18 VA.R. 2715	6/18/03
18 VAC 85-40-55	Added	19:18 VA.R. 2717	6/18/03
18 VAC 85-80-65	Added	19:18 VA.R. 2717	6/18/03
18 VAC 85-101-145	Added	19:18 VA.R. 2717	6/18/03
18 VAC 85-110-145	Added	19:18 VA.R. 2718	6/18/03
18 VAC 85-120-85	Added	19:18 VA.R. 2718	6/18/03
18 VAC 85-20-310 through 18 VAC 85-20-390	Added	19:18 VA.R. 2719-2720	6/18/03
18 VAC 85-50-10	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-40	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-59	Added	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-101	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-110	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 85-50-115	Amended	19:18 VA.R. 2722	6/18/03
18 VAC 90-20-271	Added	19:18 VA.R. 2722	6/18/03
18 VAC 90-20-360	Amended	19:13 VA.R. 1967	4/9/03
18 VAC 90-20-361	Added	19:13 VA.R. 1967	4/9/03
18 VAC 90-20-362	Added	19:13 VA.R. 1967	4/9/03
18 VAC 90-20-363	Added	19:13 VA.R. 1968	4/9/03
18 VAC 90-20-364	Added	19:13 VA.R. 1968	4/9/03
18 VAC 115-30-10	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-30	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-40	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-45	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-50	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-60	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-61	Added	19:18 VA.R. 2724	6/18/03



## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 115-30-62	Added	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-70	Repealed	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-90	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-110	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 115-30-140	Amended	19:18 VA.R. 2724	6/18/03
18 VAC 130-20-10	Amended	19:18 VA.R. 2724	7/1/03
18 VAC 130-20-30	Amended	19:18 VA.R. 2728	7/1/03
18 VAC 130-20-40	Amended	19:18 VA.R. 2729	7/1/03
18 VAC 130-20-50	Amended	19:18 VA.R. 2729	7/1/03
18 VAC 130-20-60	Amended	19:18 VA.R. 2730	7/1/03
18 VAC 130-20-70	Amended	19:18 VA.R. 2730	7/1/03
18 VAC 130-20-110	Amended	19:18 VA.R. 2730	7/1/03
18 VAC 130-20-170	Amended	19:18 VA.R. 2731	7/1/03
18 VAC 130-20-180	Amended	19:18 VA.R. 2731	7/1/03
18 VAC 130-20-200	Amended	19:18 VA.R. 2733	7/1/03
18 VAC 130-20-210	Amended	19:18 VA.R. 2733	7/1/03
18 VAC 130-20-220	Amended	19:18 VA.R. 2733	7/1/03
18 VAC 130-20-230	Amended	19:18 VA.R. 2734	7/1/03
18 VAC 135-20-10 through 18 VAC 135-20-80	Amended	19:12 VA.R. 1899-1901	4/1/03
18 VAC 135-20-30	Erratum	19:14 VA.R. 2177	--
18 VAC 135-20-60	Erratum	19:14 VA.R. 2177	--
18 VAC 135-20-100	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-105	Added	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-110 through 18 VAC 135-20-150	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-155	Added	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-160 through 18 VAC 135-20-180	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-185	Added	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-190	Amended	19:12 VA.R. 1901	4/1/03
18 VAC 135-20-200	Repealed	19:12 VA.R. 1903	4/1/03
18 VAC 135-20-220	Amended	19:12 VA.R. 1903	4/1/03
18 VAC 135-20-230	Repealed	19:12 VA.R. 1903	4/1/03
18 VAC 135-20-240 through 18 VAC 135-20-300	Amended	19:12 VA.R. 1903-1904	4/1/03
18 VAC 135-20-260	Erratum	19:14 VA.R. 2177	--
18 VAC 135-20-320	Repealed	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-330	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-340	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-360	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-370	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 135-20-410	Amended	19:12 VA.R. 1904	4/1/03
18 VAC 140-20-30	Amended	19:14 VA.R. 2145	4/23/03
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-312-20	Amended	19:17 VA.R. 2579	4/10/03
20 VAC 5-400-180	Repealed	19:17 VA.R. 2583	4/10/03
20 VAC 5-417-10 through 20 VAC 5-417-80	Added	19:17 VA.R. 2583-2587	4/10/03
20 VAC 5-429-10 through 20 VAC 5-429-60	Added	19:17 VA.R. 2587-2588	4/10/03
<b>Title 22. Social Services</b>			
22 VAC 30-20-10 through 22 VAC 30-20-40	Amended	19:14 VA.R. 2147-2154	4/24/03
22 VAC 30-20-60	Amended	19:14 VA.R. 2154	4/24/03
22 VAC 30-20-80	Amended	19:14 VA.R. 2154	4/24/03
22 VAC 30-20-90	Amended	19:14 VA.R. 2155	4/24/03
22 VAC 30-20-90	Amended	19:18 VA.R. 2736	6/18/03
22 VAC 30-20-95	Added	19:14 VA.R. 2155	4/24/03
22 VAC 30-20-100 through 22 VAC 30-20-130	Amended	19:14 VA.R. 2155-2164	4/24/03
22 VAC 30-20-150	Amended	19:14 VA.R. 2164	4/24/03
22 VAC 30-20-160	Amended	19:14 VA.R. 2164	4/24/03
22 VAC 30-20-170	Amended	19:14 VA.R. 2165	4/24/03

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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 30-20-181	Amended	19:14 VA.R. 2166	4/24/03
22 VAC 30-20-200	Amended	19:14 VA.R. 2167	4/24/03
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-280-20	Amended	19:16 VA.R. 2414	3/24/03
24 VAC 30-280-40	Amended	19:16 VA.R. 2415	3/24/03
24 VAC 30-280-50	Amended	19:16 VA.R. 2415	3/24/03
24 VAC 30-280-60	Amended	19:16 VA.R. 2416	3/24/03

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled **9 VAC 5-40, Existing Stationary Sources (Rev. G03)**. The purpose of the proposed action is to develop a regulation concerning consumer products that will contribute to the achievement of the necessary VOC emissions reductions to stay within the budget limit in order to safeguard federal approval of transportation projects in Northern Virginia. Consumer products that may be regulated include, but are not limited to, adhesives, adhesive removers, aerosol products (like cooking and dusting sprays), air freshener, antiperspirants and deodorants, facial toners and astringents, waxes and polishes (for cars, floors, etc.), tile cleaners, tar removers, bug sprays, rug cleaners, charcoal lighter fluid, disinfectants, cosmetics, and soaps.

**Need:** Among the primary goals of the federal Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

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

A SIP is the key to the state's air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards—that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from

contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures are directed at limiting emissions primarily from commercial/industrial facilities and operations and include the following: emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures which are directed at small businesses and consumer activities. Mobile source control measures are directed at tailpipe and other emissions primarily from motor vehicles and include the following:

Federal Motor Vehicle Emission Standards, fuel volatility limits, reformulated gasoline, emissions control system anti-tampering programs, and inspection and maintenance programs. Transportation source control measures limit the location and use of motor vehicles and include the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and many others.

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

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant—ozone—has proven problematic. While ozone is needed at the earth's outer atmospheric layer to shield out harmful rays from the sun, excess concentrations at the surface have an adverse effect on human health and welfare. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides (NO<sub>x</sub>), and sunlight. When VOC and NO<sub>x</sub> emissions from mobile sources and stationary sources are reduced, ozone is reduced.

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# Notices of Intended Regulatory Action

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

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

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

The process provided in the Act yielded three nonattainment areas for Virginia. The classifications for Virginia's nonattainment areas were marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area. Since that time, air quality has improved. Although Northern Virginia remains a nonattainment area, Richmond and Hampton Roads have achieved the one-hour ozone standard and are now considered maintenance areas: that is, specific strategies that were implemented must continue; however, no additional new requirements are necessary provided the areas do not measure ozone concentrations in levels high enough to reclassify them into nonattainment.

Once the nonattainment areas were defined, each state was then obligated to submit a SIP demonstrating how it would attain the air quality standards in each nonattainment area. First, the Act requires that certain specific control measures and other requirements be adopted and included in the SIP; a list of those that necessitated the adoption of state regulations is provided below. In addition, the state had to demonstrate that it would achieve a VOC emission reduction of 15%. Finally, the SIP had to include an attainment demonstration by photochemical modeling (including annual emission reductions of 3% from 1996 to 1999) in addition to the 15% emission reduction demonstration. In cases where the specific

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

## ALL AREAS

1. Correct existing VOC regulatory program (controls on certain sources identified in EPA control technology guidelines)
2. Requirement for annual statements of emissions from industries
3. Preconstruction review (permit) program for new industry and expansions (with variable major source definition, variable offset ratio for addition of new pollution, and special requirements for expansions to existing industry in serious areas)
4. Offset ratio for addition of new pollution of 1.1 to 1
5. Procedures to determine if systems level highway plans and other federally financed projects are in conformity with air quality plans

## MODERATE AND ABOVE AREAS

1. Requirement for controls for all major (100 tons per year) VOC sources
2. Requirement for controls for all major (100 tons per year) NO<sub>x</sub> sources
3. Case-by-case control technology determinations for all major VOC and NO<sub>x</sub> sources not covered by an EPA control technology guideline
4. Offset ratio for addition of new pollution of 1.15 to 1
5. Requirement for vapor recovery controls for emissions from filling vehicles with gasoline (stage II)

## SERIOUS AND ABOVE AREAS

1. Requirement for controls for all major (50 tons per year) VOC sources
2. Requirement for controls for all major (50 tons per year) NO<sub>x</sub> sources
3. Offset ratio for addition of new pollution of 1.2 to 1
4. Enhanced monitoring (source emissions) program
5. Correct existing motor vehicle emissions inspection and maintenance (I&M) program
6. Enhanced motor vehicle emissions I&M program
7. clean fuel fleet vehicle program
8. oxygenated fuels program

## SEVERE AND ABOVE AREAS

1. Requirement for controls for all major (25 tons per year) VOC sources
2. Requirement for controls for all major (25 tons per year) NO<sub>x</sub> sources

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## Notices of Intended Regulatory Action

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3. Offset ratio for addition of new pollution of 1.3 to 1
4. Requirement for major sources to pay a penalty fee if area does not attain air quality standard by attainment date
5. Transportation control strategies and measures to offset emissions growth from VMT

Virginia has submitted for federal approval a plan for the Northern Virginia area (formerly classified Serious, now classified Severe) that meets all the requirements for the Serious and Above areas. The plan includes an emissions budget that allows transportation conformity determinations to be made through 2005. Transportation conformity is a Clean Air Act requirement to ensure that federally supported highway and transit activities are consistent with ("conform to") the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air pollution violations, worsen existing violations, or delay timely attainment of federal air quality standards.

Virginia's transportation conformity regulation (9 VAC 5 Chapter 150) requires MPOs and DOT to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects that are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

The federal transportation conformity rule (40 CFR Part 93) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA. In January 2002, EPA released a major revision of this model. This model, MOBILE, is used to calculate current and future inventories of motor vehicle emissions at the national and local level. Inventories based on MOBILE are also used to meet the federal Clean Air Act's state implementation plan (SIP) and transportation conformity requirements. The revised model, MOBILE6, is based on new and improved data as well as an updated understanding of vehicle emissions processes. EPA strongly encourages areas to use the interagency consultation process to examine how MOBILE6 will affect future transportation conformity determinations so that SIPs and motor vehicle emissions budgets can be revised as necessary prior to the end of the MOBILE6 conformity grace period (January 29, 2004).

For the Northern Virginia area, the interagency group in charge of recommending emissions levels for EPA approval is the Metropolitan Washington Air Quality Committee (MWAQC), formed by the governors of Virginia and Maryland and the mayor of Washington, D.C. At the January 23, 2002, meeting of MWAQC, it was decided to proceed with revising the regional SIPs to incorporate the latest mobile emissions estimates using MOBILE6. The effect of this action will be to project Virginia's mobile emissions above the current budget limits. In order to insure that Northern Virginia stays in attainment and that Virginia can continue to make conformity determinations, MWAQC also decided to revise the emissions budgets and to recommend the adoption of new regulations. MWAQC has recommended that Maryland, Virginia, and Washington, D.C., adopt several pertinent regulations,

including one covering consumer products, in order to achieve the necessary reductions of VOC emissions in the Northern Virginia area.

Potential Issues: The regulation to be developed will apply to many consumer products, most of which have not previously been regulated in Virginia.

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

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to achieve the necessary VOC emissions reductions to stay within the budget limit in order to safeguard federal approval of transportation projects in Northern Virginia.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it does not meet the stated purpose of the regulatory action.
3. Take no action to amend the regulations. This option is not being selected because failure to act will result in federal sanctions, including disapproval of transportation projects in the Northern Virginia area.

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

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A public meeting will be held by the department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

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

Ad Hoc Advisory Group: Subject to the stipulations noted below, the department will form an ad hoc advisory group to assist in the development of the regulation. If you want to be on the group, notify the agency contact in writing by 4:30 p.m. the last day of the comment period and provide your name, address, phone number, and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you want to be on the group, you are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for department reconsideration through the collaborative approach of regulatory negotiation and consensus. At its discretion, the department may dispense with the use of an ad hoc advisory group if it receives fewer than five applications. More than one application from a single company, organization, group, or other entity count as one for purposes of making the decision specified in the preceding sentence.

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, Clean Air Act (§§ 110, 111, 123, 129, 171, 172 and 182), and 40 CFR Parts 51 and 60.

Public comments may be submitted until 5 p.m. on July 3, 2003.

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

VA.R. Doc. No. R03-197; Filed May 7, 2003, 12:39 p.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled **9 VAC 5-91, Regulations for the Control of Motor Vehicle Emissions (Rev. MJ)**. The purpose of the proposed action is to amend the current regulation which conforms to federal requirements for on-road testing by expanding the regulatory provisions to meet the state law. The new regulatory amendments would (i) revise the existing provisions affecting the on-road testing (remote sensing) of emissions from motor vehicles located in or primarily operated in Northern Virginia (including out of area commuters) and the subsequent testing of those motor vehicles; and (ii) establish a program to subsidize repair costs of some vehicles identified by remote sensing.

Need: The current regulation governing the motor vehicle emissions testing (I/M) program meets the applicable federal requirements for on-road testing but does not meet the state code requirements. In order to meet the requirements of the state code, the regulation needs to be amended to include a definitive requirement for random testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards in the current regulation. The regulation also needs to be amended to establish standards, criteria, and procedures to implement a program to subsidize repairs of some vehicles identified by on-road testing as being noncompliant when the owner is financially unable to afford the repairs. Additional background information may be found below.

One of the primary goals of the federal Clean Air Act (Act) is the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). These standards, designed to protect public health and welfare, apply to six pollutants, of which ozone is the primary focus of this proposed action. Ozone is formed when volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) in the air react together in the presence of sunlight. VOCs are chemicals contained in gasoline, polishes, paints, varnishes, cleaning fluids, inks, and other household and industrial products. NO<sub>x</sub> emissions are a by-product from the combustion of fuels and industrial processes.

The National Ambient Air Quality Standard for ozone is currently 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. When concentrations of ozone in the ambient air exceed the federal standard, the area is considered to be out of compliance and is classified as "nonattainment." Several counties and cities within the Northern Virginia area have been identified as ozone nonattainment areas according to provisions of the Act.

States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) may result in the continued violations of the standard and subsequent negative affects on human health, (ii) may result in assumption of the program by EPA at which time the Commonwealth would lose authority over matters affecting its citizens, and (iii) may result in the implementation of sanctions by EPA, such as more restrictive requirements on new major industrial facilities and loss of federal funds for highway construction. Furthermore, if a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent control requirements.

Motor vehicle emissions inspection programs, known as inspection and maintenance (I/M) programs, are an integral part of the effort to reduce mobile source air pollution. Cars and trucks create about half of the ozone air pollution. Of all highway vehicles, passenger cars and light trucks emit most of the vehicle-related carbon monoxide and ozone-forming

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hydrocarbons. Tremendous progress has been made in reducing these pollutants; however, total vehicle emissions remain high. This is because the number of vehicle miles traveled on our highways has doubled in the last 20 years, offsetting much of the technological progress in vehicle emission control over the same two decades. Ongoing efforts to reduce emissions from individual vehicles will be necessary to achieve our air quality goals.

I/M programs achieve their objective by identifying vehicles that have high emissions as a result of one or more malfunctions and requiring them to be repaired. Minor malfunctions in the emissions control system can increase emissions significantly. The average car on the road can emit three to four times the carbon monoxide and hydrocarbons allowed by new car standards if emission control systems are malfunctioning. Unfortunately, rarely is it obvious which cars have malfunctions as the emissions themselves may not be noticeable and emission control malfunctions do not necessarily affect vehicle driveability.

I/M programs provide a way to check whether the emission control systems on a vehicle are working correctly. All new passenger cars and trucks sold in the United States today must meet stringent air pollution standards and those standards became more stringent in model year 1994 and again in 1998, but they can only retain this low-polluting profile if the emission controls and engine are functioning properly. An I/M program is designed to ensure that vehicles stay clean in actual use. This, in turn, can substantially reduce the amount of volatile organic compounds, carbon monoxide, and nitrogen oxides emitted to the ambient air, thereby reducing the formation of ozone, lowering ozone concentrations, and contributing toward attainment of the NAAQS.

The aspect of on-road testing, i.e. remote sensing, is needed as an addition to the existing enhanced emissions inspection program for several reasons.

1. Remote sensing is a requirement of the Federal Clean Air Act amendments of 1990. The act requires that at least 0.5% of the vehicles receive "on-road" testing. RSD is the most cost effective way to achieve this.
2. The State Implementation Plan for Northern Virginia already assumes that remote sensing will be used to identify high polluting vehicles and to require their verification, testing and, if needed, repair out-of-cycle (in addition to the existing 2-year testing requirement). The Department of Environmental Quality is committed to fulfilling this SIP requirement.
3. Remote sensing is an effective means of identifying vehicles that are subject to the enhanced emissions inspection program by virtue of being "primarily operated in" (but registered outside) the I/M area per the current I/M rule. Some of these vehicles may be improperly registered outside their actual residence in violation of Virginia law.
4. Remote sensing is an effective means of identifying vehicles that are eligible for "clean screening" or exemption from their next schedule regular I/M test. Under certain limited conditions, this would relieve very clean vehicles from having to be tested at the next inspection cycle.

A remote sensing pilot study conducted in 2002 found that approximately 28% of the vehicles observed in the I/M area were registered outside the I/M area, including 9.0% from other Virginia jurisdictions. Emissions from these vehicles contribute to the air quality nonattainment status. High emitter vehicles from Virginia identified by remote sensing would be subject to verification testing and repairs if needed. Information on high emitter vehicles from other states would be shared with appropriate I/M administrators through agreements currently authorized by Virginia statute.

The study data are being analyzed to determine exactly how many high emitter vehicles would be expected and how much air quality benefit would be obtained from RSD. DEQ will consider this data is setting the standards and conditions.

## Potential Issues:

1. Changes in the wording of some definitions. This is being done as a result of technical changes in the remote sensing program operation.
2. Changes in some elements of the remote sensing testing applicability and program procedure and protocol as it pertains to gross polluters and clean car screening. This is being done as a result of technical changes in the remote sensing program and to conform to state requirements.
3. Changes in the remote sensing test standards. This is being done as a result of technical changes in the remote sensing program and changes in equipment capability.
4. Changes in some permitting and licensing procedures. This is being done as a result of technical changes in the remote sensing program.
5. Addition of language to implement the mandate for economic assistance to subsidize repair costs of some vehicles identified as gross emitters via remote sensing. This is being done to conform to state requirements.
6. Changes in some enforcement and compliance procedures. This is being done as a result of technical changes in program operation and to conform to state requirements.

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

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to develop a regulation revision that conforms to state law for the testing of emissions, including remote sensing, from motor vehicles located or primarily operated in Northern Virginia.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and

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policies. This option is not being selected because it does not provide for implementation of a motor vehicle emissions testing program that meets the provisions, or meets alternative provisions of the state code.

3. Take no action to amend the regulation and operate under the existing regulation. This option is not being selected because it does not meet the requirements of state law.

As provided in the public participation procedures of the State Air Pollution Control Board, the department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments (see section below on public participation) on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

**Public Participation:** The department is soliciting comments on (i) the intended regulatory action, to include ideas to assist the department in the development of the proposal, and (ii) the costs and benefits of the alternatives stated in this notice or other alternatives.

A public meeting will be held by the department to receive comments on and to discuss the intended action. Information on the date, time, and place of the meeting is published in the Calendar of Events section of the Virginia Register. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

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

**Ad Hoc Advisory Group:** Subject to the stipulations noted below, the department will form an ad hoc advisory group to assist in the development of the regulation. If you want to be on the group, notify the agency contact in writing by 4:30 p.m. the last day of the comment period and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you want to be on the group, you are encouraged to attend the public meeting mentioned above. The primary function of the group is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. At its discretion, the department may dispense with the use of an ad hoc advisory group if it receives less than five applications. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence.

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

Statutory Authority: §§ 46.2-1176 and 46.2-1187.3 of the Code of Virginia, Clean Air Act (§ 182), and 40 CFR Part 51, subpart S).

Public comments may be submitted until 5 p.m. on July 3, 2003.

**Contact:** Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, or e-mail [mimajor@deq.state.va.us](mailto:mimajor@deq.state.va.us).

VA.R. Doc. No. R03-196; Filed May 7, 2003, 12:39 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 25-260, Water Quality Standards**. The State Water Control Board (board) proposes to amend the state's Antidegradation Policy (9 VAC 25-260-30), part of the Water Quality Standards, by designating a section of Ragged Island Creek for special protection as an Exceptional Water (9 VAC 25-260-30 A 3 c). The Exceptional Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

The proposed designation is for Ragged Island Creek and its tributaries in Isle of Wight County from its confluence with the James River, including Batten Bay, from a line drawn across the creek mouth at N36°56.306'/W76°29.136' to N36°55.469'/W76°29.802', upstream to the Route 17 bridge, and to the following boundary points on each unnamed tributary:

N36°56.579'/W76°29.454', N36°56.971'/W76°29.680',  
N36°57.231'/W76°30.070', N36°57.341'/W76°30.334',  
N36°57.514'/W76°30.705', N36°57.159'/W76°31.065',  
N36°56.631'/W76°30.676', N36°56.512'/W76°30.260',  
N36°56.342'/W76°30.141'.

("Tier III" is how the public commonly refers to those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. The equivalent regulatory terms are "Outstanding National Resource Waters" for EPA and "Exceptional Waters" for Virginia.)

**Need:** The department has concluded that the proposed amendment to the regulation is essential to protecting the health, safety and welfare of the citizens of the Commonwealth by protecting the water quality and living resources of this particular water body for human consumption of fish, recreational uses and conservation. Because of the



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potential impact of an Exceptional Waters designation on permitted discharges to the water body, § 62.1-44.15:4 B of the Code of Virginia requires notification and opportunity for comment from potentially impacted localities and riparian property owners, so the decision by the board to initiate a rulemaking to amend the water quality standards to designate Ragged Island Creek as an Exceptional Water was made after providing an opportunity to comment and giving due consideration to their comments.

This proposed amendment is a necessary revision to the state water quality standards regulation. The State Water Control Board views Exceptional Waters nominations as citizen petitions under § 2.2-4007 of the Code of Virginia. Therefore, the board took action on this petition for a proposed designation of Ragged Island Creek and its tributaries as Exceptional Waters because department staff had concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and/or possessing outstanding recreational opportunities or exceptional aquatic communities are described in the department's revised April 25, 2001, "Guidance for Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3)."

Ragged Island Creek is surrounded by tidal marshland and is bordered on its northern side by a Virginia Department of Game and Inland Fisheries wildlife management area and on its southern side by private property. There is the opportunity to hunt deer in the pine islands and other high ground as well as the opportunity for waterfowl hunting. The creek is also an important nursery for anadromous and marine species of fish as well as a seasonal feeding ground for adult fish. Ragged Island Creek satisfies two of the eligibility criteria to be considered for designation as Exceptional Waters. It possesses an exceptional environmental setting and provides for outstanding recreational opportunities.

State classification of this water body as an Exceptional Water will afford an additional layer of protection over that provided by the Antidegradation Policy (9 VAC 25-260-30) in that no water quality degradation at all would be allowed in Exceptional Waters. The only exception would be temporary, limited impact activities. This designation for a water body would protect the exceptional recreational and ecological resources of the water from degradation and avoid the potential incremental lowering of water quality that could be allowed for some waters as described in 9 VAC 25-260-30 A 3 b (3) if a public decision is made to allow degradation due to local socioeconomic factors. These are waters that are of a very high quality or possess ecological attributes or exceptional recreational usage that need the special protection and maintenance provided by not lowering water quality.

Substance: The proposed amendment to the Antidegradation Policy (9 VAC 25-260-30), part of the state's Water Quality Standards, would designate a portion of Ragged Island Creek

and its tributaries for special protection as an Exceptional Water (9 VAC 25-260-30 A 3 c).

Upon permanent regulatory designation of a water body as an Exceptional Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters designated. In addition, no new mixing zones would be allowed in an Exceptional Water and mixing zones from upstream or tributary waters could not extend into the Exceptional Waters sections.

Alternatives: In compliance with the State Water Control Board's Public Participation Guidelines (9 VAC 25-10-20 C), the department will consider all alternatives which are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

The primary alternative considered to date was to leave the regulation unchanged. This was not the alternative chosen because Ragged Island Creek, based on the information available at the time of the preliminary evaluation, met the eligibility criteria.

Public Participation: The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal, costs and benefits of the alternatives stated in this notice or other alternatives, and impacts of the regulation on farm or forest lands. The board is also soliciting comment on (i) whether the eligibility decision criteria for an exceptional waters designation is met by this water body, (ii) the concerns raised by one riparian landowner that federal regulations would impose restrictions on the use of the GrayCo riparian property and on the Commonwealth's improvement of the Wildlife Management Area (WMA), (iii) whether GrayCo should be allowed to develop its riparian property as any other landowner; and (iv) whether the creek meets the exceptional environmental setting or exceptional recreational opportunity eligibility criteria necessary for consideration for Exceptional Waters status.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219 or [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

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

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

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

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Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC 1251 et seq.) and 40 CFR Part 131.

Public comments may be submitted until 5 p.m. on July 25, 2003.

**Contact:** Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us).

VA.R. Doc. No. R03-199; Filed May 9, 2003, 1:59 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 25-260, Water Quality Standards**. The State Water Control Board (board) proposes to amend the state's Antidegradation Policy (9 VAC 25-260-30), part of the Water Quality Standards, by designating a section of Little Stony Creek for special protection as an Exceptional Water (9 VAC 25-260-30 A 3 c). The Exceptional Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

The proposed designation is for Little Stony Creek in Giles County from the first footbridge above the Cascades picnic area, upstream to the 3,300-foot elevation.

("Tier III" is how the public commonly refers to those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. The equivalent regulatory terms are "Outstanding National Resource Waters" for EPA and "Exceptional Waters" for Virginia.)

**Need:** The department has concluded that the proposed amendment to the regulation is essential to protecting the health, safety and welfare of the citizens of the Commonwealth by protecting the water quality and living resources of this particular water body for human consumption of fish, recreational uses and conservation. Because of the potential impact of an Exceptional Waters designation on permitted discharges to the water body, § 62.1-44.15:4 B of the Code of Virginia requires notification and opportunity for comment from potentially impacted localities and riparian property owners, so the decision by the board to initiate a rulemaking to amend the water quality standards to designate Little Stony Creek as an Exceptional Water was made after providing an opportunity to comment and giving due consideration to their comments.

State classification of this water body as an Exceptional Water will afford an additional layer of protection over that provided by the Antidegradation Policy (9 VAC 25-260-30 A 3 b) in that no water quality degradation at all would be allowed in Exceptional Waters. The only exception would be temporary, limited impact activities. This designation for a water body would protect the exceptional recreational and ecological resources of the water from degradation and avoid the potential incremental lowering of water quality that could be allowed for some waters as described in 9 VAC 25-260-30 A 3 b (3) if a public decision is made to allow degradation due to local socioeconomic factors. These are waters that are of a very high quality or possess ecological attributes or exceptional recreational usage that need the special protection and maintenance provided by not lowering water quality.

**Substance:** The proposed amendment to the Antidegradation Policy (9 VAC 25-260-30), part of the state's Water Quality Standards, would designate Little Stony Creek for special protection as an Exceptional Water (9 VAC 25-260-30 A 3 c).

Upon permanent regulatory designation of a water body as an Exceptional Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters designated. In addition, no new mixing zones would be allowed in an Exceptional Water and mixing zones from upstream or tributary waters could not extend into the Exceptional Waters sections.

The segment of Little Stony Creek under consideration for designation does not currently contain any permitted point source discharges.

**Alternative:** In compliance with the State Water Control Board's Public Participation Guidelines (9 VAC 25-10-20 C), the department will consider all alternatives that are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

The primary alternative considered to date was to leave the regulation unchanged. This was not the alternative chosen because Little Stony Creek, based on the information available at the time of the preliminary evaluation, met the eligibility criteria.

**Public Participation:** The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal, costs and benefits of the alternatives stated in this notice or other alternatives, and impacts of the regulation on farm or forest lands. The board is also soliciting comment on whether the eligibility decision criteria for an exceptional waters designation are met for the portion of this water body proposed for designation and whether the upper and lower designation boundaries are appropriately delineated for the water body. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219 or [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us). Written comments must

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include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

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

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

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC 1251 et seq.) and 40 CFR Part 131.

Public comments may be submitted until 5 p.m. on July 25, 2003.

**Contact:** Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us).

VA.R. Doc. No. R03-200; Filed May 9, 2003, 1:59 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 25-260, Water Quality Standards**. The State Water Control Board (board) proposes to amend the state's Antidegradation Policy (9 VAC 25-260-30), part of the Water Quality Standards, by designating Lake Drummond and portions of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Pedlar River, Ramseys Draft, and Whitetop Laurel Creek as Exceptional Waters (9 VAC 25-260-30 A 3 c). The Exceptional Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

The proposed designation is for:

Lake Drummond, located on U.S. Fish and Wildlife Service property, which is nominated in its entirety within the cities of Chesapeake and Suffolk excluding any ditches and/or tributaries.

Brown Mountain Creek, located on U.S. Forest Service land in Amherst County, from the City of Lynchburg property

boundary upstream to the first crossing with the national forest property boundary.

Laurel Fork, located on U.S. Forest Service land in Highland County, from the national forest property boundary below Route 642 downstream to the Virginia/West Virginia state line.

North Fork of the Buffalo River, located on U.S. Forest Service land in Amherst County, from its confluence with Rocky Branch upstream to its headwaters.

Pedlar River, located on U.S. Forest Service land in Amherst County, from where the river crosses FR 39 upstream to the first crossing with the national forest property boundary.

Ramseys Draft, located on U.S. Forest Service land in Augusta County, from its headwaters (which includes Right and Left Prong Ramseys Draft) downstream to the Wilderness Area boundary. Whitetop Laurel Creek, located on U.S. Forest Service land in Washington County, from the national forest boundary immediately upstream from the second railroad trestle crossing the creek above Taylors Valley upstream to the confluence of Green Cove Creek.

("Tier III" is how the public commonly refers to those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. The equivalent regulatory terms are "Outstanding National Resource Waters" for EPA and "Exceptional Waters" for Virginia.)

Need: The department has concluded that the proposed amendments to the regulation are essential to protecting the health, safety and welfare of the citizens of the Commonwealth by protecting the water quality and living resources of these particular water bodies for human consumption of fish, recreational uses and conservation. Because of the potential impact of an Exceptional Waters designation on permitted discharges to the water body, Section 62.1-44.15:4 B of the Code of Virginia requires notification and opportunity for comment from potentially impacted localities and riparian property owners, so the decision by the board to initiate a rulemaking to amend the water quality standards to designate these waters as Exceptional Waters was made after providing an opportunity to comment and giving due consideration to their comments.

State classification of these waters as Exceptional Waters will afford an additional layer of protection over that provided by the Antidegradation Policy (9 VAC 25-260-30 A 3 b) in that no water quality degradation at all would be allowed in Exceptional Waters. The only exception would be temporary, limited impact activities. This designation for a water body would protect the exceptional recreational and ecological resources of the water from degradation and avoid the potential incremental lowering of water quality that could be allowed for some waters as described in 9 VAC 25-260-30 A 3 b (3) if a public decision is made to allow degradation due to local socioeconomic factors. These are waters that are of a very high quality or possess ecological attributes or exceptional recreational usage that need the special protection and maintenance provided by not lowering water quality.

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# Notices of Intended Regulatory Action

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**Substance:** The proposed amendment to the Antidegradation Policy (9 VAC 25-260-30), part of the state's Water Quality Standards, would designate Lake Drummond and portions of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Pedlar River, Ramseys Draft, and Whitetop Laurel Creek for special protection as Exceptional Waters (9 VAC 25-260-30 A 3 c).

Upon permanent regulatory designation of a water body as an Exceptional Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters designated. In addition, no new mixing zones would be allowed in an Exceptional Water and mixing zones from upstream or tributary waters could not extend into the Exceptional Waters sections.

**Alternative:** In compliance with the State Water Control Board's Public Participation Guidelines (9 VAC 25-10-20 C), the department will consider all alternatives that are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

The primary alternative considered to date was to leave the regulation unchanged. This was not the alternative chosen because these seven water bodies met the eligibility criteria, based on the information available at the time of the preliminary evaluation.

**Public Participation:** The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal, costs and benefits of the alternatives stated in this notice or other alternatives, and impacts of the regulation on farm or forest lands. The board is also soliciting comment on whether the eligibility decision criteria for exceptional waters designation are met for each of these waters and whether the upper and lower designation boundaries are appropriately delineated for each water body. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219 or [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

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

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

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC 1251 et seq.) and 40 CFR Part 131.

Public comments may be submitted until 5 p.m. on July 25, 2003.

**Contact:** Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us).

VA.R. Doc. No. R03-202; Filed May 9, 2003, 2 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 25-260, Water Quality Standards**. The State Water Control Board (board) proposes to amend the state's Antidegradation Policy (9 VAC 25-260-30), part of the Water Quality Standards, by designating a section of Bottom Creek for special protection as an Exceptional Water (9 VAC 25-260-30 A 3 c). The Exceptional Waters category of the Antidegradation Policy allows the board to designate waters which display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

The proposed designation is for Bottom Creek in Montgomery and Roanoke Co. from its confluence with Big Laurel Creek downstream to its confluence with Goose Creek to form the South Fork of the Roanoke River.

("Tier III" is how the public commonly refers to those waters that are protected from water quality degradation through a prohibition on new or increased point source discharges. The equivalent regulatory terms are "Outstanding National Resource Waters" for EPA and "Exceptional Waters" for Virginia.)

**Need:** The department has concluded that the proposed amendment to the regulation is essential to protecting the health, safety and welfare of the citizens of the Commonwealth by protecting the water quality and living resources of this particular water body for human consumption of fish, recreational uses and conservation. Because of the potential impact of an Exceptional Waters designation on permitted discharges to the water body, § 62.1-44.15:4 B of the Code of Virginia requires notification and opportunity for comment from potentially impacted localities and riparian property owners, so the decision by the board to initiate a rulemaking to amend the water quality standards to designate Bottom Creek as an Exceptional Water was made after providing an opportunity to comment and giving due consideration to their comments.

This proposed amendment is a necessary revision to the state water quality standards regulation. The State Water Control

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## Notices of Intended Regulatory Action

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Board views Exceptional Waters nominations as citizen petitions under § 2.2-4007 of the Code of Virginia. Therefore, the board took action on this petition for a proposed designation of Bottom Creek as an exceptional water because department staff had concluded, based on the information available at the time of the preliminary evaluation, that most of the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and/or possessing outstanding recreational opportunities or exceptional aquatic communities are described in the department's revised April 25, 2001, "Guidance for Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3)."

Approximately two-thirds of the nominated portion of Bottom Creek lies within the Bottom Creek Gorge Preserve that is owned by the Nature Conservancy and open to the public. The remainder flows through private property and access is restricted. Although designated as a Class ii wild natural trout stream by the Department of Game and Inland Fisheries (DGIF), fishing is not allowed in the Bottom Creek Gorge Preserve. The preserve does provide exceptional opportunities for recreational activities such as hiking, bird- and wildlife watching, and photography. The majority of the nominated portion of Bottom Creek satisfies all three of the eligibility criteria to be considered for designation as Exceptional Waters. There are concerns that the segment from the upstream boundary of the preserve to the confluence of Big Laurel Creek may not meet the eligibility criteria.

State classification of this water body as an Exceptional Water will afford an additional layer of protection over that provided by the Antidegradation Policy (9 VAC 25-260-30 A 3 b) in that no water quality degradation at all would be allowed in Exceptional Waters. The only exception would be temporary, limited impact activities. This designation for a water body would protect the exceptional recreational and ecological resources of the water from degradation and avoid the potential incremental lowering of water quality that could be allowed for some waters as described in 9 VAC 25-260-30 A 3 b (3) if a public decision is made to allow degradation due to local socioeconomic factors. These are waters that are of a very high quality or possess ecological attributes or exceptional recreational usage that need the special protection and maintenance provided by not lowering water quality.

**Substance:** The proposed amendment to the Antidegradation Policy (9 VAC 25-260-30), part of the state's Water Quality Standards, would designate Bottom Creek for special protection as an Exceptional Water (9 VAC 25-260-30 A 3 c).

Upon permanent regulatory designation of a water body as an Exceptional Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters designated. In addition, no new mixing zones would be allowed in an Exceptional Water and mixing zones from upstream or

tributary waters could not extend into the Exceptional Waters sections.

**Alternative:** In compliance with the State Water Control Board's Public Participation Guidelines (9 VAC 25-10-20 C), the department will consider all alternatives that are considered to be less burdensome and less intrusive for achieving the essential purpose of the amendment, and any other alternatives presented during the proposed rulemaking.

The primary alternative considered to date was to leave the regulation unchanged. This was not the alternative chosen because most of the proposed segment of Bottom Creek met the eligibility criteria, based on the information available at the time of the preliminary evaluation.

**Public Participation:** The board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal, costs and benefits of the alternatives stated in this notice or other alternatives, and impacts of the regulation on farm or forest lands. The board is also soliciting comment on whether the upper boundary of the creek as proposed in the initial petition received by the board should be changed and whether the eligibility decision criteria for exceptional waters designation is met for this water body. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Jean W. Gregory, Office of Water Quality Programs, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219 or [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period.

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

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

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia, Clean Water Act (33 USC 1251 et seq.) and 40 CFR Part 131.

Public comments may be submitted until 5 p.m. on July 25, 2003.

**Contact:** Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us).

VA.R. Doc. No. R03-201; Filed May 9, 2003, 2 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 25-630, General Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management**. The purpose of

the proposed action is to amend the VPA General Permit for poultry waste management, where applicable, to reflect changes to 40 CFR Parts 9, 122, 123, and 412, as published in the Federal Register on February 12, 2003. This general permit regulation governs the authorization to manage pollutants from confined poultry feeding operations, including storage and land application of animal waste. (See 19:17 VA.R. 2470 May 5, 2003, for more detailed information on this regulatory action.)

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Public comments may be submitted until June 4, 2003.

**Contact:** Scott Haley, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4443, FAX (804) 698-4032, or e-mail [ts Haley@deq.state.va.us](mailto:ts Haley@deq.state.va.us).

VA.R. Doc. No. R03-179; Filed April 16, 2003, 10:33 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### DEPARTMENT OF LABOR AND INDUSTRY

#### Safety and Health Codes Board

##### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Labor and Industry intends to consider promulgating regulations entitled **16 VAC 25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry - Subpart V**, and amending regulations entitled **16 VAC 25-175, Federal Identical Construction Industry Standards**. The purpose of this action is to **adopt** a regulation unique to the Virginia Occupational Safety and Health Program (VOSH) entitled 16 VAC 25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry - Subpart V, that will make the Construction Industry safety requirements for electrical transmission workers identical to the current federal identical General Industry regulation counterpart, 16 VAC 25-90-1910.269(l)(2)(i). This action will also amend the Federal Identical Construction Industry Regulation, 16 VAC 25-175 by repealing 16 VAC 25-175-1926.950 (c) (1) (i).

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

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

Public comments may be received until June 5, 2003.

**Contact:** John J. Crisanti, Policy Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, email [jjc@doli.state.va.us](mailto:jjc@doli.state.va.us).

VA.R. Doc. No. R03-176; Filed April 11, 2003, 12:35 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

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

##### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects intends to amend regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations**. The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

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

Statutory Authority: §§ 54.1-113, 54.1-201.4, 54.1-404, and 54.1-411 of the Code of Virginia.

Public comments may be submitted until June 4, 2003.

**Contact:** Mark N. Courtney, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail [APELSCIDLA@dpor.state.va.us](mailto:APELSCIDLA@dpor.state.va.us).

VA.R. Doc. No. R03-177; Filed April 11, 2003, 2:20 p.m.

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

##### † Notice of Intended Regulatory Action

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 consider amending regulations entitled **18 VAC 30-20, Regulations of the Board of Audiology and Speech-Language Pathology**. The purpose of the proposed action is to address the need of the Board of Audiology and Speech-Language Pathology to increase fees to cover expenses for essential functions of approving applicants for licensure, investigation of complaints against licensees, and adjudication of disciplinary cases required for public safety and security in the Commonwealth.

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

Statutory Authority: § 54.1-2400 and Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1 of the Code of Virginia.

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# Notices of Intended Regulatory Action

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Public comments may be submitted until 5 p.m. on July 2, 2003.

**Contact:** Elizabeth Young, Executive Director, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, or e-mail [elizabeth.young@dhp.state.va.us](mailto:elizabeth.young@dhp.state.va.us).

VA.R. Doc. No. R03-206; Filed May 14, 2003, 10:01 a.m.

## BOARD FOR GEOLOGY

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Geology intends to consider amending regulations entitled **18 VAC 70-20, Board for Geology Regulations**. The purpose of the proposed action is to make general clarifying amendments to existing language, eliminate definitions contained in statute, ensure consistency with state law, review renewal and reinstatement requirements, review fees for compliance with the Callahan Act (§ 54.1-113 of the Code of Virginia) and make other changes that may result from the board's periodic review of the regulations.

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

Statutory Authority: §§ 54.1-113, 54.1-201, and 54.1-1403 of the Code of Virginia.

Public comments may be submitted until July 18, 2003.

**Contact:** Joseph Kossan, Assistant Administrator, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-7507, FAX (804) 367-6128, or e-mail [geology@dpor.state.va.us](mailto:geology@dpor.state.va.us).

VA.R. Doc. No. R03-195; Filed May 2, 2003, 12:27 p.m.

## BOARD OF PHYSICAL THERAPY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to consider amending regulations entitled **18 VAC 112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed action is to clarify and update educational, examination and practice requirements. The board has determined that some of its requirements may need to be more consistent with national standards in the practice of physical therapy, may need to be clarified to facilitate compliance by licensees, or may need to be modified to reduce the burden of compliance.

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

Statutory Authority: § 54.1-2400 and Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until June 18, 2003.

**Contact:** Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9943 or e-mail [elizabeth.young@dhp.state.va.us](mailto:elizabeth.young@dhp.state.va.us).

VA.R. Doc. No. R03-191; Filed April 30, 2003, 10:59 a.m.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLANDS PROFESSIONALS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Professional Soil Scientists and Wetlands Professionals intends to consider amending regulations entitled **18 VAC 145-20, Board for Professional Soil Scientists Regulations**. The purpose of the proposed action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Any other changes that may be necessary may also be considered.

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

Statutory Authority: §§ 54.1-113 and 54.1-201.4 of the Code of Virginia.

Public comments may be submitted until June 4, 2003.

**Contact:** Mark N. Courtney, Executive Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail [SoilScientists@dpor.state.va.us](mailto:SoilScientists@dpor.state.va.us).

VA.R. Doc. No. R03-178; Filed April 11, 2003, 2:20 p.m.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled **18 VAC 160-20, Board for Waterworks and Wastewater Works Operators Regulations**. The purpose of the proposed action is to increase fees for applications and regulants of the Board for Waterworks and Wastewater Works Operators in order to comply with § 54.1-113 of the Code of Virginia (Callahan Act), which requires the board to adjust its fees when the expenses allocated to it for the past biennium are found to be more than 10% greater or less than the moneys collected on its behalf. The board will revise its fees so that the revenue received will be sufficient, but not excessive, to cover the board's expenses.

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 June 18, 2003.

**Contact:** Joseph Kossan, Assistant Administrator, Department of Professional and Occupational Regulation,

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# Notices of Intended Regulatory Action

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3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128 or e-mail [waterwasteoper@dpor.state.va.us](mailto:waterwasteoper@dpor.state.va.us).

VA.R. Doc. No. R03-192; Filed April 30, 2003, 11:08 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled **22 VAC 40-110, Minimum Standards for Licensed Family Day Homes**. The purpose of the proposed action is to repeal the current regulation. The necessary provisions will be incorporated into a new regulation, 22 VAC 40-111, Standards for Licensed Family Day Homes.

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

Statutory Authority: § 63.2-217, 63.2-1701, and 63.2-1734 of the Code of Virginia.

Public comments may be submitted until June 18, 2003.

**Contact:** Doris Sherrod, Human Services Program Consultant, Department of Social Services, Division of Licensing Programs, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1748, FAX (804) 692-2370 or e-mail [dss7@dss.state.va.us](mailto:dss7@dss.state.va.us).

VA.R. Doc. No. R03-185; Filed April 28, 2003, 10:50 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider adopting regulations entitled **22 VAC 40-111, Standards for Licensed Family Day Homes**. The purpose of the proposed action is to consider repealing the current Minimum Standards for Licensed Family Day Homes (22 VAC 40-110) and adopting a new regulation. The new regulation, Standards for Licensed Family Day Homes (22 VAC 40-111), will incorporate: (i) findings from the periodic review completed in 1999; (ii) recommendations from ad hoc committee meetings held in 1999; (iii) changes in the Code of Virginia from 1993 to the recodification of the licensing statute, effective October 1, 2002; and (iv) comments received in response to the changes proposed in the Notice of Regulatory Action published on April 22, 2002. The new regulation will cover the following topics: personnel; household members; orientation and training; physical environment; equipment; care of children; emergency preparedness and procedures; water safety; and recordkeeping. These are the same topics covered in the current regulation. The goal of the regulation is ensure that the activities, services and facilities of family day homes are conducive to the health, safety and well-being of children.

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

Statutory Authority: § 63.2-217, 63.2-1701, and 63.2-1734 of the Code of Virginia.

Public comments may be submitted until June 18, 2003.

**Contact:** Doris Sherrod, Human Services Program Consultant, Department of Social Services, Division of Licensing Programs, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1748, FAX (804) 692-2370 or e-mail [dss7@dss.state.va.us](mailto:dss7@dss.state.va.us).

VA.R. Doc. No. R03-186; Filed April 28, 2003, 10:47 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled **22 VAC 40-120, Minimum Standards for Licensed Family Day-Care Systems**. The purpose of the proposed action is to repeal the current regulation. The necessary provisions will be incorporated into a new regulation, 22 VAC 40-121, Standards for Licensed Family Day Systems.

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

Statutory Authority: § 63.2-217, 63.2-1701, and 63.2-1734 of the Code of Virginia.

Public comments may be submitted until June 18, 2003.

**Contact:** Doris Sherrod, Human Services Program Consultant, Department of Social Services, Division of Licensing Programs, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1748, FAX (804) 692-2370 or e-mail [dss7@dss.state.va.us](mailto:dss7@dss.state.va.us).

VA.R. Doc. No. R03-187; Filed April 28, 2003, 10:47 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider adopting regulations entitled **22 VAC 40-121, Standards for Licensed Family Day Systems**. The purpose of the proposed action is to consider repealing the current Minimum Standards for Licensed Family Day-Care Systems (22 VAC 40-120) and adopting a new regulation. The new regulation is titled Standards for Licensed Family Day Systems (22 VAC 40-121). Family day systems approve family day homes as members of the system, and refer children to available member homes. There have been no major revisions to this regulation since it was originally adopted in 1981. The goal is to ensure that the activities, services and facilities of the system and its member homes operate in a manner that is conducive to the health, safety and welfare of children received for care.

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



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# Notices of Intended Regulatory Action

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Statutory Authority: § 63.2-217, 63.2-1701, and 63.2-1734 of the Code of Virginia.

Public comments may be submitted until June 18, 2003.

**Contact:** Doris Sherrod, Human Services Program Consultant, Department of Social Services, Division of Licensing Programs, 730 E. Broad St., 7th Floor, Richmond, VA 23219, telephone (804) 692-1748, FAX (804) 692-2370 or e-mail [dss7@dss.state.va.us](mailto:dss7@dss.state.va.us).

VA.R. Doc. No. R03-188; Filed April 28, 2003, 10:45 a.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider adopting regulations entitled **22 VAC 40-293, Locality Groupings**. The purpose of the proposed action is to establish new regulations related to locality groupings. Currently, localities are placed in groupings that determine the payment levels for Temporary Assistance for Needy Families. Procedures to change locality groupings have never been regulated. These regulations provide the rules for these changes, including the data to be provided, the requirement that funds be available as determined by the commissioner, and the ability to change data sources upon agreement of the board.

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

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

Public comments may be submitted until July 2, 2003.

**Contact:** Mark L. Golden, TANF Manager, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1731, FAX (804) 225-2321, or e-mail [mxg2@dss.state.va.us](mailto:mxg2@dss.state.va.us).

VA.R. Doc. No. R03-203; Filed May 9, 2003, 2:10 p.m.



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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## Symbol Key

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

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## TITLE 2. AGRICULTURE

### STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

#### Extension of Public Comment Period

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

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

Public comments on the proposed regulations will be received until August 5, 2003.

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

VA.R. Doc. No. R00-271; Filed May 9, 2003, 3:17 p.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 25 of the Code of Virginia, which exempts the Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 of the Code of Virginia.

**Title of Regulation:** 12 VAC 5-90. Regulations for Disease Reporting and Control (amending 12 VAC 5-90-80).

**Statutory Authority:** § 32.1-35 of the Code of Virginia.

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

(See Calendar of Events section for additional information)

**Agency Contact:** Diane Woolard, Ph.D., Director of Surveillance and Investigation, Office of Epidemiology, Department of Health, Suite 113, 1500 E. Main Street,

Richmond, VA 23219, telephone (804) 786-6029, FAX (804) 786-1076, e-mail [dwoolard@vdh.state.va.us](mailto:dwoolard@vdh.state.va.us).

#### Summary:

*These regulations are being amended to add Severe Acute Respiratory Syndrome (SARS) to the list of diseases that medical care providers and laboratories must report to the Department of Health, enabling it to conduct epidemiological surveillance. Such surveillance enables the Department of Health to increase its protection of the health of citizens of the Commonwealth.*

*This amendment to the regulations is necessary due to an imminent threat to public health. Severe acute respiratory syndrome (SARS) is a new communicable disease that has affected over 3,000 people worldwide in recent weeks, with 200 suspected cases in the United States, including six in Virginia. Each case needs to come immediately to the attention of the Department of Health to ensure that measures are put in place to prevent the spread of this disease to others. The Asian and Canadian experiences have demonstrated that if a person with SARS is not properly isolated, dozens of others can become ill and hundreds may need to have restrictions placed on their usual activities. SARS can cause serious and life-threatening disease. This action amends 12 VAC 5-90-80, the reportable disease list contained in the Regulations for Disease Reporting and Control, to add "severe acute respiratory syndrome (SARS)," thereby making this a reportable condition in Virginia and allowing the Department of Health to track and respond to SARS cases.*

#### 12 VAC 5-90-80. Reportable disease list.

A. The board declares the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12 VAC 5-90-90. Conditions identified by an asterisk (\*) require rapid communication as defined in subsection B of this section:

Acquired Immunodeficiency Syndrome (AIDS)  
Amebiasis  
\*Anthrax  
Arboviral infections (e.g., EEE, LAC, SLE, WNV)  
\*Botulism  
Brucellosis  
Campylobacter infection  
Chancroid  
Chickenpox  
Chlamydia trachomatis infections  
\*Cholera  
Creutzfeld-Jakob disease if < 55 years of age  
Cryptosporidiosis  
Cyclosporiasis  
\*Diphtheria  
Ehrlichiosis

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Escherichia coli O157:H7 and other enterohemorrhagic E. coli infections  
Giardiasis  
Gonorrhea  
Granuloma inguinale  
\*Haemophilus influenzae infection, invasive  
Hantavirus pulmonary syndrome  
Hemolytic uremic syndrome (HUS)  
\*Hepatitis A (IgM +)  
Hepatitis B:  
    Acute disease (IgM +)  
    HBsAg positive pregnant women  
Hepatitis C (acute and chronic)  
Hepatitis, other acute viral  
Human immunodeficiency virus (HIV) infection  
Influenza  
Kawasaki syndrome  
Lead-elevated blood levels  
Legionellosis  
Leprosy (Hansen disease)  
Listeriosis  
Lyme disease  
Lymphogranuloma venereum  
Malaria  
\*Measles (Rubeola)  
\*Meningococcal infection  
Mumps  
Ophthalmia neonatorum  
\*Outbreaks, all (including foodborne, nosocomial, occupational, toxic substance-related, waterborne, and other outbreaks)  
\*Pertussis (Whooping cough)  
\*Plague  
\*Poliomyelitis  
\*Psittacosis  
Q fever  
\*Rabies, human and animal  
Rabies treatment, post-exposure  
Rocky Mountain spotted fever  
Rubella (German measles), including congenital rubella syndrome  
Salmonellosis  
\*Severe acute respiratory syndrome (SARS)  
Shigellosis  
Smallpox  
Streptococcal disease, Group A, invasive  
Streptococcus pneumoniae, invasive in <5 years of age  
Syphilis (report \*primary and \*secondary syphilis by rapid means)  
Tetanus  
Toxic shock syndrome  
Toxic substance-related illness  
Trichinosis (Trichinellosis)  
\*Tuberculosis disease  
Tuberculosis infection in children ages <4 years (Mantoux tuberculin skin test reaction  $\geq 10$  mm)  
Tularemia  
Typhoid fever  
Typhus  
Unusual occurrence of disease of public health concern  
Vancomycin-resistant Staphylococcus aureus  
Vibrio infection

Viral hemorrhagic fever  
\*Yellow Fever

B. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed below and identified by asterisks in subsection A of this section and 12 VAC 5-90-90 B, shall be made within 24 hours by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, telegraph, teletype, etc.) to the local health director or other professional employee of the department:

Anthrax  
Botulism  
Cholera  
Diphtheria  
Haemophilus influenzae infection, invasive  
Hepatitis A  
Measles (Rubeola)  
Meningococcal infection  
Outbreaks, all  
Pertussis  
Plague  
Poliomyelitis  
Psittacosis  
Rabies in man and animals  
Severe acute respiratory syndrome (SARS)  
Syphilis, primary and secondary  
Tuberculosis disease  
Yellow Fever

C. Diseases to be reported by number of cases. The following disease in the list of reportable diseases shall be reported as number-of-cases only:

Influenza (by type, if available)

D. Human immunodeficiency virus (HIV) infection. Every physician practicing in this Commonwealth shall report to the local health department any patient of his who has tested positive for human immunodeficiency virus (HIV). Every person in charge of a medical care facility shall report the occurrence in or admission to the facility of a patient with HIV infection unless there is evidence that the occurrence has been reported by a physician. When such a report is made, it shall include the information required in 12 VAC 5-90-90 A. Only individuals who have laboratory results which indicate the presence of HIV antigen, nucleic acid, or antibodies (such as at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot or by rapid tests with confirmation) are considered to have HIV infection.

E. Toxic substance-related diseases or illnesses. All toxic substance-related diseases or illnesses, including pesticide and heavy metal poisoning or illness or disease resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such disease or illness is verified or suspected and presents an emergency or a serious threat to public health or safety,

the report of such disease or illness shall be by rapid communication as in subsection B of this section.

F. Outbreaks. The occurrence of outbreaks or clusters of any illness which may represent a group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

G. Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish temporary surveillance systems for diseases or conditions that are not on the list of reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

H. Contact tracing. When notified about a disease specified in subsection A of this section, the local health department shall perform contact tracing for HIV infection, infectious syphilis, and tuberculosis and may perform contact tracing for the other diseases if deemed necessary to protect the public health. The local health director shall have the responsibility to accomplish contact tracing by either having patients inform their potential contacts directly or through obtaining pertinent information such as names, descriptions, and addresses to enable the health department staff to inform the contacts. All contacts of HIV infection shall be afforded the opportunity for appropriate counseling, testing, and individual face-to-face disclosure of their test results. In no case shall names of informants or infected persons be revealed to contacts by the health department. All information obtained shall be kept strictly confidential.

VA.R. Doc. No. R03-183; Filed May 12, 2003, 9:49 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**Title of Regulation:** 12 VAC 30-40. Eligibility Conditions and Requirements (amending 12 VAC 30-40-100, 12 VAC 30-40-140, 12 VAC 30-40-240, 12 VAC 30-40-280, and 12 VAC 30-40-290.

**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 August 1, 2003.  
(See Calendar of Events section for additional information)

**Agency Contact:** Patricia Sykes, Manager, Division of Policy, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680, or e-mail psykes@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. Sections 1902(a)(10)(A)(i), (ii) and 1902 (a)(10)(C) of the Social Security Act (the Act) describe the mandatory, optional, and Medically Needy groups of Aged, Blind, and Disabled individuals who are eligible for Medicaid. Section 1902(a)(10)(E)(i), (iii), and (iv) of the Act describe mandatory groups of qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), and qualified individuals (QIs) respectively, who are eligible for Medicaid. Section 1902(r)(2) of the Act grants states the authority to use eligibility requirements for Medicaid that are more liberal than the requirements of the most closely related public cash assistance program. Section 1902(f) of the Act grants states the authority to impose more restrictive eligibility requirements for the aged, blind, and disabled recipients than those imposed by the Social Security Administration for the Supplemental Income (SSI) program.

**Purpose:** The purpose of this proposal is to simplify Medicaid eligibility requirements for counting income for aged, blind, and disabled individuals and by conforming methods for counting certain resources of Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs) and Qualified Individuals (QIs) with the methods for counting the resources of other Medicaid aged, blind, and disabled recipients.

Current Medicaid policy requires that the value of in-kind support and maintenance be counted as income in determining the financial eligibility of individuals under the Aged, Blind, or Disabled Categorically Needy and Medically Needy groups. In-kind support and maintenance means food, clothing or shelter or any combination of these provided to an individual. The fair market value of in-kind support and maintenance is counted as income when evaluating the financial eligibility of the above-referenced groups. This regulatory change would eliminate the difficulty in and subjective nature of determining the fair market value of in-kind support and maintenance for all Aged, Blind, and Disabled covered groups with the exception of the special income level group for institutionalized individuals, thus simplifying and more accurately assessing the financial eligibility criteria for such groups.

**Substance:** The sections of the State Plan and the corresponding regulations affected by this action are Attachment 2.6-A (12 VAC 30-40-100), Supplement 5 to Attachment 2.6-A (12 VAC 30-40-240), Supplements 8a (12 VAC 30-40-280) and 8b (12 VAC 30-40-290) to Attachment 2.6-A.

In accordance with Executive Order 21 (02), the department continuously reviews its regulations. A review of the regulations revealed six regulations that can be improved.

1. More liberal methods of counting income: The State Plan provides that the income methods of the SSI program are used in determining the income eligibility of the Aged, Blind, and Disabled groups covered under the State Plan. Federal law at § 1902(a)(10)(C) links the income and resource methods for Aged, Blind, and Disabled individuals to the SSI program; however, § 1902(r)(2) of the Act permits states to

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use more liberal methods of counting income and resources. The State Plan does not currently reflect more liberal methods of evaluating income; however, the Virginia Medicaid program has excluded the value of in-kind support and maintenance as income for Aged, Blind, and Disabled individuals covered under the State Plan. This exemption has long been in practice but has not heretofore been expressly set forth in the State Plan in Supplement 8a. This regulatory action proposes to continue exempting in-kind support and maintenance costs from eligibility calculations and specify such in the State Plan.

2. More liberal methods of treating resources for QMBs, SLMBs and QIs: The current regulations contain a discrepancy in the manner in which real and personal property is evaluated in determining eligibility for different covered groups of aged, blind, and disabled individuals. Federal law identifies and defines groups of individuals who must be covered by Medicaid programs operated in the states. Among these are several groups of aged, blind, and disabled individuals. Individuals who are aged, blind, and disabled and who have income below stipulated income limits are eligible for full Medicaid benefits as Categorically Needy or Medically Needy individuals. However, aged, blind, and disabled individuals who qualify for Medicare and whose income is higher than the Categorically or Medically Needy income limits may be eligible for Medicaid payment of the Medicare cost sharing portion as:

- (i) A Qualified Medicare Beneficiary (QMB) if income is below 100% of the federal poverty limits (FPL);
- (ii) A Specified Low-Income Medicare Beneficiary (SLMB) if an individual meets all the requirements to be a QMB except income, and income is less than 120% of FPL; or
- (iii) A Qualified Individual if he meets all the requirements to be a QMB except income and income is at or below 175% of FPL.

Federal law permits states some latitude in setting the financial eligibility requirements for these groups. Federal law at § 1902(a)(10)(C) links the income and resource methods for aged, blind, and disabled individuals to the methods of the SSI program. However, § 1902(r)(2) of the Act permits states to use more liberal methods of counting income and resources. The State Plan lists a number of more liberal methods of counting resources for the Categorically Needy or the Medically Needy individuals than those methods employed by the SSI program. These more liberal methods permit the exemption of:

- (a) Cemetery plots owned by the individual;
- (b) Up to \$3,500 in cash assets designated for burial;
- (c) Real property that cannot be sold after a reasonable effort to sell has been made;
- (d) Life rights to real property;
- (e) One automobile; and
- (f) Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any person 21 years old and over. Policies on individuals under age 21 are exempt regardless of the face value.

The State Plan does not currently reflect the use of more liberal methods of evaluating resource for QMBs, SLMBs, and QIs. This regulation intends to count the resources for QMBs, SLMBs and QIs the same as other Medicaid groups of similarly situated individuals.

3. Exemption of the former home of an institutionalized individual: Medicaid exempts the former home of an institutionalized individual for six months after institutionalization. After that date, the value of the former home is counted in determining continuing Medicaid financial eligibility unless dependent relatives occupy the home, in which case the home may continue to be exempt. A disabled parent is one of the dependent relatives listed in 12 VAC 30-40-240 and in Supplement 5 to Attachment 2.6-A of the State Plan. The existing regulation currently requires a finding that the parent's disability meet the Social Security definition of disability. However, as a result of this regulatory action, the regulation is being amended to also recognize determinations of civil service disability.

4. Exemption of cemetery plots: This exemption has long been in Medicaid regulations but is not listed in the State Plan in Supplement 8b to Attachment 2.6-A. The exemption is found in 12 VAC 30-40-240. Although 12 VAC 30-40-240 refers to 12 VAC 30-40-290, the reference to cemetery plots was inadvertently left out of the latter regulation.

This regulatory change corrects this oversight and illustrates that this exemption is more liberal than the SSI limitation of one cemetery plot for each immediate family member.

5. Exemption of household goods and personal effects: This exemption has long been in practice but is not listed in the State Plan in Supplement 8b. When determining eligibility for SSI, the Social Security Administration has a complex policy for evaluating which household goods and personal effects of applicants should be counted when determining financial eligibility. What possessions may be exempted because they are used in the operation of the home or kept as personal effects is quite detailed. For example, only one wedding and one engagement ring are exempt. Furthermore, furniture items have to be evaluated to determine whether the item has unusual value.

Additionally there are elaborate justifications for exemption if an item has unusual value but is used in everyday living. For example, if the dining room table is an antique but is the only table the family has to eat on, it can be exempted. Otherwise, the value of the item has to be counted in determining the individual's eligibility for SSI.

Medicaid has never counted the value of household goods and personal effects in determining Medicaid eligibility. In 1984, due to changes in federal law in the Deficit Reduction Act, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services) required states to file more liberal resource methods in the State Plan. At that time, Governor Charles Robb directed DMAS to continue the more liberal resource methods previously used, including disregarding the value of household goods and personal effects. Certain more liberal resource methods were filed in the State Plan, but through an inadvertent error, the requirements for evaluating household goods and personal

effects were not filed in the State Plan. Thus, the policy has never been formally incorporated into the State Plan. In order to ensure that the policy is duly promulgated, the State Plan is being amended to reflect this long-standing policy.

6. **Determining Eligibility Based on Resources:** When determining Medicaid eligibility, an individual shall be eligible in a month if his or her countable resources were at or below the resource standard on any day of such month. This policy differs from the SSI program, which only counts resources owned on the first day of each month.

This rule has been in operation in Virginia for many years. Attachment 2.6-A of the State Plan for Medical Assistance provides that coverage is available for the full month if the individual is eligible at any time during the month. This has always been interpreted to mean that if an individual's resources meet the financial eligibility criteria on any day during the month, the individual is eligible to receive Medicaid services during that entire month. However, the State Plan has never clearly stated this rule. Therefore, in order to ensure that the regulatory language clearly sets forth this more liberal method of counting resources, the language is being added to Supplement 8b to Attachment 2.6-A of the State Plan.

This regulatory action is also making a technical correction by removing federally permitted preprinted language from 12 VAC 30-40-100, item h, which is the reference to coverage of COBRA Beneficiaries. This does not belong in the Virginia Administrative Code. Its inclusion was inadvertent when the federally issued Title XIX State Plan for Medical Assistance Services was incorporated into the VAC.

These regulations are essential to the efficient and equitable application of Medicaid eligibility criteria. By making Medicaid eligibility determination more efficient and objective, eligible Virginians can better access needed health and medical care. Reducing the administrative burden for local eligibility workers reduces cost to the taxpayers for Medicaid administration.

Issues: These regulations are essential to the efficient and equitable application of Medicaid eligibility criteria. By making Medicaid eligibility determination more efficient and objective, eligible Virginians can better access needed health and medical care. Reducing the administrative burden for local eligibility workers reduces cost to the taxpayers for Medicaid administration.

The regulatory changes in this proposed action are designed to improve the efficiency and economy of administering Virginia's Medicaid program. By streamlining and simplifying the complex Medicaid eligibility requirements, applicants and recipients will be relieved of unnecessary red tape and barriers and local eligibility workers can apply more consistent and uniform requirements in performing their duties. The department projects no negative issues involved in implementing this proposed change. All these policies have been in effect for years. The regulations are designed to ensure that the regulations fully support the administrative procedures already utilized by local agencies.

**Fiscal Impact:** The department does not anticipate any fiscal impact from this regulation. Individuals who were qualifying for Medicaid before these changes take effect will continue to qualify for Medicaid after these changes take effect. These

regulations will ensure that the time and complexity of the eligibility determination process will not increase. The more streamlined procedures are already in place. Therefore, these regulations will not have any impact on the local social service agencies. There are no localities that are uniquely affected by these regulations as they apply statewide.

This regulation clarifies requirements already in effect operationally. Therefore, no new costs are anticipated. There is no expected impact on local entities.

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

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

**Summary of the proposed regulation.** The proposed changes clarify the types of income and resources considered when determining eligibility of certain Medicaid recipient groups.

**Estimated economic impact.** These regulations establish eligibility criteria and methods of counting income and resources when determining Medicaid eligibility for aged, blind, and disabled individuals as well as qualified Medicare beneficiaries, specified low-income Medicare beneficiaries, and qualified individuals. Following a comprehensive review of its regulations and procedures, the Department of Medical Assistance Services (DMAS) proposes to clarify its regulations so that they accurately reflect the current procedures used by local departments of social services in determining Medicaid eligibility.

One of the proposed changes will clarify that the value of in-kind support and maintenance provided to Medicaid applicants is not counted as income. Other changes relate to types of resources counted and methods of counting income when determining Medicaid eligibility. The proposed regulations clarify (i) that the value of cemetery plots, household goods, and personal effects owned by applicants or recipients is not counted as a resource, (ii) that Medicaid coverage is effective the first day of the month if an individual is resource eligible at any time during the month, and (iii) that the methods of determining resources for categorically needy, medically needy and qualified Medicare beneficiaries are the same. These proposed changes reflect current practice that has always been followed when determining eligibility for Medicaid coverage. Thus, they are not expected to have any significant fiscal or economic effects other than conforming regulations to current practice.

**Businesses and entities affected.** The proposed regulations apply to aged, blind, and disabled applicants for Medicaid

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coverage. In fiscal year 2002, there were 82,620 aged recipients and 125,456 blind and disabled recipients.

Localities particularly affected. The proposed regulation will not uniquely affect any particular locality as it applies statewide.

Projected impact on employment. The proposed regulation is not expected to have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not expected to have any significant effects on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Eligibility Conditions and Requirements: ADAPT.

## Summary:

*This proposal simplifies Medicaid eligibility requirements for counting income for aged, blind, and disabled individuals and by conforming methods for counting certain resources of Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs) and Qualified Individuals (QIs) with the methods for counting the resources of other Medicaid aged, blind, and disabled recipients. This regulatory change eliminates the difficulty in and subjective nature of determining the fair market value of in-kind support and maintenance for all Aged, Blind, and Disabled covered groups with the exception of the special income level group for institutionalized individuals.*

*In addition, this action removes the disparity in the methods for counting specific types of real and personal property depending on the covered group for which the aged, blind, or disabled individual qualifies. In addition, the amendments clarify exemptions for the former home of an institutionalized recipient, household goods and personal effects, and cemetery plots as well as clarifying that financial eligibility can be met anytime during a month if resources are within the applicable limits on any day in such month.*

## 12 VAC 30-40-100. Methods of determining income.

a. AFDC-related individuals (except for poverty level related pregnant women, infants, and children).

(1) In determining countable income for AFDC-related individuals, the methods under the state's approved AFDC plan and any more liberal methods described in 12 VAC 30-40-280 are used.

(2) In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to children living with parents until the children become 21.

(3) Agency continues to treat women eligible under the provisions of § 1902(a)(10) of the Act as eligible, without regard to any changes in income of the family of which she is a member, for the 60-day period after her pregnancy ends and any remaining days in the month in which the 60th day falls.

b. Aged individuals. In determining countable income for aged individuals, including aged individuals with incomes up to the federal poverty level described in section 1902(m)(1) of the Act, the following methods are used.

(1) *The methods of the SSI program and/or any more liberal methods described in 12 VAC 30-40-280 apply.*

(2) For optional state supplement recipients in § 1902(f) states and SSI criteria states without § 1616 or § 1634 agreements, SSI methods ~~only~~ *and/or any more liberal methods than SSI described in 12 VAC 30-40-280 apply.*

(3) In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses.

c. Blind individuals. In determining countable income for blind individuals, only the methods of the SSI program *and/or any more liberal methods described in 12 VAC 30-40-280 apply.*

For optional state supplement recipients in § 1902(f) states and SSI criteria states without § 1616 or § 1634 agreements, ~~only~~ *the SSI methods and/or any more liberal methods than SSI described in 12 VAC 30-40-280 apply.*

In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21.

d. Disabled individuals. In determining countable income of disabled individuals, including disabled individuals with incomes up to the federal poverty level described in § 1902(m) of the Act, ~~only~~ *the methods of the SSI program ~~only~~ and/or any more liberal methods described in 12 VAC 30-40-280 apply.*

For optional state supplement recipients in § 1902(f) states and SSI criteria states without § 1616 or § 1634 agreements, ~~only~~ *the SSI methods and/or any more liberal methods than SSI described in 12 VAC 30-40-280 apply.*

In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21.

e. Poverty level pregnant women, infants, and children. For pregnant women and infants or children covered under the provisions of § 1902(a)(10)(A)(i)(IV), (VI) and (VII), and § 1902(a)(10)(A)(ii)(IX) of the Act:

(1) The methods of the state's approved AFDC plan are used in determining countable income.

(2) In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21.

(3) The agency continues to treat women eligible under the provisions of § 1902(a)(10) of the Act as eligible, without regard to any changes in income of the family of which she

is a member, for the 60-day period after her pregnancy ends and any remaining days in the month in which the 60th day falls.

f. Qualified Medicare beneficiaries. In determining countable income for qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, ~~only~~ the methods of the SSI program *and/or more liberal methods described in 12 VAC 30-40-280* are used.

If an individual receives a Title II benefit, any amounts attributable to the most recent increase in the monthly insurance benefit as a result of a Title II COLA is not counted as income during a "transition period" beginning with January, when the Title II benefit for December is received, and ending with the last day of the month following the month of publication of the revised annual federal poverty level.

For individuals with Title II income, the revised poverty levels are not effective until the first day of the month following the end of the transition period.

For individuals not receiving Title II income, the revised poverty levels are effective no later than the date of publication.

g. Qualified disabled and working individuals. In determining countable income for qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, the methods of the SSI program are used.

~~h. COBRA continuation beneficiaries. For COBRA continuation beneficiaries specified at § 1902(u)(4), costs incurred from medical care or for any other type of remedial care shall not be taken into account in determining income, except as provided in § 1612(b)(4)(B)(ii).~~

**12 VAC 30-40-140. Methods for determining resources.**

a. AFDC-related individuals (except for poverty level related pregnant women, infants, and children).

(1) In determining countable resources for AFDC-related individuals, the following methods are used:

- (a) The methods under the state's approved AFDC plan; and/or
- (b) Any more liberal methods described in 12 VAC 30-40-290.

(2) In determining relative financial responsibility, the agency considers only the resources of spouses living in the same household as available to spouses and the resources of parents as available to children living with parents until the children become 21.

b. Aged individuals. For aged individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act, the agency used methods that are more restrictive (except for individuals described in § 1902(m)(1) of the Act) and/or more liberal than those of the SSI program for the treatment of resources. 12 VAC 30-40-240 describes the more restrictive methods and 12 VAC 30-40-290 specifies the more liberal methods.

In determining relative financial responsibility, the agency considers only the resources of spouses living in the same household as available to spouses.

c. Blind individuals. For blind individuals the agency uses methods that are more restrictive and/or more liberal than those of the SSI program for the treatment of resources. 12 VAC 30-40-240 describes the more restrictive methods and 12 VAC 30-40-290 specifies the more liberal methods.

In determining relative financial responsibility, the agency considers only the resources of spouses living in the same household as available to spouses and the resources of parents as available to children living with parents until the children become 21.

d. Disabled individuals, including individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act. The agency used methods that are more restrictive (except for individuals described in § 1902(m)(1) of the Act) and/or more liberal than those of the SSI program for the treatment of resources. More restrictive methods are described in 12 VAC 30-40-240 and more liberal methods are specified in 12 VAC 30-40-290.

In determining relative financial responsibility, the agency considers only the resources of spouses living in the same household as available to spouses and the resources of parents as available to children living with parents until the children become 21.

e. Poverty level pregnant women covered under § 1902(a)(10)(A)(i)(IV) and § 1902(a)(10)(A)(ii)(IX)(A) of the Act.

The agency does not consider resources in determining eligibility.

In determining relative financial responsibility, the agency considers only the resources of spouses living in the same household as available to spouses and the resources of parents as available to children living with parents until the children become 21.

f. Poverty level infants covered under § 1902(a)(10)(A)(i)(IV) of the Act.

The agency does not consider resources in determining eligibility.

g. Poverty level children covered under § 1902(a)(10)(A)(i)(VI) of the Act.

(1) The agency does not consider resources in determining eligibility. In determining relative financial responsibility, the agency considers only the resources of spouses living in the same household as available to spouses and the resources of parents as available to children living with parents until the children become 21.

(2) Poverty level children under § 1902(a)(10)(A)(i)(VIII). The agency does not consider resources in determining eligibility.

In determining relative responsibility, the agency considers only the resources of spouses living in the same household as available to spouses and the resources of parents as available to children living with parents until the children become 21.

h. For Qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act the agency uses ~~only the~~ methods *that are more liberal than those* of the SSI program



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for the treatment of resources. *More liberal methods are specified in 12 VAC 30-40-290.*

i. For qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, the agency uses SSI program methods for the treatment of resources.

j. Reserved.

k. Specified low-income Medicare beneficiaries covered under § 1902(a)(10)(E)(iii) of the Act. The agency uses the same method as in subsection (h) of this section.

**12 VAC 30-40-240. More restrictive methods of treating resources than those of the SSI program: § 1902(f) states only.**

A. The following limitations apply to resources in addition to the resource requirements of the Supplemental Security Income (SSI) program for the aged, blind and disabled.

1. For income-producing property and other nonresidential property, appropriate equity and profit is to be determined by the prorata share owned by an individual in relation to his proportionate share of the equity and profit.

2. Property in the form of an interest in an undivided estate is to be regarded as an asset when the value of the interest plus all other resources exceeds the applicable resource limit unless it is considered unsaleable for reasons other than being an undivided estate. An heir can initiate a court action to partition. If a partition suit is necessary (because at least one other owner or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value. However, if a partition would not result in the applicant/recipient securing title to property having value substantially in excess of the cost of the court action, the property would not be regarded as an asset.

B. Real property.

1. The current market value of real property is determined by ascertaining the tax assessed value of the property and applying to it the local assessment rate. The equity value is the current market value less the amount due on any recorded liens against the property. "Recorded" means written evidence that can be substantiated, such as deeds of trust, liens, promissory notes, etc.

2. Real property contiguous to an individual's residence which does not meet the home property definitions in subdivision 3 of this subsection, the SSI income-producing requirement or the exceptions listed in subdivision 6 of this subsection and which is saleable according to the provisions in 12 VAC 30-40-290 C, shall be counted as an available resource. The equity value of the contiguous property shall be added to the value of all other countable resources.

3. Ownership of a dwelling occupied by the applicant as his home does not affect eligibility. A home shall mean the house and lot used as the principal residence and all contiguous property as long as the value of the land, exclusive of the lot occupied by the house, does not exceed

\$5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the State Plan for Medical Assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value.

The lot occupied by the house shall be a measure of land as designated on a plat or survey or whatever the locality sets as a minimum size for a building lot, whichever is less. In localities where no minimum building lot requirement exists, a lot shall be a measure of land designated on a plat or survey or one acre, whichever is less.

Contiguous property essential to the operation of the home means:

a. Land used for the regular production of any food or goods for the household's consumption only, including:

(1) Vegetable gardens;

(2) Pasture land which supports livestock raised for milk or meat, and land used to raise chickens, pigs, etc. (the amount of land necessary to support such animals is established by the local extension service; however, in no case shall more land be allowed than that actually being used to support the livestock);

(3) Outbuildings used to process and/or store any of the above;

b. Driveways which connect the homesite to public roadways;

c. Land necessary to the home site to meet local zoning requirements (e.g. building sites, mobile home sites, road frontage, distance from road, etc.);

d. Land necessary for compliance with state or local health requirements (e.g., distance between home and septic tank, distance between septic tanks, etc.);

e. Water supply for the household;

f. Existing burial plots;

g. Outbuilding used in connection with the dwelling, such as garages or tool sheds.

All of the above facts must be fully reevaluated and documented in the case record before the home site determination is made.

4. An institutionalized individual's former residence is counted as an available resource if the recipient is institutionalized longer than six months after the date he was admitted. The former residence is disregarded if it is occupied by the recipient's:

a. Spouse;

b. Minor dependent child under age 18;

c. Dependent child under age 19 if still in school or vocational training; ~~or~~

d. ~~Parent or~~ Adult child who is disabled according to the Medicaid or civil service disability definition, and who was living in the home with the recipient for at least one year prior to the recipient's institutionalization, and who is dependent upon the recipient for his shelter needs; or

e. Parent who is age 65 or older and who is disabled according to the Medicaid or civil service disability definition and who was living in the home with the recipient for at least one year prior to the recipient's institutionalization and who is dependent upon the recipient for his shelter needs.

5. An applicant or recipient's proportional share of the value of property owned jointly with another person to whom the applicant or recipient is not married as tenants in common or joint tenants with the right of survivorship at common law is counted as a resource unless it is exempt property or is unsaleable.

6. Ownership of other real property generally precludes eligibility. Exceptions to this provision are: (i) when the equity value of the property, plus all other resources, does not exceed the appropriate resource limitation; (ii) the property is smaller than the county or city zoning ordinances allow for home sites or building purposes, or the property has less than the amount of road frontage required by the county or city for building purposes and adjoining land owners will not buy the property; or (iii) the property has no access, or the only access is through the exempted home site; or (iv) the property is contiguous to the recipient's home site and the survey expenses required for its sale reduce the value of such property, plus all other resources, below applicable resource limitations; or (v) the property cannot be sold after a reasonable effort to sell it has been made, as defined in 12 VAC 30-40-290.

C. Personal property.

1. Prepaid burial plans are counted as a resource since the money is refundable to the individual upon his request. Cemetery plots are not counted as resources. See 12 VAC 30-40-290.

2. Assets which can be liquidated such as cash, bank accounts, stocks, bonds, securities and deeds of trusts are considered resources.

**12 VAC 30-40-280. More liberal income disregards.**

A. For children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.

B. For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance shall be granted an income exemption consistent with the Act (§§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). Any interest earned on one interest-bearing savings or investment account per assistance unit not to exceed \$5,000, if the applicant, applicants, recipient or recipients designate that the

account is reserved for purposes related to self-sufficiency, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. For purposes of this section, "purposes related to self-sufficiency" shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the Medicaid assistance unit.

C. For the group described in §§ 1902(a)(10)(A)(i)(VII) and 1902(l)(1)(D), income in the amount of the difference between 100% and 133% of the Federal Poverty Level (as revised annually in the Federal Register) is disregarded.

*D. For aged, blind, and disabled individuals, both categorically and medically needy, with the exception of the special income level group of institutionalized individuals, the Commonwealth of Virginia shall disregard the value of in-kind support and maintenance when determining eligibility. In-kind support and maintenance means food, clothing, or shelter or any combination of these provided to an individual.*

**12 VAC 30-40-290. More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.**

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for ~~medically-needy~~ individuals, disregarded from countable resources is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

*B. Cemetery plots. Cemetery plots are not counted as resources regardless of the number owned.*

~~B. C. Life rights. Life rights to real property are not counted as a resource.~~

~~C. D. Reasonable effort to sell.~~

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

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a. As of the date the property becomes subject to a realtor's listing agreement if:

- (1) It is listed at a price at current market value; and
- (2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for at least 90 days within a 12-month period), the recipient must then:

- (1) Subject his property to a realtor's listing agreement at price or below current market value; or
- (2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the

recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

~~D.~~ E. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

~~E.~~ F. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds \$1,500, the cash surrender value of the policies is counted as a resource.

~~F.~~ G. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§ 1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§ 1902(a)(10)(A)(ii)(VIII), (IX); § 1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings or investment account per assistance unit not to exceed \$5,000 if the applicant, applicants, recipient or recipients designate that the account is reserved for purposes related to self-sufficiency. Any funds deposited in the account shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for purposes related to self-sufficiency shall be exempt. For purposes of this section, purposes related to self-sufficiency shall include, but are not limited to, (i) paying for tuition, books, and incidental expenses at any elementary, secondary, or vocational school, or any college or university; (ii) for making down payment on a primary residence; or (iii) for establishment of a commercial operation that is owned by a member of the medical assistance unit.

~~G.~~ H. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§ 1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act.

*I. Household goods and personal effects. The Commonwealth of Virginia will disregard the value of household goods and personal effects. Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises as a home. Examples of household goods are furniture, appliances, televisions, carpets, cooking and eating utensils and dishes. Personal effects are items of personal property that are worn or carried by an individual or that have an intimate relation to the individual. Examples of personal property include clothing, jewelry, personal care items, prosthetic devices and educational or recreational items such as books, musical instruments, or hobby materials.*

*J. Determining eligibility based on resources. When determining Medicaid eligibility, an individual shall be eligible in a month if his countable resources were at or below the resource standard on any day of such month.*

VA.R. Doc. No. R02-262; Filed May 9, 2003, 11:05 a.m.

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

**Title of Regulation: 22 VAC 40-250. Agency Placement Adoptions -- AREVA (amending 22 VAC 40-250-10 and 22 VAC 40-250-20).**

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

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

(See Calendar of Events section for additional information)

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

**Basis: Section 63.2-217 of the Code of Virginia provides that the State Board shall adopt such regulations as necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-900 of the Code of Virginia provides that a local board shall adopt regulations for the provision of foster care services directed toward the permanent planning for children in the custody of or placed by local boards.**

**Purpose: The regulation provides guidelines for the Adoption Resource Exchange of Virginia (AREVA) registration and operations. AREVA is an essential tool for recruiting adoptive families for waiting children. Without registration of a child with AREVA, the child is likely to remain in foster care for a longer period of time before achieving permanency with an adoptive family. Therefore, the regulation is essential to protect the health, safety, and welfare of waiting children in foster care.**

The regulation was enacted in 1989, based on the practices and population of children waiting for adoptive families at that time. The proposed amendments will make the regulation

consistent with other applicable regulations relative to the children registered, provide agencies adequate time to register children and families, and update the regulation by omitting obsolete terms and references. An amendment is also needed to lengthen the time for child registration following termination of parental rights from 30 to 60 days. This is to ensure that the agency has sufficient time to receive the court order terminating parental rights before the child is registered with AREVA. Other amendments are necessary to delete obsolete language and to include reference to an automated adoption exchange.

**Substance: An amendment to the regulation is necessary to make the AREVA registration criteria for children consistent with criteria for adoption subsidy eligibility. The children registered with AREVA are those determined to have special needs or individual characteristics that make them hard to place for adoption, thus making them eligible to receive adoption subsidy. The regulation which addresses special needs and adoption subsidy criteria (22 VAC 40-260) is also being amended. It is important that both regulations reflect the same criteria.**

An amendment is also needed to lengthen the timeframe for child registration following termination of parental rights. This is to ensure that the agency has sufficient time to receive the court order terminating the parental rights before registering the child with AREVA. Other amendments are necessary to delete obsolete language and to include reference to an automated adoption exchange.

**Issues: The advantage of the regulation to the public, agency, and Commonwealth is that uniform policies for administering AREVA will remain in effect. The advantage of the proposed amendments to the public, agency, and Commonwealth is that the AREVA registration criteria will be updated to more adequately reflect the population in care and be consistent with other related regulations, thus enhancing AREVA's function as an effective tool for facilitating the placement of children. There are no disadvantages to the public or Commonwealth.**

**Fiscal Impact: There is no anticipated fiscal impact of amending the regulation.**

**Department of Planning and Budget's Economic Impact**

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

Summary of the proposed regulation. The proposed regulations will expand the maximum time for registration with adoption resource exchange program from 30 to 60 days

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# Proposed Regulations

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following termination of parental rights and update and clarify the regulation to reflect current practices.

Estimated economic impact. These regulations contain standards and procedures for Virginia's adoption resource exchange (AREVA) program. AREVA program maintains photo listings and narratives of children waiting for adoption. Current regulations require registration with AREVA within 30 days of termination of parental rights. However, the Department of Social Services indicates that the 30-day requirement is unrealistic because (1) official court documents confirming termination of parental rights are frequently not available within this timeframe and (2) actual registration process generally takes longer. Thus, it is proposed to increase the maximum timeframe for registration with AREVA from 30 to 60 days.

This proposed change will make the regulations consistent with the actual registration timeframe followed in practice and improve compliance with the established timeframe in the regulations, but is not expected to have any significant fiscal or economic effects.

In addition, the proposed regulations include several other updating and clarifying changes to reflect other current practices. For example, references to adoptive placement plan will be deleted, as it is no longer used by local agencies. Similarly, these changes are not likely to create any significant economic effects.

Businesses and entities affected. The proposed regulations apply to each of the 121 local departments of social services in the Commonwealth. Currently, there are 549 children registered with AREVA.

Localities particularly affected. The proposed regulation applies statewide.

Projected impact on employment. The proposed regulation is not expected to have any impact on employment in Virginia.

Effects on the use and value of private property. The proposed regulation is not expected to have any significant effects on the use and value of private property.

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

## Summary:

*The proposed amendments (i) make the AREVA registration criteria for children consistent with the changes being made to the criteria for special needs and adoption subsidy (22 VAC 40-260); (ii) lengthen the timeframe for child registration following termination of parental rights from 30 to 60 days; (iii) delete obsolete language; and (iv) include reference to an automated adoption exchange.*

## **22 VAC 40-250-10. Definitions.**

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

*"Adoption"* means a legal process in which a person's rights and duties toward birth parents are terminated and similar rights and duties are established with a new family.

~~*"Adoptive placement plan"* means a written plan for finding a permanent adoptive placement for a child.~~

*"Agency"* means a local Department of Public Welfare or Social Services.

*"Agency placement adoption"* means an adoption in which a child is placed in an adoptive home by an agency or child-placing agency which has custody of the child.

*"AREVA"* means the Adoption Resource Exchange of Virginia which maintains a registry and photo-listing of children and families waiting for adoption.

*"Child"* means any person under 18 years of age.

*"Child placing agency"* means any agency licensed to place children in foster homes or adoptive homes.

~~*"Child with special needs"* means any child in the custody of an agency or child placing agency who is legally free for adoption; and:~~

~~1. For whom it has been determined that the child is unlikely to be adopted within a reasonable period of time due to one or more factors including, but not limited to: The state has determined is unlikely to return home because of termination of parental rights.~~

~~2. Has individual characteristics that make the child hard to place including:~~

- ~~a. Physical, mental, or emotional condition existing prior to adoption;~~
- ~~b. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability;~~
- ~~c. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings or foster parents.~~

~~3. Has had reasonable efforts made to place without subsidy.~~

~~4. For whom the above conditions were present at the time of adoption, but not diagnosed until after entry of the final order of adoption, and no more than one year has elapsed since the diagnosis is not more than 12 months old.~~

## **22 VAC 40-250-20. The Adoption Resource Exchange of Virginia.**

The purpose of AREVA is to increase opportunities for children to be adopted by providing services to agencies having custody of these children.

1. Services provided by AREVA shall include:

- a. Maintaining a registry of children awaiting adoption and a registry of approved families waiting for adoption;
- b. Preparing and distributing a photo-listing of special needs children awaiting adoption and a photo-listing of families awaiting special needs children;

- c. Providing information and referral services for children who have special needs to link agencies with other adoption resources;
  - d. Providing on-going recruitment for waiting children;
  - e. Providing consultation and technical assistance to agencies in finding adoptive families for waiting children; and
  - f. Monitoring agency compliance with:
    - (1) Legal requirements for adoption; *and*
    - (2) State board policy on registering children and families; ~~and.~~
    - ~~(3) Submission and completion of the Adoptive Placement Plan.~~
2. Registration requirements.
- a. Registration of children.
    - (1) All children shall be registered with AREVA within ~~30~~ 60 days of termination of parental rights if:
      - (a) The goal is adoption;
      - (b) The child is legally free for adoption;
      - (c) The agency has the authority to place for adoption; and
      - (d) Adoptive placement has not occurred.
    - (2) A copy of the ~~plan for adoptive placement and the~~ court commitment or permanent entrustment agreements shall be submitted by the agency with the child's registration forms.
  - b. Registration of families.
    - (1) Approved families shall be registered within ~~30~~ 60 days after the date of approval if they are expressing interest in adopting children who are:
      - (a) Six years of age and over;
      - (b) Members of sibling groups;
      - (c) Physically, mentally, or emotionally disabled; or
      - (d) Black, biracial, or members of other minority races.
    - (2) Approved families expressing interest in adopting healthy white children up to the age of six may be registered with AREVA upon request of the family.
3. Photo-listing procedures.
- a. Local agencies may request a 60-day deferment from the photo-listing for children and families when:
    - (1) A family has been identified, including foster parents, and placement is pending;
    - (2) The child or family shall be featured in the photo-listing the month following expiration of the deferment period, unless an adoptive home placement agreement has been signed.
- ~~b.~~ *An additional 30-day deferment may be granted once at the discretion of AREVA staff.*
  - ~~c.~~ AREVA staff shall make the determination about which children and families to feature in the photo-listing. The decision will be based on the needs of waiting children and on the types of families waiting for placement.
4. Agency responsibilities.
- a. The agency shall be responsible for local recruitment of prospective adoptive families.
  - b. The agency registering the child or family shall inform AREVA immediately of:
    - (1) Changes in the status of the child or family;
    - (2) Placements for adoptive purposes;
    - (3) Withdrawals of the child or family from AREVA.
  - c. The agency shall provide families selected for a particular child with full factual information that the agency has on the child and the child's birth family, except that which would reveal the identity of the child's birth family. The information provided shall include complete medical and psychological reports.
  - d. The agency shall explore with the family selected for a particular child the family's ability to fully or partially meet financial costs related to any special needs the child may have. If it is determined that the child has special needs and is eligible for subsidy, the agency shall inform the adoptive parents of the child's eligibility for subsidy.
  - e. The agency shall obtain the consent of the Commissioner of Social Services prior to placing a child out of state.
5. Resource utilization. When indicated, AREVA shall consult with the agency regarding the need to explore additional resources.
- a. AREVA staff may recommend referral of a child to a specialized adoption agency.
  - b. AREVA staff shall routinely register a child with the national adoption exchange after the child has been in the photo-listing for 60 days, unless a placement is pending.
  - c. AREVA shall be responsible for statewide recruitment of prospective adoptive families.
  - d. *AREVA will automatically feature children on the state's electronic exchange system. AREVA staff shall make the determination about which children and families to feature. The decision will be based on the needs of the waiting children and on the types of families waiting for placement.*

VA.R. Doc. No. R02-223; Filed May 12, 2003, 2:07 p.m.

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# Proposed Regulations

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**Title of Regulation:** 22 VAC 40-260. Agency Placement Adoptions -- Subsidy (amending 22 VAC 40-260-10 and 22 VAC 40-260-20).

**Statutory Authority:** §§ 63.2-217, 63.2-900 and 63.2-1303 of the Code of Virginia.

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

(See Calendar of Events section for additional information)

**Agency Contact:** Karin Clark, Adoption Program Consultant, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1251, FAX (804) 692-1284, or e-mail kac900@dss.state.va.us.

**Basis:** Section 63.2-217 of the Code of Virginia provides that the State Board of Social Services shall adopt such regulations as necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-900 of the Code of Virginia provides that a local board shall adopt regulations for the provision of foster care services directed toward the permanent planning for children in the custody of or placed by local boards.

**Purpose:** Many of Virginia's waiting children have physical, mental, and emotional challenges that make them difficult to place in adoptive homes. Adoption subsidy facilitates their placement into adoptive homes by providing the adoptive family with additional resources in order to meet the child's special needs. The regulation facilitates permanency through adoption for children with special needs who might otherwise languish in foster care. The regulation is, therefore, essential to their health, safety, and welfare. 22 VAC 40-260 establishes administrative guidelines necessary for local agencies to administer adoption subsidy and is essential for this reason.

Proposed amendments would update the special needs criteria to more accurately reflect the population of waiting children, increase accountability in the administration of subsidy, and provide clarity on several topics. The regulation was established in 1989 and amendments are necessary to incorporate references to the 1997 Adoption and Safe Families Act and other statutory mandates which have taken affect since 1989.

One amendment pertains to appeal rights. Virginia's adoption assistance program receives funding from Title IV-E of the Social Security Act. Title IV-E requires the state to provide for granting an opportunity for a fair hearing to any individual whose claim for IV-E benefits is denied or not acted upon within reasonable time. Appeal rights for adoptive parents and applicants have been added to 22 VAC 40-260. As a result, the need for a separate regulation singly addressing appeals is eliminated and appeal rights are retained; thus, 22 VAC 40-270, Appeals, will be repealed.

**Substance:** The majority of the proposed changes are intended to clarify existing requirements and provide practice guidance. Substantive changes are as follows:

Special needs criteria are revised to more accurately reflect the children in care by amending the characteristic related to

minority or mixed racial heritage by adding a minimum age of 3 years.

Language regarding when reasonable efforts have been made to place a child without subsidy is replaced with less restrictive language that requires the child be registered and photo-listed with AREVA. This is consistent with Title IV-E requirements regarding reasonable efforts.

Appeal rights for adoptive parents and applicants have been added.

**Issues:** The advantage to the public, agency, and Commonwealth in retaining and amending the regulation is that adoption subsidy, which facilitates the adoptive placement of children with special needs, will continue to be administered according to state and federal requirements. The proposed amendments will update the special needs criteria and clarify key requirements.

There are no disadvantages to the public or Commonwealth.

**Fiscal Impact:** There is no anticipated fiscal impact of amending the regulation.

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

Summary of the proposed regulation. The Department of Social Services (DSS) proposes to revise its adoption subsidy regulations. Specific changes include (i) removing the requirement to feature a child in AREVA photo listing for a period of 30 days to qualify for the subsidy, (ii) clarifying that renegotiation of the adoption subsidy is required when the adopted child enters foster care or physical custody becomes the responsibility of the Commonwealth and that the applicability of appeals procedures is limited to adoption subsidy decisions.

Estimated economic impact. The purpose of the adoption subsidy is to facilitate adoptions of hard to place children, or children with special needs by providing federal and state financial assistance to families adopting such children. The Social Security Act<sup>1</sup> requires that reasonable efforts be made to place these children without the adoption subsidy in addition to other qualifying criteria for the adoption assistance. Currently, a reasonable effort is deemed to be made in the Commonwealth if the child is registered and featured in Virginia's adoption resource exchange system (AREVA) photo

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<sup>1</sup> Section 471(a)(19).

listing for a period of 30 days. The proposed changes will remove the 30-day requirement, so that as soon as the registered child is featured in the photo listing, the reasonable effort criterion will be met and a placement with the adoption subsidy can proceed.

This change will affect those children for whom a family is available for adoption with subsidy within the 30-day photo listing period. The proposed change will allow adoption of these children immediately after being featured as opposed to waiting up to a month. In fiscal year 2002, approximately 103 adopted children were photo listed. This change will apply to a subset of these children who were adopted within the initial 30 days of listing. According to DSS, while AREVA photo listing facilitates adoptions without the subsidy in the long term, it is almost never the case that children on the photo list are adopted within the initial 30 days. Thus, no significant economic effect is expected from this change.

However, in the event that a child is being placed without having to wait 30 days for an adoption without the subsidy, a number of economic effects could be expected. First, provided the level of care provided by a family receiving and not receiving financial assistance does not differ, earlier placement of a special needs child with an adoptive parent is almost certainly expected to benefit the child being adopted. Second, families who wish to adopt with financial assistance would also benefit from this change, as the adoption process would be expedited. Third, an expedited adoption process may produce some administrative cost savings. On the other hand, this change would reduce the chance of these children being adopted by families who do not wish to receive financial assistance. As a result, the adoption assistance would be provided to more families and the need for subsidy funds would increase. Although these are potential effects, they would occur only when children are placed without having to wait the initial 30-day listing period, which is believed to be an unlikely event given DSS's experience with the adoption program.

Additionally, the proposed changes include two clarifications. One clarification is that the renegotiation of the adoption subsidy is required when the adopted child enters foster care or physical custody becomes the responsibility of the Commonwealth. According to DSS, this change is a clarification of the current language, as this requirement already exists under 22 VAC 40-260 D. Similarly, it will be clarified that the applicability of appeals procedures is limited to adoption subsidy decisions rather than actual placement decisions. As a part of making these clarifications, DSS proposes to repeal 22 VAC 40-270 and moving some of its provisions to 22 VAC 40-260. Because these changes are mere clarifications, they are not expected to create any significant economic effects.

Businesses and entities affected. The proposed regulations apply to each of the 121 local departments of social services in the Commonwealth. Approximately 103 adopted children who were photo listed in AREVA annually are subject to the change in the 30-day photo listing requirement.

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

Projected impact on employment. The effect of proposed changes on employment is unlikely to be significant.

Effects on the use and value of private property. The proposed changes are unlikely 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: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed amendments (i) remove the requirement to feature a child in Virginia's Adoption Resource Exchange System (AREVA) photo listing for a period of 30 days to qualify for adoption subsidy; (ii) clarify that adoption subsidy agreements can be renegotiated when the adopted child enters foster care or physical custody becomes the responsibility of the Commonwealth; and (iii) provide a right of appeal provision for adoptive parents and applicants to appeal agency decisions related to adoption assistance. The proposed appeal provision is language taken from 22 VAC 40-270, which is being repealed. The proposed appeal provision is narrower than the appeal provisions found in 22 VAC 40-270, which grants adoptive parents and applicants a right to appeal all service and policy related agency decisions.*

**22 VAC 40-260-10. Definitions.**

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

"AFDC" means the Aid to Families with Dependent Children Program.

"Adoption" means a legal process in which a person's rights and duties toward birth parents are terminated and similar rights and duties are established with a new family.

"Adoption assistance agreement" means a written agreement between the agency and adoptive parents that is binding on both parties. An adoption assistance agreement may be for a federal ~~subsidy~~, a state ~~or local subsidy~~, a state ~~or local~~ subsidy, or a conditional subsidy.

"Agency" means a local Department of ~~Public Welfare~~ or Social Services.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by an agency or child placing agency which has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia which maintains a registry and photo-listing of children and families waiting for adoption.

"Child" means any person under 18 years of age.

"Child-placing agency" means any agency licensed to place children in foster homes or adoptive homes.

"Child with special needs" means any child in the custody of an agency or child-placing agency who is ~~legally free for adoption~~.



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1. *The state has determined is unlikely to return home because of termination of parental rights.*

~~For whom it has been determined that the child is unlikely to be adopted within a reasonable period of time due to one or more factors including, but not limited to~~ 2. *Has individual characteristics that make the child hard to place including:*

- a. Physical, mental, or emotional condition existing prior to adoption;
- b. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability;
- c. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings or foster parents.

3. *Has had reasonable efforts made to place without subsidy.*

~~2-~~ 4. *For whom the above conditions were present at the time of adoption, but not diagnosed until after entry of the final order of adoption, and no more than one year has elapsed since the diagnosis is not more than 12 months old.*

"Department" means the Virginia Department of Social Services.

"Finalization of the adoption" means the court process of sanctioning the adoption which begins with the filing of a petition and ends with the entry of the final order of adoption.

"Maintenance payments" means payments made to adoptive parents on behalf of a child with special needs to help with daily living expenses.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs including, but not limited to, attorney fees directly related to the finalization of the adoption; transportation; court costs; and reasonable and necessary fees of child placing agencies.

"Special service payments" means payments or services provided to help in meeting the child's physical, mental, emotional, or dental needs.

"SSI" means Supplemental Security Income.

"Subsidy/adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

## 22 VAC 40-260-20. Subsidy.

A. An adoption assistance agreement shall be executed by the agency or child placing agency for all children who have been determined eligible for subsidy.

B. *Determining the child's eligibility before legal adoption.*

1. *Basic eligibility. The child must be:*

- a. *Under 18 years of age;*
- b. *In the custody of a local department of social services or licensed, private child placing agency at the time the petition for adoption is filed; and*

c. *Placed by the local department of social services or licensed, private child placing agency with the prospective adoptive family for the purpose of adoption, except for those situations in which the child has resided for 18 months with foster parents who file a petition for adoption under § 63.2-1229 of the Code of Virginia.*

A- 2. *Determining that the child's eligibility for subsidy child has special needs.* 1. ~~In determining the child's eligibility for subsidy before legal adoption,~~ The agency or child-placing agency shall *determine that:*

a. ~~Determine that the child is a child with special needs. A special needs child is any child in the custody of an agency or child placing agency who is free for adoption, but unlikely to be adopted within a reasonable time due to one or more of the following conditions including, but not limited to:~~

a. *The child cannot be returned home because parental rights are terminated.*

b. *The child has individual characteristics that make the child hard to place for adoption due to one or more of the following:*

- (1) Physical, mental, or emotional condition existing before legal adoption;
- (2) Hereditary tendency, congenital problem or birth injury that could lead to a future disability, *verified by a medical/psychological statement;*
- (3) Is six years of age or older;
- (4) Is a member of a minority or mixed racial heritage;
- (5) Is a member of a sibling group that should not be separated; and
- (6) Has significant emotional ties with foster parents with whom the child has resided for at least 12 months; when the adoption is in the best interest of the child and when the subsidy is necessary to consummate the adoption by these foster parents.

~~b-~~ Make c. *Reasonable efforts have been made to first place the child with appropriate adoptive parents without subsidy. A reasonable effort:*

- (1) Shall be made except when it would be against the best interest of the child because of factors such as the existence of significant emotional ties with foster parents;
- (2) Shall be considered made if: *the child has been registered with AREVA and featured in the photolisting.*
  - ~~(a) Local recruitment efforts have been undertaken and documented; or~~
  - ~~(b) Requirements for registration with AREVA have been met; and~~
  - ~~(c) The child has been featured in the AREVA photo listing for a period of 30 days or other special recruitment efforts have been undertaken by AREVA~~

~~and an appropriate family has not been identified for the child.~~

~~2. In order for a child to be eligible after legal adoption:~~

~~C. Determining the child's eligibility after legal adoption.~~

~~a. 1. The child must have a physical, mental or emotional condition that was present at the time of adoptive placement; or~~

~~b. 2. The need for subsidy results from a hereditary tendency, congenital problem, or birth injury; and~~

~~c. 3. In either a or b no more than one year has elapsed since the diagnosis was made both subdivisions 1 and 2 of this subsection, there is a medical or psychological diagnosis that is not more than 12 months old.~~

~~B. D. Determining the type of agreement for which the child is eligible. The types of subsidy for which a child can be eligible are:~~

~~1. A federal or state subsidy. This type of subsidy is used for children whose foster care expenses are paid from federal and state funds. A federal/state subsidy agreement shall be executed for any special needs child who meets eligibility requirements for AFDC or SSI.~~

~~2. A state subsidy. This type of subsidy is used for children whose foster care expenses are paid from state and local Comprehensive Services Act pool funds.~~

~~3. A conditional subsidy:~~

~~a. Shall be provided for any child with special needs, whose foster care expenses are paid from state and local Comprehensive Services Act pool funds, when payments and services are not needed at the time of placement but may be needed later. It is granted upon the request of the adoptive parents when a child:~~

~~(1) Has a physical, mental or emotional disability at the time of placement;~~

~~(2) Has a hereditary tendency, congenital problem or birth injury;~~

~~(3) Could develop emotional or other problems resulting from separation from birth parents, placement in foster care, or adoption;~~

~~(4) May need help later with daily living expenses.~~

~~b. Does not involve money payments or services. It is an agreement that allows the adoptive parent or parents to apply for a state or local subsidy after the final order of adoption;~~

~~c. Does not require that reasonable efforts first be made to place the child with an appropriate family without subsidy;~~

~~d. Commits the agency to providing a state subsidy when the adoptive parent or parents apply, if it is determined that the need is related to one of the conditions described in subdivision 3 a of this subsection;~~

~~e. d. Does not require annual certification.~~

~~G. E. Determining the types of payment to be made. Adoption assistance payments must be negotiated with the adoptive family taking into consideration the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources must be explored to help defray the costs of adoption assistance.~~

There are three types of payment which shall be made on behalf of a child who is eligible for subsidy. The amount of payments made and services provided shall not exceed what would have been paid or provided had the child remained in foster care. The types of payment include:

1. Maintenance payments:

a. A maintenance payment shall be approved for all children who are eligible for subsidy, except those for whom a conditional subsidy will be provided, unless the adoptive parent or parents indicate that a payment is not needed or it is determined through negotiation that the payment is not needed.

b. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.

~~c. The negotiated maintenance rate shall be approved by the department prior to signing the Adoption Assistance Agreement.~~

~~d. c. Maintenance payments shall not be reduced lower than the amount specified in the initial subsidy agreement, unless requested by the adoptive parents.~~

~~e. d. Increases in the amount of payment shall be made when the child is receiving the maximum allowable basic maintenance payment and:~~

~~(1) A child reaches a higher age grouping, as specified in foster care policy for maintenance payments;~~

~~(2) Statewide increases are approved for foster care maintenance payments.~~

~~f. e. Payments shall be made directly to the adoptive parent or parents on a monthly basis.~~

2. Special service payments:

a. A special service payment is used to help in meeting the child's physical, mental, emotional, or *nonroutine* dental needs. *The special service payment must be directly related to the child's individual characteristic that makes the child hard to place or a physical, mental or emotional condition that existed at the time of placement but was not identified before the final order of adoption.*

b. Types of expenses that are appropriate to be paid include:

(1) Medical, surgical, or dental;

(2) Equipment such as prosthetics, braces, crutches, hearing aids, ~~eyeglasses~~, etc.;

(3) Individual tutoring or remedial educational sessions, books or equipment;

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(4) Psychological and psychiatric evaluations and treatment;

(5) Speech, physical, and occupational therapy;

(6) Premiums for a major medical insurance policy for a child, if the child is not covered by a family policy; and

(7) Special services provided directly to the child by the adoptive parents. These are services provided by the parent to meet the special needs of a child. They are distinct from basic maintenance and supervision. The parents shall be qualified by experience or specific training to perform such services. This item may be paid in addition to a maintenance payment.

c. Special service payments may be provided, at the discretion of the agency, for other services needed to maintain the same level of service that the child received in foster care.

d. A special service payment may be used for children eligible for Title XIX and the Social Services Block Grant (SSBG) to supplement expenses not covered by Medicaid or when SSBG funds are not available or do not provide adequate coverage.

e. Payments for special services are negotiated with the adoptive parents taking into consideration:

(1) The special needs of the child;

(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and

(3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.

f. Special service payments may be made directly to the providers of service or through the adoptive parents. A bill or receipt shall be submitted before payment. The agency shall not be responsible for bills or receipts submitted later than six months after the end of the month in which the service was rendered.

~~g. Providers shall be approved according to requirements for purchase of service specified by the Department of Social Services. The rate of payment shall not exceed the prevailing community rate.~~

### 3. One time only payments:

Adoptive parents shall be reimbursed, upon request, for the nonrecurring expenses of adopting a ~~special needs~~ child with special needs.

a. Nonrecurring expenses shall include:

(1) Attorney fees directly related to the finalization of the adoption, ~~not to exceed a reasonable rate set by the Department of Social Services;~~

(2) Transportation and other expenses incurred by adoptive parents related to placement of the child. Expenses may be paid for more than one visit;

(3) Court costs related to filing an adoption petition; and

(4) Reasonable and necessary fees of adoption child placing agencies, ~~not to exceed a reasonable rate set by the Department of Social Services.~~

b. An adoption assistance agreement shall be signed and shall specify the services to be provided under this section.

c. Payment of nonrecurring expenses may begin as soon as the adoption assistance agreement has been signed and the child is placed in the adoptive home. Payment may be made directly to providers of service or to the adoptive parents for expenses they have incurred.

d. A bill or receipt shall be submitted before payment can be made. The agency shall not be responsible for bills or receipts submitted later than six months after the end of the month in which the expense was incurred.

### ~~D.~~ F. Applying for subsidy.

1. Procedures for the child whose eligibility is established before legal adoption.

a. The adoption assistance agreement:

(1) Shall be executed within 90 days of receipt of the application for adoption assistance;

(2) Shall be signed before entry of the final order of adoption;

(3) Shall specify the amount of payment and the services to be provided, including Title XIX and SSBG services;

(4) May be adjusted with the concurrence of the adoptive parents, in the event of changes in the needs of the child;

(5) Shall remain in effect regardless of the state of which the adoptive parents are residents at any given time; and

(6) The interests of the child shall be protected through the Interstate Compact on Adoption and Medical Assistance, should the adoptive parents and child move to another state while the agreement is effective.

2. Procedures for the child whose eligibility is established after legal adoption. The application procedures are the same as for the child whose eligibility is established before adoption except:

a. The application shall be submitted within one year of ~~the~~ a diagnosis;

b. The application shall be for a state subsidy.

### ~~E.~~ G. Maintaining responsibility.

1. The adoptive parent or parents shall:

a. Submit annually to the agency or child placing agency an affidavit which certifies that:

(1) The child for whom they are receiving subsidy remains in their care;

(2) They are legally responsible for supporting the child; and, if applicable,

(3) The child's condition requiring subsidy continues to exist.

b. Submit copies of all bills or receipts for special service payments made directly to the adoptive parents.

2. The agency or child-placing agency shall:

a. *Maintain responsibility for any payment or services identified in the agreement, regardless of where the family resides;*

~~a.~~ b. Inform prospective adoptive parents of the child's eligibility for subsidy. This shall include a full disclosure of the services and payments for which the child is or may be eligible;

~~b.~~ c. Notify adoptive parent or parents who are receiving subsidy that the annual affidavit is due. The notification shall be sent to the adoptive parent or parents two months before the affidavit is due;

~~c.~~ d. Inform adoptive parent or parents, in writing, that they have the right to appeal decisions relating to the child's eligibility for subsidy and decisions relating to payments and services to be provided.

~~F.~~ H. Terminating the subsidy agreement. The Adoption Assistance Agreement:

1. Shall be terminated when the child reaches the age of 18 unless the child has:

a. A physical or mental disability; or

b. An educational delay ~~resulting from a physical or mental disability~~. This shall include educational delays resulting from a child's foster care circumstances. *The maintenance payment may be continued for a child who is turning 18 during his senior year of school, if the child is expected to graduate by the end of school year in which he turns 18.*

c. If a child has one of the conditions in a and b above, the agreement shall be continued until the child reaches the age of 21;

2. Shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless;

a. It is determined that the child is no longer receiving financial support from the adoptive parents; or

b. The adoptive parent or parents are no longer legally responsible for the child; or

c. The child's condition requiring subsidy no longer exists.

3. Shall not be terminated if the child's condition improves but could deteriorate again. In this case, the agreement shall be suspended without a payment, rather than terminated.

4. *When a child receiving adoption subsidy enters foster care or physical custody becomes the responsibility of the state, the local agency may renegotiate the adoption*

*assistance agreement with the adoptive parent(s). Any renegotiated adoption assistance agreement must receive concurrence from all parties to the agreement.*

I. Appeals.

1. *Adoptive applicants and adoptive parents shall have the right to appeal adoption subsidy/assistance decisions related to:*

a. *The lack of or shortage of subsidy/ adoption assistance because the agency failed to present to adoptive parents relevant facts known by the agency regarding the child prior to adoption finalization;*

b. *Failure of the agency to inform the parents of the child's eligibility for subsidy/adoption assistance;*

c. *Agency decisions related to the child's eligibility for subsidy/adoption assistance, subsidy payments and services, and changing or terminating a subsidy agreement; and*

d. *Failure of the agency to comply with state laws, policies, and procedures for approving adoptive homes.*

2. *Appeals shall be processed in accordance with procedures established by the Virginia Board of Social Services.*

VA.R. Doc. No. R02-224; Filed May 12, 2003, 2:06 p.m.

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Title of Regulation: **22 VAC 40-270. Agency Placement Adoptions -- Appeals (REPEALING).**

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

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

(See Calendar of Events section for additional information)

Agency Contact: Karin Clark, Adoption Program Consultant, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849, telephone (804) 692-1251, FAX (804) 692-1284, or e-mail kac900@dss.state.va.us.

Basis: Section 63.2-217 of the Code of Virginia provides that the State Board shall adopt such regulations as necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-900 of the Code of Virginia provides that a local board shall adopt regulations for the provision of foster care services directed toward the permanent planning for children in the custody of or placed by local boards.

Purpose: Virginia's adoption assistance program receives funding from Title IV-E of the Social Security Act. Title IV-E requires the state to provide for granting an opportunity for a fair hearing to any individual whose claim for IV-E benefits is denied or not acted upon within reasonable time. Appeal rights for adoptive parents and applicants are addressed in proposed amendments to another adoption regulation, 22 VAC 40-260. Because appeal rights will be added to another regulation, the need for a separate regulation singly addressing appeals is eliminated. The welfare of the adoptive

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parents and applicants will be protected in the proposed amendments to 22 VAC 40-260.

**Substance:** The regulation will be repealed. An appeals provision will be added to 22 VAC 40-260, Agency Placement Adoptions-Subsidy.

**Issues:** The advantage of repealing the regulation to the public, agency, and Commonwealth is that appeal rights for adoptive parents and applicants are still assured through amendments to 22 VAC 40-260. The need for a separate regulation, however, is eliminated. There are no disadvantages to the public or Commonwealth.

**Fiscal Impact:** There is no anticipated fiscal impact of repealing the regulation.

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

Summary of the proposed regulation. The Department of Social Services (DSS) proposes to revise its adoption subsidy regulations. Specific changes include (i) removing the requirement to feature a child in AREVA photo listing for a period of 30 days to qualify for the subsidy, (ii) clarifying that renegotiation of the adoption subsidy is required when the adopted child enters foster care or physical custody becomes the responsibility of the Commonwealth and that the applicability of appeals procedures is limited to adoption subsidy decisions.

Estimated economic impact. The purpose of the adoption subsidy is to facilitate adoptions of hard to place children, or children with special needs by providing federal and state financial assistance to families adopting such children. The Social Security Act<sup>1</sup> requires that reasonable efforts be made to place these children without the adoption subsidy in addition to other qualifying criteria for the adoption assistance. Currently, a reasonable effort is deemed to be made in the Commonwealth if the child is registered and featured in Virginia's adoption resource exchange system (AREVA) photo listing for a period of 30 days. The proposed changes will remove the 30-day requirement, so that as soon as the registered child is featured in the photo listing, the reasonable effort criterion will be met and a placement with the adoption subsidy can proceed.

This change will affect those children for whom a family is available for adoption with subsidy within the 30-day photo

listing period. The proposed change will allow adoption of these children immediately after being featured as opposed to waiting up to a month. In fiscal year 2002, approximately 103 adopted children were photo listed. This change will apply to a subset of these children who were adopted within the initial 30 days of listing. According to DSS, while AREVA photo listing facilitates adoptions without the subsidy in the long term, it is almost never the case that children on the photo list are adopted within the initial 30 days. Thus, no significant economic effect is expected from this change.

However, in the event that a child is being placed without having to wait 30 days for an adoption without the subsidy, a number of economic effects could be expected. First, provided the level of care provided by a family receiving and not receiving financial assistance does not differ, earlier placement of a special needs child with an adoptive parent is almost certainly expected to benefit the child being adopted. Second, families who wish to adopt with financial assistance would also benefit from this change, as the adoption process would be expedited. Third, an expedited adoption process may produce some administrative cost savings. On the other hand, this change would reduce the chance of these children being adopted by families who do not wish to receive financial assistance. As a result, the adoption assistance would be provided to more families and the need for subsidy funds would increase. Although these are potential effects, they would occur only when children are placed without having to wait the initial 30-day listing period, which is believed to be an unlikely event given DSS's experience with the adoption program.

Additionally, the proposed changes include two clarifications. One clarification is that the renegotiation of the adoption subsidy is required when the adopted child enters foster care or physical custody becomes the responsibility of the Commonwealth. According to DSS, this change is a clarification of the current language, as this requirement already exists under 22 VAC 40-260. Similarly, it will be clarified that the applicability of appeals procedures is limited to adoption subsidy decisions rather than actual placement decisions. As a part of making these clarifications, DSS proposes to repeal 22 VAC 40-270 and moving some of its provisions to 22 VAC 40-260. Because these changes are mere clarifications, they are not expected to create any significant economic effects.

**Businesses and entities affected.** The proposed regulations apply to each of the 121 local departments of social services in the Commonwealth. Approximately 103 adopted children who were photo listed in AREVA annually are subject to the change in the 30-day photo listing requirement.

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

**Projected impact on employment.** The effect of proposed changes on employment is unlikely to be significant.

**Effects on the use and value of private property.** The proposed changes are unlikely 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:** The Department of

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<sup>1</sup> Section 471(a)(19).

Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*This regulation provides guidance on the appeal rights of adoptive applicants and adoptive parents. The proposal is to repeal the regulation. An appeals provision will be added to 22 VAC 40-260, Agency Placement Adoptions-Subsidy.*

*The repeal of this regulation eliminates for adoptive parents and applicants a right to appeal service and policy related issues that include, but are not limited to, such provisions as (i) failure of the agency to provide full, factual information that the agency has about the child, except information that would reveal the identity of the child's family of origin and (ii) agency decisions related to approval of the family as a prospective adoptive home. The proposed amendments to 22 VAC 40-260 will now provide a right of appeal provision for adoptive parents and applicants to appeal agency decisions related to adoption assistance only.*

VA.R. Doc. No. R02-225; Filed May 12, 2003, 2:04 p.m.



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# FINAL REGULATIONS

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For information concerning Final Regulations, see Information Page.

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## 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.

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of § 2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Title of Regulation: **4 VAC 15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4 VAC 15-30-50).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2003.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

#### Summary:

*The amendment authorizes persons operating under conditions of a commercial nuisance animal permit to capture, temporarily hold or possess, transport, release, and when necessary humanely euthanize wildlife, under the provisions and conditions established by the department.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2225-2226 April 7, 2003, 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. R03-143; Filed May 14, 2003, 10:43 a.m.

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Title of Regulation: **4 VAC 15-40. Game: In General (amending 4 VAC 15-40-230; adding 4 VAC 15-40-282, 4 VAC 15-40-283, and 4 VAC 15-40-284).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2003.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010

West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

#### Summary:

*The amendments (i) clarify the ending date when traps may be set in the waters of the Commonwealth and establish a year-round time period for setting traps in waters within the incorporated limits of cities and towns in the Commonwealth and in the counties of Arlington, Chesterfield, Fairfax, Henrico, James City, Loudoun, Prince William, Spotsylvania, Stafford, Roanoke and York, unless prohibited by local ordinances; (ii) prohibit the unauthorized feeding of bear; (iii) prohibit chasing and hunting with dogs, and the training of dogs on any wild animal from a baited place or putting out bait or salt for the purpose of chasing, hunting and training of dogs on any wild animal; (iv) prohibit intentionally crippling or harming game animals for the intent of continuing a hunt or chase, or for the purpose of training dogs; (v) make it unlawful to dislodge an animal from a tree to further a chase or to train dogs; and (vi) prohibit the use of radio tracking equipment, except on dogs, to aid in the chase, harvest or capture of wildlife.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2226-2227 April 7, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

**4 VAC 15-40-230. [ No change from proposed. ]**

**4 VAC 15-40-282. [ No change from proposed. ]**

**4 VAC 15-40-283. Unlawful to chase, hunt or train from a baited site.**

*Except as prescribed in subdivision 4 of § 29.1-521 of the Code of Virginia, it shall be unlawful to chase with dogs or hunt with dogs or to attempt to chase or hunt with dogs any wild animal from a baited site or to train dogs on any wild animal from a baited site. Furthermore, it shall be unlawful to place, distribute or maintain bait or salt for any wild animal for the purpose of chasing with dogs, hunting with dogs or the training of dogs. As used in this regulation, bait shall mean any food, grain, or other consumable substance that could serve as a lure or attractant [ ; however, crops grown for normal or accepted agriculture or wildlife management purposes shall not be considered as bait ]. A baited site will be considered to be baited for 30 days following the complete removal of all such bait or salt.*

**4 VAC 15-40-284. Intentionally crippling or harming [ ~~nonmigratory game birds and~~ ] game animals prohibited; dislodging an animal from a tree prohibited; and use of [ ~~telemetry radio tracking~~ ] equipment to aid in the chase, harvest, or capture of wildlife prohibited.**

A. No person shall intentionally cripple or otherwise harm any [ ~~nonmigratory game bird or~~ ] game animal for the intent of continuing a hunt or chase, or for the purpose of training dogs. Upon treeing, baying, or otherwise containing an animal in a manner that offers the animal no avenue of escape, the person or the hunting party shall either (i) harvest the animal if within a legal take season and by using lawful methods of take or (ii) terminate the chase by retrieving the dogs and allowing the animal freedom to escape for the remainder of the same calendar day.

B. It shall be unlawful to dislodge an animal from a tree for the intent of continuing a hunt or chase, or for the purpose of training dogs.

C. It shall be unlawful to use [ ~~electronic tracking equipment, to include but not be limited to radio collars and telemetry devices~~ radio tracking equipment, except on dogs ], to aid in the chase, harvest or capture of wildlife. No part of this section shall be construed to prohibit the use of [ ~~telemetry to aid with the location or recovery of dogs or for the use in department-authorized wildlife management activities~~ radio tracking equipment for wildlife management activities conducted or authorized by the department or for the location or recovery of dogs ].

[ ~~D. Any electronic tracking equipment utilized in violation of this section shall be immediately seized by the arresting officer and disposed of upon conviction as ordered by the court.~~ ]

VA.R. Doc. No. R03-144; Filed May 14, 2003, 10:43 a.m.

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**Title of Regulation:** 4 VAC 15-50. **Game:** Bear (amending 4 VAC 15-50-10, 4 VAC 15-50-20, 4 VAC 15-50-25, 4 VAC 15-50-70, 4 VAC 15-50-80, 4 VAC 15-50-90, 4 VAC 15-50-110, and 4 VAC 15-50-120; adding 4 VAC 15-50-71, 4 VAC 15-50-81, and 4 VAC 15-50-91; repealing 4 VAC 15-50-30).

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2003.

**Agency Contact:** Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

**Summary:**

The amendments (i) specify certain counties and cities that are excepted out of the general firearms bear season; (ii) establish an open hunting season on bear in 21 counties or portions of counties from the first Monday in December and for 11 consecutive days following; (iii) include the City of Virginia Beach in the open season for hunting bears; (iv)

expand bear hunting by repealing the continuous closed season on bear hunting in certain counties; (v) establish a muzzleloading gun season on black bear from the Tuesday prior to the third Monday in November and for three consecutive hunting days following except in specified counties and cities or portions thereof; (vi) prohibit the use of dogs during the bear muzzleloading gun season; (vii) define muzzleloading gun for the purpose of 4 VAC 15-50-71; (viii) prohibit the possession of other firearms during the muzzleloading gun season; (ix) provide that the existing provisions governing the tagging of bear will expire on June 30, 2004, and establish a new system for validating tagging and checking bear beginning July 1, 2004; (x) prohibit the use of dogs for bear hunting in certain counties and cities or portions thereof; and (xi) prohibit bear hound training season (chase) in certain counties and cities or portions thereof.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2227-2230 April 7, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

**4 VAC 15-50-10. [ No change from proposed. ]**

**4 VAC 15-50-20. Open season; Russell County and Clinch Mountain and Hidden Valley Wildlife Management Areas [ ~~certain counties or portions of counties;~~ ] first Monday in December and for 11 consecutive hunting days following [ in certain counties or portions of counties and on the Clinch Mountain and Hidden Valley Wildlife Management Areas ].**

It shall be lawful to hunt bear from the first Monday in December and for 11 consecutive hunting days following, both dates inclusive, in ~~Russell County (south and east of U.S. Route 19) and~~ [ on the Clinch Mountain and Hidden Valley Wildlife Management Areas and in ] the counties of Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Dickenson, Floyd, Franklin, Grayson, Henry, Lee, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Russell, Scott, Smyth (south of Interstate 81 [ ~~and that part north of Interstate 81 that is west of Route 16~~ ]), Tazewell [ (that part north of Route 19 that is ] west of Route 16), Washington [ (south of Interstate 81 and that part north of Interstate 81 that is west of Route 19) ], Wise, and Wythe (south of Interstate 81).

**4 VAC 15-50-25. [ No change from proposed. ]**

**4 VAC 15-50-30. [ No change from proposed. ]**

**4 VAC 15-50-70. Bow and arrow hunting.**

A. ~~Season.~~ It shall be lawful to hunt bear during the special archery season with bow and arrow from the [ second ~~first~~ ] Saturday in October through the [ Saturday ~~Friday~~ ] prior to the [ second ~~third~~ ] Monday in November, both dates inclusive.

B. ~~Carrying firearms prohibited.~~ It shall be unlawful to carry firearms while hunting with bow and arrow.



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~~C. Requirements for bow and arrow.~~ Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

~~D. Use of dogs prohibited during bow season.~~ It shall be unlawful to use dogs when hunting with bow and arrow from the [ second ~~first~~ ] Saturday in October through the [ Saturday ~~Friday~~ ] prior to the [ second ~~third~~ ] Monday in November, both dates inclusive.

E. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4 VAC 15-40-20 B, to hunt bear subject to the provisions of subsections A through D of this section. For the purpose of the application of subsections A through D to this subsection the phrase "bow and arrow" includes crossbow.

#### **4 VAC 15-50-71. Muzzleloading gun hunting.**

A. *It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Tuesday prior to the third Monday in November and for three consecutive hunting days following, both dates inclusive, except in [ Alleghany, ] Amherst, Augusta ( [ east west ] of Interstate 81 and [ that part east of Interstate 81 that is ] south of Interstate 64), [ Bath, ] Bedford, Bland, Botetourt [ east of Interstate 81 ], Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, [ Highland, ] Lee, Montgomery, Nelson, Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski, Roanoke, Rockbridge [ east of Interstate 81 ], [ Rockingham (west of Interstate 81), ] Russell, Scott, [ Shenandoah (west of Interstate 81), ] Smyth, Tazewell, Washington, Wise and Wythe counties and in the cities of Chesapeake, Suffolk and Virginia Beach.*

B. *It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns.*

C. *A muzzleloading gun, for the purpose of this section, means a single shot flintlock or percussion weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent).*

D. *It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.*

**4 VAC 15-50-80. [ No change from proposed. ]**

**4 VAC 15-50-81. [ No change from proposed. ]**

**4 VAC 15-50-90. [ No change from proposed. ]**

**4 VAC 15-50-91. [ No change from proposed. ]**

**4 VAC 15-50-110. Use of dogs in hunting bear.**

A. ~~Generally.~~ It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and in the counties of Amherst (west of U.S. Route 29), Bedford, ~~Campbell (west of Norfolk Southern Railroad),~~ and Nelson (west of Route 151)

~~and Pittsylvania (west of Norfolk Southern Railroad); and within the boundaries of the national forests.~~

~~B. Special provision for Greene and Madison counties.~~ It shall be unlawful to use dogs for the hunting of bear during the first 12 hunting days of the open season for hunting deer in the counties of Greene and Madison.

*C. It shall be unlawful to use dogs for the hunting of bear in the counties of Campbell (west of Norfolk Southern Railroad), Carroll, Floyd, Franklin, Grayson (east of Route 21), Henry, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), [ ~~Roanoke (south of a continuous line formed by Route 785, Route 311 and Route 779), ] and Wythe (that part east of Route 21 that is south of Interstate 81).~~*

#### **4 VAC 15-50-120. Bear hound training season.**

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to chase black bear with dogs, without capturing or taking, in all counties and cities or in the portions of counties in which bear hunting is permitted except in the counties of Accomack, Amelia, Appomattox, Brunswick, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Gloucester, Goochland, Grayson, Greensville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery (south of Interstate 81), New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski (south of Interstate 81), Richmond, [ Roanoke (south of a continuous line formed by Route 785, Route 311 and Route 779), ] Roanoke (south of a continuous line formed by [ ~~Rt.~~ Route ] 785, [ ~~Rt.~~ Route ] 311 and [ ~~Rt.~~ Route ] 779), Smyth (south of Interstate 81), Southampton, Spotsylvania, Stafford, Surry, Sussex, Washington (south of Interstate 81), Westmoreland, Wythe (south of Interstate 81), and York, and in the cities of Hampton, Newport News and Norfolk, from the last Saturday in August through the last Saturday in September. It shall be unlawful to have in immediate possession a firearm, bow or any weapon or device capable of taking a black bear.

VA.R. Doc. No. R03-145; Filed May 14, 2003, 10:43 a.m.

\* \* \* \* \*

Title of Regulation: **4 VAC 15-60. Game: Beaver (amending 4 VAC 15-60-20).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2003.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

Summary:

The amendment establishes a continuous open trapping season for beaver within incorporated limits of any city or town in the Commonwealth and in the counties of Arlington, Chesterfield, Fairfax, Henrico, James City, Loudoun, Prince William, Spotsylvania, Stafford, Roanoke and York.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:15 VA.R. 2230 April 7, 2003, 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. R03-146; Filed May 14, 2003, 10:42 a.m.

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Title of Regulation: 4 VAC 15-90. Game: Deer (amending 4 VAC 15-90-10, 4 VAC 15-90-20, 4 VAC 15-90-21, 4 VAC 15-90-70, 4 VAC 15-90-80, 4 VAC 15-90-90, 4 VAC 15-90-100, 4 VAC 15-90-110, 4 VAC 15-120, 4 VAC 15-90-141, 4 VAC 15-90-160, 4 VAC 15-90-170, 4 VAC 15-90-190, 4 VAC 15-90-195, 4 VAC 15-90-200, 4 VAC 15-90-210, 4 VAC 15-90-220, 4 VAC 15-90-230, and 4 VAC 15-90-240; adding 4 VAC 15-90-121, 4 VAC 15-90-231, and 4 VAC 15-90-241).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2003.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

Summary:

The amendments (i) move opening day for muzzleloader and general firearms deer seasons to Saturday; (ii) increase the bag limit on July 1, 2004, from four to six and antlerless only tags from one to three east of Blue Ridge and from three to five and antlerless only tags from one to three west; (iii) expand urban archery season to the Monday following the close of deer season through the last Saturday in March; (iv) extend two week firearms season to four weeks in Franklin and Henry counties; (v) extend two week firearms season to seven weeks in Amherst, Nelson and Pittsylvania counties west of the dog line; (vi) allow the taking of antlerless deer during the entire muzzleloader and general firearms seasons in all cities and towns (with a few exceptions) that allow hunting; (vii) establish full season either sex deer hunting during the entire muzzleloader season in Floyd County and on private lands in Roanoke County; (viii) provide the late muzzleloader season in Virginia Beach; (ix) increase the number of either sex deer hunting days on private lands in 34 counties and on public lands in 24 counties; (x) reduce the number of either sex deer hunting days in two counties.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:15 VA.R. 2230-2236 April 7, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at

length; however, the sections that have changed since publication of the proposed are set out.

4 VAC 15-90-10. [ No change from proposed. ]

4 VAC 15-90-20. Two-week open season; cities, towns, and counties west of Blue Ridge Mountains and certain cities, towns, and counties or parts thereof east of Blue Ridge Mountains.

It shall be lawful to hunt deer on the Saturday prior to the third Monday in November and for 12 consecutive hunting days following in the cities, towns and counties west of the Blue Ridge Mountains (except Clarke [ County and Floyd counties ] and on non-national forest lands in Frederick County, and on the Radford Army Ammunition Plant in Pulaski County), and in the [ county counties ] (including cities and towns within) of [ Amherst (west of U.S. Route 29), ] Bedford [ , Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), ] Franklin, Henry, [ Nelson (west of Route 151) ] and Pittsylvania (west of Norfolk Southern Railroad), and on the Chester F. Phelps Wildlife Management Area, Fairystone Farms Wildlife Management Area, Fairystone State Park, and Philpott Reservoir.

4 VAC 15-90-21. Four-week open season in Patrick County; certain cities, towns, and counties or parts thereof [ east of the Blue Ridge Mountains ].

It shall be lawful to hunt deer on the Saturday prior to the third Monday in November and for 24 consecutive hunting days following in Patrick County (except on Fairystone Farms Wildlife Management Area, Fairystone State Park, and Philpott Reservoir) the counties (including the cities and towns within) of [ Floyd, ] Franklin, Henry, [ and ] Patrick [ and Pittsylvania (west of Norfolk Southern Railroad) ].

4 VAC 15-90-70. Bow and arrow hunting.

A. Early special archery. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Saturday Friday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. Late special archery season west of Blue Ridge Mountains and certain cities and counties east of Blue Ridge Mountains. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the Monday following the close of the general firearms season on deer [ west of the Blue Ridge Mountains ] through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties of (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

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~~C. Either-sex deer hunting days.~~ Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except in Buchanan County and on private lands in the counties of Dickenson and Wise where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

~~D. Carrying firearms prohibited.~~ It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons.

~~E. Requirements for bow and arrow.~~ Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

~~F. Use of dogs prohibited during bow season.~~ It shall be unlawful to use dogs when hunting with bow and arrow [ ~~from the first Saturday in October through the Saturday prior to the third Monday in November, both dates inclusive during any special archery season~~ ].

G. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4 VAC 15-40-20 B, to hunt deer subject to the provisions of subsections A through [ ~~G H~~ ] of this section. For the purpose of the application of subsections A through [ ~~G H~~ ] to this subsection, the phrase "bow and arrow" includes crossbow.

~~H. Early special urban archery season.~~ It shall be lawful to hunt antlerless deer *during the special urban archery season* with bow and arrow from the third Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, *and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive*, within the incorporated limits of any city or town in the Commonwealth (except in the cities of Chesapeake, Suffolk, and Virginia Beach and in the cities and towns in Buchanan, Dickenson and Wise counties) and the counties of Fairfax and York provided that its governing body submits by certified letter to the department prior to May 1, ~~annually~~, its intent to participate in the ~~early special urban archery season~~. ~~The early special urban archery season will take effect in the 2002-2003 hunting season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to May 1 notice of its intent not to participate in the special urban archery season.~~

**4 VAC 15-90-80. [ No change from proposed. ]**

**4 VAC 15-90-90. [ No change from proposed. ]**

**4 VAC 15-90-100. General firearms season either-sex deer hunting days; Saturday following third Monday in November and last two hunting days.**

During the general firearms season, deer of either sex may be taken on the Saturday immediately following the third Monday in November and the last two hunting days only, in the counties of ~~(including cities within) Alleghany (except on national forest lands), Augusta (except on national forest and department-owned lands), Bath (except on national forest lands), Bland (except on national forest lands), Carroll (except on national forest and department-owned lands), Craig (except on national forest and department-owned lands), Giles (except on national~~

~~forest lands), Highland (except on national forest and department-owned lands), Page (except on national forest lands), Pulaski (except on national forest lands and the Radford Army Ammunition Plant), Rockbridge (except on national forest and department-owned lands), and Wythe (except on national forest lands) Lee (except on national forest lands), Page (except on national forest lands), Russell (except on Clinch Mountain Wildlife Management Area and Hidden Valley Wildlife Management Area), [ Scott (except on national forest lands), ] Smyth (except on national forest lands and Clinch Mountain Wildlife Management Area and Hidden Valley Wildlife Management Area), Tazewell (except on national forest lands and Clinch Mountain Wildlife Management Area and Hidden Valley Wildlife Management Area), Washington (except on national forest lands and Clinch Mountain Wildlife Management Area and Hidden Valley Wildlife Management Area), and on Fairystone Farms Wildlife Management Area, Fairystone State Park, Philpott Reservoir, and Turkeycock Mountain Wildlife Management Area and on national forest and department-owned lands in Alleghany, Augusta, Bath, Bland, Botetourt, Carroll, Craig, Giles, Highland, Montgomery, Pulaski, Roanoke, Rockbridge, and Wythe.~~

**4 VAC 15-90-110. [ No change from proposed. ]**

**4 VAC 15-90-120. [ No change from proposed. ]**

**4 VAC 15-90-121. [ No change from proposed. ]**

**4 VAC 15-90-141. [ No change from proposed. ]**

**4 VAC 15-90-160. [ No change from proposed. ]**

**4 VAC 15-90-170. [ No change from proposed. ]**

**4 VAC 15-90-190. General firearms season either-sex deer hunting days; first Saturday immediately following third Monday in November and last six days.**

During the general firearms season, deer of either sex may be taken on the first Saturday immediately following the third Monday in November and the last six hunting days, in the counties of ~~(including cities within) Botetourt (except on national forest lands), Grayson (except on national forest lands and portions of Grayson Highland State Park open to hunting), Middlesex, Mathews, Montgomery Alleghany (except on national forest lands), Augusta (except on national forest and department-owned lands), Bath (except on national forest and department-owned lands), Bland (except on national forest and department-owned lands), Carroll (except on national forest and department-owned lands), Craig (except on national forest lands), Giles (except on national forest lands), Highland (except on national forest and department-owned lands), Pulaski (except on national forest lands and the Radford Army Ammunition Plant), Rockbridge (except on national forest and department-owned lands), Rockingham (except on national forest lands), [ Scott (except on national forest lands), ] Shenandoah (except on national forest lands), and Wythe (except on national forest lands), and on the James River Wildlife Management Area, and on national forest lands in Amherst, Bedford, and Nelson counties.~~

**4 VAC 15-90-195. General firearms season either-sex deer hunting days; first two Saturdays immediately following third Monday in November and last six hunting days.**

During the general firearms season, deer of either sex may be taken on the first two Saturdays immediately following the third Monday in November and on the last six hunting days, in the counties of ~~(including the cities within)~~ Caroline (except Fort A.P. Hill), Charles City (except on Chickahominy Wildlife Management Area), ~~Chesterfield (except on Pocahontas State Park and Presquile NWR), [ Essex, ]~~ King George (except Caledon Natural Area and Dahlgren Surface Warfare Center), King and Queen, King William, Louisa, ~~Mathews, Middlesex, New Kent, Richmond, and Westmoreland.~~

**4 VAC 15-90-200. [ No change from proposed. ]**

**4 VAC 15-90-210. General firearms season either-sex deer hunting days; first two Saturdays immediately following third Monday in November and last 12 hunting days.**

During the general firearms season, deer of either sex may be taken on the first two Saturdays immediately following the third Monday in November and on the last 12 hunting days, in the counties of ~~(including the cities within)~~ Albemarle, Amherst (east of U.S. Route 29), Campbell (east of Norfolk Southern Railroad except City of Lynchburg), Culpeper (except on Chester F. Phelps Wildlife Management Area), ~~Fauquier (except on the G. Richard Thompson and Chester F. Phelps Wildlife Management Areas, Sky Meadows State Park and Quantico Marine Reservation) [ Essex, ]~~ Gloucester, Goochland (east of U.S. Route 522), Greene, Halifax, Hanover, Henrico (except Presquile National Wildlife Refuge), James City (except York River State Park), Lancaster, Madison, Nelson (east of Route 151 except James River Wildlife Management Area), Northumberland, Orange, Pittsylvania (east of Norfolk Southern Railroad except White Oak Mountain Wildlife Management Area), Rappahannock, ~~Richmond~~, Spotsylvania, Stafford (except on Quantico Marine Reservation), and in the City of Suffolk (west of the Dismal Swamp line).

**4 VAC 15-90-220. [ No change from proposed. ]**

**4 VAC 15-90-230. [ No change from proposed. ]**

**4 VAC 15-90-231. [ No change from proposed. ]**

**4 VAC 15-90-240. [ No change from proposed. ]**

**4 VAC 15-90-241. Checking deer by persons exempt from license requirement or holding a license authorization number.**

A. *This section is effective July 1, 2004.*

B. *Upon killing a deer, any person exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to*

*any appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's toll-free Telecheck system. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a Telecheck confirmation number. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the Telecheck reporting system, [ no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the Telecheck-reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the Telecheck confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the Telecheck confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the Telecheck-reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass ].*

C. *It shall be unlawful for any person to destroy the identity (sex) of any deer killed until the deer is checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the Telecheck system.*

VA.R. Doc. No. R03-147; Filed May 14, 2003, 10:42 a.m.

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**Title of Regulation: 4 VAC 15-140. Game: Muskrat (amending 4 VAC 15-140-20; repealing 4 VAC 15-140-40).**

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2003.

**Agency Contact:** Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

**Summary:**

*The amendments (i) establish a continuous open trapping season for muskrat within incorporated limits of any city or town in the Commonwealth and in certain specified counties*

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and (ii) repeal the restriction on the setting of traps on a stob, float or floating device for capturing muskrat.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2237 April 7, 2003, 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. R03-148; Filed May 14, 2003, 10:41 a.m.

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**Title of Regulation:** 4 VAC 15-160. Game: Opossum (amending 4 VAC 15-160-10 and 4 VAC 15-160-31; repealing 4 VAC 15-160-20).

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2003.

**Agency Contact:** Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

**Summary:**

*The amendments (i) provide for a uniform statewide hunting season of opossum by rescinding the references to the excepted areas and (ii) establish a continuous open trapping season for opossum within incorporated limits of any city or town in the Commonwealth and in certain specified counties.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2237 April 7, 2003, 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. R03-149; Filed May 14, 2003, 10:41 a.m.

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**Title of Regulation:** 4 VAC 15-200. Game: Rabbit and Hare (amending 4 VAC 15-200-10).

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2003.

**Agency Contact:** Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

**Summary:**

*The amendment extends the rabbit season by two weeks by changing the closing date from January 31 to February 14.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2237 April 7, 2003, 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. R03-150; Filed May 14, 2003, 10:41 a.m.

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**Title of Regulation:** 4 VAC 15-210. Game: Raccoon (amending 4 VAC 15-210-30 and 4 VAC 15-210-51; repealing 4 VAC 15-210-40).

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2003.

**Agency Contact:** Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

**Summary:**

*The amendments (i) provide for a uniform statewide hunting season of raccoon by rescinding the references to the excepted areas and (ii) establish a continuous open trapping season for raccoon within incorporated limits of any city or town in the Commonwealth and in certain specified counties.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2238 April 7, 2003, 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. R03-151; Filed May 14, 2003, 10:40 a.m.

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**Title of Regulation:** 4 VAC 15-230. Game: Squirrel (amending 4 VAC 15-230-20 and 4 VAC 15-230-60; repealing 4 VAC 15-230-30 and 4 VAC 15-230-70).

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2003.

**Agency Contact:** Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

**Summary:**

*The amendments (i) expand and make uniform statewide the gray and red squirrel season, and (ii) include and exclude certain localities regarding the fox squirrel season while providing for a uniform open season date.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2238 April 7, 2003, 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. R03-152; Filed May 14, 2003, 10:40 a.m.

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**Title of Regulation:** 4 VAC 15-240. **Game:** Turkey (amending 4 VAC 15-240-31, 4 VAC 15-240-40, 4 VAC 15-240-50, 4 VAC 15-240-80, and 4 VAC 15-240-90; adding 4 VAC 15-240-81 and 4 VAC 15-240-91).

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Effective Date:** July 1, 2003.

**Agency Contact:** Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

**Summary:**

The amendments (i) expand the fall turkey hunting season in certain counties and add a county, (ii) create a youth turkey hunting opportunity, and (iii) make changes regarding the tagging and checking of turkeys.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2239-2240 April 7, 2003, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

**4 VAC 15-240-31. [ No change from proposed. ]**

**4 VAC 15-240-40. Open season; spring season for bearded turkeys.**

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys only from the second Saturday in April and for 30 consecutive hunting days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time during the first 19 hunting days and from 1/2 hour before sunrise to [ ~~6 p.m.~~ sunset ] during the last 12 hunting days of the spring season.

B. Turkey hunters 15 years of age and under may hunt on the first Saturday in April from 1/2 hour before sunrise to 12:00 noon prevailing time, when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or an adult that is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters on this day may assist with calling but they shall not carry or discharge weapons.

C. Bearded turkeys may be hunted by calling.

D. It shall be unlawful to use dogs or organized drives for the purpose of hunting.

E. It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

**4 VAC 15-240-50. [ No change from proposed. ]**

**4 VAC 15-240-80. [ No change from proposed. ]**

**4 VAC 15-240-81. [ No change from proposed. ]**

**4 VAC 15-240-90. [ No change from proposed. ]**

**4 VAC 15-240-91. Checking turkey by persons exempt from license requirement or holding a license authorization number.**

A. This section is effective July 1, 2004.

B. Upon killing a turkey, any person exempt from the license requirement as described in § 29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in § 29.1-339, or the holder of a permanent license issued pursuant to § 29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever comes first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the turkey was killed or report their spring kill (as provided by 4 VAC 15-240-40) through the department's toll-free Telecheck system. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a Telecheck confirmation number. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If a spring-season kill is reported using the Telecheck reporting system, [ ~~no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the Telecheck-reported spring carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the Telecheck confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass~~ the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the Telecheck confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the Telecheck-reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass ].

C. It shall be unlawful for any person to destroy the identity of the sex of any turkey killed until the turkey is checked as required by this section.

VA.R. Doc. No. R03-153; Filed May 14, 2003, 10:30 a.m.

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Title of Regulation: **4 VAC 15-260. Game: Waterfowl and Waterfowl Blinds (amending 4 VAC 15-260-120).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2003.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

Summary:

*The amendments (i) remove the reference to old-squaw ducks and replace it with long-tailed ducks; (ii) open the Pocomoke Sound during the special sea duck season; (iii) clarify that the hunting of sea ducks is permitted in designated waters at a distance greater than 800 yards of any shore, island or emergent vegetation during the special sea duck season.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2240-2241 April 7, 2003, 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. R03-154; Filed May 14, 2003, 10:39

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Title of Regulation: **4 VAC 15-290. Game: Permits (amending 4 VAC 15-290-115).**

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Effective Date: July 1, 2003.

Agency Contact: Phil Smith, Policy Analyst and Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488 or e-mail RegComments@dgif.state.va.us.

Summary:

*The amendment allows the department to authorize permitted foxhound field trials held within foxhound training enclosures and raccoon hound field trials at any time.*

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:15 VA.R. 2241 April 7, 2003, 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. R03-155; Filed May 14, 2003, 10:39 a.m.

## TITLE 9. ENVIRONMENT

### VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **9 VAC 20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9 VAC 20-110-10 through 9 VAC 20-110-40, [ 9 VAC 20-110-90, ] 9 VAC 20-110-100, 9 VAC 20-110-110, 9 VAC 20-110-121, and 9 VAC 20-110-122; repealing 9 VAC 20-110-115).**

Statutory Authority: § 10.1-1450 of the Code of Virginia.

Effective Date: July 2, 2003.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23240, telephone (804) 698-4238, FAX (804) 698-4327 or e-mail mspporterfi@deq.state.va.us.

Summary:

*The amendments (i) revise definitions; (ii) clarify existing language regarding registration of hazardous radioactive materials by shipper; (iii) correct an incorrect citation; and (iv) add clarifying language regarding radioactive materials. Additionally, text referencing the director issuing variances from physical qualification requirements to drivers transporting hazardous materials is removed from the regulations since current statute no longer gives the Director of the Department of Environmental Quality the authority to issue these variances.*

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.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:26 VA.R. 3764-3768 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.

#### 9 VAC 20-110-10. 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 Virginia Waste Management Board.

"Carrier" means a person engaged in the transportation of passengers or property by:

1. Land or water, as a common, contract, or private carrier; or
2. Civil aircraft.

"CFR" means the Code of Federal Regulations.

"Coordinator" means the Chief Executive Officer of the Virginia Department of Emergency Services Management.

"Department" means the Virginia Department of Environmental Quality.

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

"Hazardous material" means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which has been incorporated under Part III (9 VAC 20-110-110 et seq.).

"Hazardous radioactive materials" mean, for the purposes of [ ~~this regulation these regulations~~ ], radioactive materials [ ~~regulated by requiring advance notification as described in~~ ] 10 CFR [ ~~Parts 20, 71, and 73~~ 71.97 ].

"Monitor" means to track the transportation of hazardous radioactive materials *requiring advance notification prior to transportation* within the Commonwealth by:

1. Requiring ~~transporters~~ *shippers to register with the coordinator and to notify the coordinator of shipments of hazardous radioactive materials within the Commonwealth; and*
2. ~~The coordinator's~~ *In requiring the coordinator to prepare a report prepared annually for the Governor and the director summarizing the hazardous radioactive materials transportation for the preceding year.*

"Person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, or agency or instrumentality of any government or Indian tribe, when it offers hazardous materials, or hazardous radioactive materials for transportation, or transports hazardous materials or hazardous radioactive materials, but such term does not include:

1. The United States Postal Service; or
2. For the purposes of ~~§§ 110 and 111 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1809-1810)~~ 49 USC [ §§ ] 5123 and 5124, any agency or instrumentality of the federal government.

"Shipper" means a person who transfers possession of hazardous material or hazardous radioactive material to the carrier for transport through the Commonwealth.

"Transport" or "transportation" means any movement of property by any mode, and any packing, loading, unloading, identification, marking, placarding, or storage incidental thereto.

~~"Variance" means authorization, granted by the director, to engage in an activity covered by these regulations without following specific regulatory requirements.~~

**9 VAC 20-110-20. Authority for [ ~~regulation~~ regulations ].**

A. These regulations are 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, and Chapter 3.3 (§ 44-146.30) of Title 44 of the Code of Virginia.

B. Section 10.1-1450 of the Code of Virginia assigns the Virginia Waste Management Board the responsibility for promulgating regulations governing the transportation of hazardous materials. Section 44-146.30 of the Code of Virginia also assigns to the board the responsibility for promulgating regulations by which the coordinator will maintain a register of shippers of hazardous radioactive materials and monitor transportation of hazardous radioactive materials within the Commonwealth, [ ~~which that~~ ] *may constitute a significant potential danger to the citizens of the Commonwealth in the event of accidental spillage or release.*

C. The board is authorized to promulgate rules and regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported, such rules to be no more restrictive than any applicable federal laws or regulations.

**9 VAC 20-110-30. [ No change from proposed. ]**

**9 VAC 20-110-40. Administration of regulations.**

A. The director has the responsibility to administer these regulations. When used in [ ~~this regulation these regulations~~ ] in any such provisions as may be adopted from 49 CFR Parts 107, 171 through 180, ~~383,~~ and 390 through 397, except in reference to regulations on international transportation, United States means the "Commonwealth of Virginia"; Environmental Protection Agency means the "Virginia Department of Environmental Quality"; and the Secretary of Transportation, regional director, and administrator mean the "director," unless the context clearly indicates otherwise.

B. The department is responsible for the planning, development and implementation of programs to meet the requirements of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 and Chapter 3.3 (§ 44-146.30) of Title 44 of the Code of Virginia.

C. The coordinator is responsible for registering shippers and monitoring transportation of hazardous radioactive materials in accordance with these regulations.

D. The Radiation Advisory Board, established pursuant to § 32.1-233 of the Code of Virginia, shall make recommendations to the director and the board, furnishing such technical advice as may be required, on matters related to development, utilization, and regulations of sources of ionizing radiation.

**[ 9 VAC 20-110-90. Enforcement.**

A. The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, and any rule or regulation promulgated herein. Those law-enforcement officers certified to enforce the provisions of this article, and any ~~regulation~~ *regulations* promulgated under such article, shall annually receive in-service training in current federal safety regulations and safety



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inspection procedures pertaining to the transportation of hazardous materials.

B. Judicial enforcement of these regulations shall be governed by § 10.1-1455 of the Code of Virginia. ]

**9 VAC 20-110-100. [ No change from proposed. ]**

**9 VAC 20-110-110. [ No change from proposed. ]**

**9 VAC 20-110-115. [ No change from proposed. ]**

**9 VAC 20-110-121. Register of shippers.**

Every ~~person~~, shipper or carrier transporting or proposing to transport [ *hazardous radioactive materials* ] within the Commonwealth [ ~~hazardous radioactive materials, requiring advance notification,~~ ] shall register with the Department of Emergency ~~Services Management~~ at least 30 days prior to the initial transportation of such materials. Application for registration or renewal of registration shall be completed on forms furnished by the coordinator and shall contain all the information required by the forms and accompanying instructions. Upon receipt of a complete application form and any other information required by the coordinator, the Department of Emergency ~~Services Management~~ shall issue a registration certificate. The certificate shall expire two years from the date of issue. Registration information shall be provided by the coordinator to the director upon request.

**9 VAC 20-110-122. Monitoring and transportation.**

A. Notification. Prior to each shipment or series of shipments of hazardous radioactive materials ~~by a registrant~~ [ ~~requiring advance notification~~ ] within the Commonwealth of Virginia, the registrant shall notify the coordinator in writing as required by ~~the 10 CFR 71.97, 10 CFR 73.37 (f) or other~~ applicable federal regulations. The coordinator shall disseminate the notification to local law-enforcement agencies, local emergency [ ~~services management~~ ] coordinators, local fire departments, or other designated local officials along the transportation route as requested by county or municipal authorities, or as determined by the coordinator to be necessary for effective implementation of these regulations.

B. Reports. At least annually, the coordinator shall submit to the director and the Governor's Office a report summarizing activities carried out under the provisions of these regulations pertaining to the transportation of hazardous radioactive materials.

VA.R. Doc. No. R01-231; Filed May 7, 2003, 12:39 p.m.

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<p><b>REGISTRAR'S NOTICE:</b> The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Virginia Waste Management Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
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**Title of Regulation:** 9 VAC 20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9 VAC 20-110-110).

**Statutory Authority:** §§ 10.1-1450 and 44-146.30 of the Code of Virginia.

**Effective Date:** July 4, 2003.

**Agency Contact:** Melissa Porterfield, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23240, telephone (804) 698-4238, FAX (804) 698-4327 or e-mail mporterfi@deq.state.va.us.

**Summary:**

*The Regulations Governing the Transportation of Hazardous Materials regulate the method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored, and transported. By Virginia statute, these regulations shall be no more restrictive than any applicable federal laws or regulations. This immediate final rule changes the date of the federal regulations incorporated by reference into these regulations. Federal regulations in effect on October 1, 2002, are incorporated into these regulations.*

**9 VAC 20-110-110. Compliance.**

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated and in effect as of ~~March 18, 1994~~ October 1, 2002 (except as otherwise specified below), pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. Hazardous Materials Program Procedures in 49 CFR Part 107, Subpart B.
2. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.
3. Shipping Container Specifications in 49 CFR Part 178.
4. Specifications for Tank Cars in 49 CFR Part 179.
5. Qualifications and Maintenance of Cargo Tanks in 49 CFR Part 180.
6. Commercial Licensing Requirements in 49 CFR Part 383.
7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R03-198; Filed May 7, 2003, 12:39 p.m.

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**Title of Regulation:** 9 VAC 20-170. Transportation of Solid and Medical Wastes on State Waters Regulations (adding 9 VAC 20-170-10 through 9 VAC 20-170-60, 9 VAC 20-170-80 through 9 VAC 20-170-190, and 9 VAC 20-170-270 through 9 VAC 20-170-420).

**Statutory Authority:** §§ 10.1-1402 and 10.1-1454.1 of the Code of Virginia.

**Effective Date:** July 2, 2003.

**Summary:**

The regulation sets forth guidelines for the permitting (permit-by-rule) of the facilities off-loading solid wastes and regulated medical wastes from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth. The regulations include standards for design and operation of both loading and off-loading facilities, but loading facilities are not required to have a permit. A schedule of permit fees is included and procedures for submitting the fees.

The regulation prescribes specific siting, design/construction, and operational standards for the loading and off-loading facilities. It contains specific requirements for containers including a performance standard, testing requirements, a manifest system, and stacking restrictions in the loading and off-loading areas.

The regulation establishes a financial responsibility requirement for the owners and operators of vessels and establishes a fee system to be paid by vessel owners or operators and collected by off-loading facility owners or operators and remitted to the department.

The definition of "solid waste" was amended to include exemptions to the waste under these regulations pursuant to Chapter 830 of the 2003 Acts of Assembly, and a new definition, "construction demolition debris waste," was included to accommodate this amendment. The definition of "receiving facility" was amended to clarify that both loading and off-loading facilities could be receiving facilities.

9 VAC 20-170-30 and 9 VAC 20-170-40 were combined to form new 9 VAC 20-170-30. 9 VAC 20-170-50 through 9 VAC 20-170-70 were renumbered one decade lower. Parts were renumbered and deferred parts were reassigned to new material.

Other changes were made to the section on Design and Construction of the Facilities (9 VAC 20-170-90) and the section on Operation (9 VAC 20-170-100). These changes deal with the handling of waste at the facility, the handling of empty containers, and the requirement that any containers used be in compliance with 9 VAC 20-170-70. A requirement was added for the maximum volumetric capacity and empty weight of each container to be listed on the manifest. The section on the Operation and Maintenance Manual (9 VAC 20-170-110) was modified to change the definition of the worst case scenarios for the release of wastes into state waters. Changes were made throughout Part IV and elsewhere as necessary to make

clear that the permitting of facilities applied to off-loading facilities and not loading facilities.

Many small changes were made to Part VI and its appendices for the purpose of correction, conformance between text at other sites in these regulations, conformance with other financial assurance regulations of the board or conformance with the statutes. New parts, Part VII, Compliance of Vessels Transporting Solid Wastes or Regulated Medical Wastes with Federal Statutes and Regulations and State Spill Response Requirements (9 VAC 20-170-410, General provisions) and Part VIII, Variance (9 VAC 20-170-420, Petitioning for Variance or Exemption), have been added to provide correlation with federal rules and to establish procedure for petitioning for and receiving variances from the regulations. Other clarifications of the relationship of the regulations with federal rules were inserted in other sections as necessary.

**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:** Copies of the regulation may be obtained from Robert G. Wickline, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4213.

CHAPTER 170.

TRANSPORTATION OF SOLID [ AND ] MEDICAL WASTES  
ON STATE WATERS REGULATIONS.

PART I.

DEFINITIONS AND PROGRAM ADMINISTRATION.

**9 VAC 20-170-10. Definitions.**

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

"Affiliated company" means (i) any company that directly or indirectly owns, controls, or holds, with power to vote, 10% or more of the outstanding voting securities of a pure captive insurer or (ii) any company of which 10% or more of the voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent, subsidiary, or associated company.

"Anniversary date" means the date of issuance of a financial mechanism.

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Associated company" means any company in the same corporate system with a pure captive insurer.

"Association captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of the members of an insurance association.

"Beneficial use" means both instream and offstream uses of state waters. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat,

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*maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.*

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

*"Bodily injury" means the death or injury of any person incident to a waste deposit from a vessel, but not including any death, disablement, or injuries covered by ~~worker's~~ workers' compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.*

*"Captive insurer" means any pure captive insurer or any association captive insurer.*

*"Certificant" means an owner or operator who has been issued a Certificate of Financial Responsibility under this chapter.*

*"Certificate applicant" means an owner or operator who has applied for a Certificate of Financial Responsibility or for the renewal of a Certificate of Financial Responsibility under this chapter.*

*"Certificate of Financial Responsibility" or "certificate" means a Certificate of Financial Responsibility issued under Part VI (9 VAC 20-170-200 9 VAC 20-170-270 et seq.) of this chapter, unless otherwise indicated.*

*"Certified copy" means a legible copy certified as accurate by a notary public or other person authorized to take oaths in the United States.*

*"CFR" means Code of Federal Regulations.*

*"Charter by demise" means to hire for exclusive use through a lease.*

*"Closure" means the act of securing a solid waste management facility pursuant to the requirements of this chapter.*

*"Commercial transport" means transportation for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.*

*"Commercial transporter" means any person who transports for the purposes of commercial carriage of solid wastes or regulated medical wastes as cargo.*

*[ "Construction demolition debris waste" or "CDD waste" means solid waste that is produced or generated during construction or destruction, remodeling, or repair of pavements, houses, commercial buildings, their foundations and other structures. Construction demolition debris 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 semi-liquids and garbage are not construction demolition debris wastes. ]*

*"Container" means any watertight structure that meets the provisions of this chapter.*

*"Containment and cleanup" means abatement, containment, removal and disposal of solid wastes or regulated medical wastes that have been deposited to state waters or adjoining shorelines, and the restoration of the environment to its existing state prior to a deposit of the wastes.*

*"Demise charterer" means a person with whom the owner of the vessel enters into a demise charter. The charterer takes over all possession and control of the vessel from the owner of the vessel and becomes subject to the duties and responsibilities of ownership. The charterer is also responsible for directing the operations of the vessel and providing the master and crew.*

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

*"Destination facility" means a facility that treats, disposes of, or recycles solid wastes or regulated medical wastes in accordance with applicable federal and state regulations.*

*"Director" means the Director of the Virginia Department of Environmental Quality or an authorized representative.*

*"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the director, which includes:*

- 1. The full name, business address, and social security number of all key personnel;*
- 2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;*
- 3. A description of the business experience of all key personnel listed in the disclosure statement;*
- 4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;*
- 5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, that are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling;*

robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ ~~54.1-3404~~ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth that have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years in connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and abilities of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Existing facility" means any receiving facility that is constructed prior to ~~the effective date of this chapter~~ [ ~~February 16, 2004~~ July 2, 2003 ].

"Generator" means any person, by site, whose act or process produces solid wastes or regulated medical wastes, or whose act first causes solid wastes or regulated medical wastes to become subject to this chapter.

"Insurance association" means any group of individuals, corporations, partnerships, associations, or governmental units or agencies whose members collectively own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurer.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person,

other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Leachate" means a liquid that has passed through or emerged from solid waste or regulated medical waste and contains soluble, suspended, or miscible materials from such 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 wastewater collection system is regulated as industrial wastewater.

"Load Line Certificate" means a certificate issued by the American Bureau of Shipping (ABS) or other similarly qualified organizations authorized by the Secretary of Transportation (U.S. Department of Transportation) to the owner of the vessel, in accordance with 46 USC Chapter 51.

"Manifest" means the shipping document originated and signed by the generator in accordance with the provisions of this chapter. For transportation of regulated medical wastes, the hazardous materials shipping paper requirements under 49 CFR Part 172 Subpart C may be reflected in the manifest.

"Medical waste" or "regulated medical waste" means solid wastes defined to be regulated medical wastes by Part III of the Regulated Medical Waste Management Regulations (9 VAC 20-120 [ ~~40 et seq.~~ ]). Solid waste packaged as regulated medical waste is regulated medical waste. Medical wastes that have been sterilized, treated or incinerated in accordance with the Regulated Medical Waste Management Regulations (9 VAC 20-120 [ ~~40 et seq.~~ ]) are no longer considered as regulated medical waste.

"Navigable waters of the Commonwealth" means state water being used or susceptible of being used, in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted in the customary modes of trade and travel on water.

"New facility" means any receiving facility [ ~~which that~~ ] is constructed on or after ~~the effective date of this chapter~~ [ ~~February 16, 2004~~ July 2, 2003 ].

"Odors" means any emissions [ ~~which that~~ ] cause an odor objectionable to individuals of ordinary sensibility.

"Operator" means, in the case of a receiving facility, any person responsible for the overall operation of a receiving facility that handles solid wastes or regulated medical wastes. In the case of a vessel, it means any person who operates, charters by demise, rents or otherwise exercises control over or responsibility for a vessel.

"Owner" means, in the case of a receiving facility, any person who owns a receiving facility or part of a receiving facility [  ~~] ] that handles solid wastes or regulated medical wastes as cargo for hire. In the case of a vessel, it means any person who owns a vessel or a part of a vessel that transports solid wastes or regulated medical wastes as cargo for hire.~~

"Parent" means a corporation, partnership, governmental unit or agency, or individual who directly or indirectly owns,

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controls or holds, with power to vote, more than 50% of the outstanding voting securities of a pure captive insurer.

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

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to a waste deposit from a vessel. This term shall not include those liabilities that, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage.

"Provider of financial responsibility" means an entity that provides financial responsibility to an owner and operator of a vessel transporting solid wastes or regulated medical wastes through one of the mechanisms listed in 9 VAC 20-170-240 9 VAC 20-170-310, including a financial institution, surety, or issuer of a letter of credit.

"Public vessel" means a vessel that is owned or demise chartered and operated by the United States government or a government of a foreign country and that is not engaged in commercial service.

"Pure captive insurer" means any insurer transacting the business of insurance and reinsurance only on risks, hazards, and liabilities of its parent, subsidiary companies of its parent, and associated and affiliated companies.

"Receiving facility" means a facility, vessel or operation that [ ~~receives~~ loads or off-loads ] solid wastes or regulated medical wastes transported [ ~~loaded, or unloaded~~ ] upon the navigable waters of the Commonwealth [ ~~, to the extent allowable under state law,~~ ] by a commercial transporter. [ ~~A receiving facility is considered as a solid waste management facility.~~ ]

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) materials regulated as hazardous wastes under the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.); (ii) scrap metal, dredged material [ , recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse ] and source-separated recyclables; (iii) solid or dissolved material in domestic sewage; (iv) solid or dissolved material in irrigation return flows or in industrial discharges that are sources subject to a permit from the State Water Control Board; or (v) source, special nuclear, or byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

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

"Subsidiary company" means any corporation of which 50% or more of the outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by a parent or by a company that is a subsidiary of the parent.

"Surface waters" means:

~~1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;~~

~~2. All interstate waters, including interstate wetlands;~~

~~3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:~~

~~a. That are or could be used by interstate or foreign travelers for recreational or other purposes;~~

~~b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or~~

~~c. That are used or could be used for industrial purposes by industries in interstate commerce;~~

~~4. All impoundments of waters otherwise defined as surface waters under this definition;~~

~~5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;~~

~~6. The territorial sea; and~~

~~7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.~~

"Surface water" means any water in the Commonwealth, except ground water as defined in § 62.1-255 of the Code of Virginia.

"Transport" or "transportation" means any movement of solid wastes or regulated medical wastes, and any packing, loading, unloading or storage incidental thereto.

"USC" means the U.S. Code.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Waste deposit" or "deposit of waste" means any solid waste or regulated medical waste from a vessel or a receiving facility that is placed, discharged, spilled, dropped, or leaked into state waters or adjoining shorelines.

**9 VAC 20-170-20. Purpose.**

This chapter establishes standards and procedures pertaining to the commercial transport, loading and off-loading of solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law in order to protect the public health, safety and welfare, and to protect the environment and natural resources from pollution, impairment or destruction.

**9 VAC 20-170-30. Applicability.**

[ A. ] This chapter applies to each owner and/or operator of a vessel transporting solid wastes or regulated medical wastes for the purposes of commercial carriage as cargo, and each owner or operator of a receiving facility. This chapter also applies to the receiving facilities and vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law.

**[ 9 VAC 20-170-40. Exclusions. ]**

[ B. ] This chapter does not apply to a public vessel as defined under 9 VAC 20-170-10, the owner and operator of a public vessel, vessels transporting solid wastes or regulated medical wastes incidental to their predominant business or purposes, vessels transporting solid wastes or regulated medical wastes generated during normal operations of the vessel, solid wastes or regulated medical wastes generated during the normal operations of the vessel, and solid wastes excluded pursuant to 9 VAC 20-80-150 or conditionally exempted pursuant to 9 VAC 20-80-160 of the Virginia Solid Waste Management Regulations.

**[ 9 VAC 20-170-50 9 VAC 20-170-40 ]. Relationship to other regulations.**

A. The Solid Waste Management Regulations (9 VAC 20-80 [ ~~40 et seq.~~ ] ) prescribe requirements for the solid waste management facilities in general. While a facility utilized to receive solid wastes or regulated medical wastes transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter is a solid waste management facility, this chapter herein prescribes specific requirements, including siting, design/construction, operation, and permitting, for this type of facilities. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

B. The Regulated Medical Waste Management Regulations (9 VAC 20-120 [ ~~40 et seq.~~ ] ) address special needs for regulated medical waste management. A facility utilized to receive regulated medical waste transported, loaded, or unloaded upon the navigable waters of the Commonwealth, to the extent allowable under state law, by a commercial transporter is a regulated medical waste facility and it must conform to any applicable sections of the Regulated Medical Waste Management Regulations adopted by the board. If there is any overlapping requirement between these two regulations, whichever is more stringent shall apply.

C. This chapter does not exempt any receiving facility from obtaining a Virginia Water Protection Permit as required by

the Virginia Water Protection Permit Regulation (9 VAC 25-[ ~~240-40 et seq.~~ ] ), whenever it is applicable.

**[ ~~9 VAC 20-170-60~~ 9 VAC 20-170-50 ]. Enforcement, inspections, and right of entry.**

A. Any person violating any requirement of this chapter [ , except for those enforced by the U.S. Department of Transportation and the U.S. Coast Guard, ] is liable for a civil penalty of not more than \$25,000 per violation. Each day of a continuing violation is a separate violation.

B. The owner or operator of a receiving facility or a vessel shall allow the director or his designee, upon presentation of appropriate credentials or other documents as may be required by law, to :

1. Enter at reasonable times upon any premises where a regulated facility or activity is located or conducted, or where records must be kept under the provisions of this chapter;
2. Have access to and copy, at reasonable times, any records that must be kept under the provisions of this chapter;
3. Inspect at reasonable times any facilities, equipment, practices, or operations regulated or required under the provisions of this chapter; and
4. Sample or monitor at reasonable times, for the purposes of assuring compliance with the provisions of this chapter.

[ C. The regulations of the U.S. Department of Transportation and the U.S. Coast Guard are enforced by those federal agencies. Information on possible violations of federal rules will be referred to the federal agency for enforcement. ]

**[ ~~9 VAC 20-170-70~~ 9 VAC 20-170-60 ]. Delegation of authority.**

The director may perform any act of the board provided under this chapter, except as limited by § 10.1-1405 of the Code of Virginia.

[ PART II.  
STANDARDS FOR CONTAINERS.

**9 VAC 20-170-70. Design, operation and maintenance of containers. ]**

(NOTE: Final action on 9 VAC 20-170-70 was published and subsequently suspended in 19:18 VA.R. 2678-2680 May 19, 2003.)

[ ~~PART II.~~ PART III. ]  
STANDARDS FOR [ LOADING AND OFF-LOADING ]  
RECEIVING FACILITIES.

Article 1.  
Standards for Containers and Receiving Facilities Design and Operation.

**9 VAC 20-170-80. Siting.**

A. The receiving facility shall be adjacent to or have direct access to roads [ ~~which that~~ ] are paved or surfaced and capable of withstanding anticipated load limits.

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~~B. The receiving facility shall be located so as to minimize waterborne traffic congestion and navigational hazards. Sites shall allow for sufficient room to minimize land traffic congestion and allow for safe operation.~~

~~C. No loading, unloading, or receiving areas shall be located closer than 50 feet to any property line (excluding the property line along the water side), nor closer than 200 feet to any occupied dwelling, a health care facility, school or recreational park area, or similar type public institution.~~

~~**[ 9 VAC 20-170-85. Design, operation and maintenance of containers used to transport solid wastes and regulated medical wastes on Virginia waters.**~~

~~A. Each container used to transport solid wastes or regulated medical wastes on state waters shall be watertight and leak-proof; prevent the loss or spillage of waste, liquids or odors; and prevent the loss or spillage of waste or leachate during transport, during normal handling and in the event of an accident.~~

~~B. Each container shall be designed, constructed and maintained to contain any liquids, including any leachate that may be generated, and prevent the loss of liquids during loading, transport or unloading of the container. Each container shall be designed, constructed and maintained to prevent the entry of liquids into the container during normal transport, during handling and in the event it is lost overboard. Each container must be completely enclosed, rigid and constructed of nonpermeable material. Each container must be designed to remain upright in the event that it is lost overboard.~~

~~C. Each container must meet all applicable U.S. Department of Transportation specifications.~~

~~D. Each container shall have a gas pressure activated relief valve or equivalent device that will allow the escape of gases to prevent the unsafe buildup of decomposition gases. Such release device shall minimize the escape of odors, liquids and waste and shall include safety measures for the planned opening of the container.~~

~~E. At least once in every six months, each container shall be tested and certified by the American Bureau of Shipping (ABS) to be in compliance with the requirements of this section. The ABS certification shall include, at least, the following items:~~

~~1. Each container shall be certified and bear a plate (CSC plate) showing certification of compliance with the International Convention for Safe Containers standards for ocean shipping containers.~~

~~2. Each container shall be certified as meeting the ABS's General Specifications (See Rules for Certification of Cargo Containers, 1987, Section 6) including weathertightness for general service. Each container must have affixed to it in a visible and accessible location a decal including the ABS general service emblem, a notice and date of certification, and the names, addresses and telephone numbers of the person performing the test and the owner of the container.~~

~~3. Each container shall be certified as having passed the following test: each container shall be tested using applied~~

~~soap and maintenance of internal gas pressure of 5.0 pounds per square inch (gauge) in accordance with "Section 2, Material Handling, Recommended Practices for Installation of Underground Liquid Storage Systems" (PEI/RP100-2000) by Petroleum Equipment Institute. To pass the test, an internal gas pressure of 5.0 pounds per square inch (gauge) shall be maintained for one hour with no appreciable loss of pressure and an inspection shall have not revealed any appreciable leakage. (Note: Petroleum Equipment Institute, Post Office Box 2380, Tulsa, Oklahoma 74101-2380.)~~

~~F. Owners of all containers must keep a record of testing of each container for at least the preceding 12 months and provide copies of the log and certification to persons who lease or handle the container and to the department. The container owner shall certify to the department that such testing has been conducted in accordance with subsection E of this section, and that the container is watertight, leak-proof and otherwise in compliance with this chapter. The certification shall so be endorsed by a decal (located near the ABS decal and CSC plate), including the last testing date, and shall be legible, accessible, and permanently marked with indelible ink on each container. The certification shall explicitly indicate compliance of the container with the requirements contain in this section.]~~

~~**9 VAC 20-170-90. Design and construction of facilities.**~~

~~A. Containers used to transport solid wastes or regulated medical wastes shall be watertight, designed, and constructed so as to prevent the escape of wastes, liquids, and odors, and to prevent the loss or spillage of wastes during transport, normal handling, and in the event of an accident. A container is considered to be watertight if it passes the watertightness test. It is demonstrated by filling the tested unit with a minimum head of water of 24 inches for at least 15 minutes and the exterior is free from the penetration of water.~~

~~B. Each container shall meet the U.S. Department of Transportation specifications and be certified by the American Bureau of Shipping (ABS) and affixed with a decal signifying that the container meets the requirements including watertightness for its general service.~~

~~C. A. An all-weather road suitable for loaded transfer vehicles shall be provided from the entrance gate to the loading, unloading, or receiving area.~~

~~B. Any solid waste or liquid deriving from solid waste shall be properly managed and not be allowed to contact or mix with storm water. The loading, unloading, or receiving areas shall be constructed of easily cleanable materials; equipped with containment or diversionary structures, drains or pumps, or equivalent means to facilitate the removal of wastewater for proper storage or disposal; and equipped with appropriate storm water management systems so as to prevent storm water from contacting wastes and/or contaminating state waters.~~

~~C. Sufficient on-site queuing capacity shall be provided for the expected traffic so that the waiting transfer vehicles do not back up onto the public road.~~

## 9 VAC 20-170-100. Operation.

A. At facilities handling containers used to transport solid wastes or regulated medical wastes on state waters, all containers, including empty containers, shall be secured and maintained so as to prevent the escape of wastes, liquids, and odors, and to prevent the loss or spillage of wastes during transport, normal handling, and in the event of an accident.

~~B. Containers shall be tested at least once every six months for watertightness. The container owner shall certify that such testing has been conducted in accordance with 9 VAC 20-170-90 A and it has shown that the container is watertight. Such certification including a current testing date shall be legible, accessible, and permanently marked on each container. No person shall load solid waste or regulated medical waste into a container to be commercially transported on state waters if the container is not fully in compliance with [ 9 VAC 20-170-85 9 VAC 20-170-70 ]. No person shall unload solid waste or regulated medical waste from a container that is not fully in compliance with [ 9 VAC 20-170-85 9 VAC 20-170-70 ]. No person shall receive or unload from a vessel commercially transporting container containing solid waste or regulated medical waste if the container is not fully in compliance with [ 9 VAC 20-170-85 9 VAC 20-170-70 ]. No person shall operate a vessel commercially transporting on state waters a container of solid waste or regulated medical waste if the container is not fully in compliance with [ 9 VAC 20-170-85 9 VAC 20-170-70 ].~~

C. The owner or operator of a receiving facility shall not receive solid wastes or regulated medical wastes in containers [ ~~not meeting~~ that do not meet ] the requirements of this [ ~~part,~~ ~~per shall~~ chapter. Containers shall not ] be received without a properly signed manifest, as specified under subsection D of this section. The owner or operator of the receiving facility shall sign and date each copy of the manifest to certify that the waste covered by the manifest was received. ~~Note [ ;~~ ~~noting.~~ The owner or operator shall note ] any significant discrepancies on each copy of the manifest. A copy of the properly signed manifest shall be delivered to the next transporter and, subsequently, [ delivered to ] the destination facility.

D. The manifest shall include, but not be limited to, the following information:

1. An identification number of each container [ and a description of the container to include its total volumetric capacity and weight when empty ];
2. A general description of the wastes being transported (solid wastes or regulated medical wastes) in each container;
3. The total quantity of the wastes being transported in each container;
4. The name and address of the generator, transporter or transporters, receiving facility, and destination facility; and
5. For transportation of solid wastes, a certification statement signed by the generator as follows: :

"I hereby certify that the above-named materials meet the quality acceptable to the destination facility according to

applicable federal and state regulations; have been properly described, classified and packaged; and are in proper condition for transportation according to applicable federal and state regulations."

For transportation of regulated medical waste, a certification statement signed by the generator as follows: :

"I hereby certify that the above-named materials do not contain any radioactive, explosive, toxic, or hazardous waste as defined by 40 CFR Part 261 or the Virginia Hazardous Waste Management Regulations; have been properly described, classified, packaged, marked and labeled; and are in proper condition for transportation according to applicable federal and state regulations."

6. A certification of receipt of materials signed by the transporter or transporters, the owner or operator of the receiving facility, and the owner or operator of the destination facility.

E. Containers loaded with solid wastes or regulated medical wastes shall not be kept on site more than 72 hours once they arrive at the [ off-loading ] receiving facility by vessels during normal operation. In the event of inclement weather or equipment malfunction, containers may be kept on site up to seven days provided a written justification is filed with the appropriate department regional office. Loaded containers shall not be stacked more than two high in the loading or unloading areas.

F. Empty containers shall be maintained watertight to prevent any escape of residual wastes, liquids, and odors during normal handling and in the event of an accident. Any remaining liquids inside of the containers shall be managed as leachate.

G. The owner or operator of a receiving facility shall load and off-load solid wastes or regulated medical wastes to assure that any deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines is prevented. Receiving facilities shall employ containment or diversionary structures and any other appropriate equipment to limit the dispersion of wastes or leachate in the event of a spill.

H. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines as a result of any facility operation or failure of the integrity of the containers, the owner or operator of a receiving facility shall immediately notify the appropriate department regional office, the [ ~~United State Coast Guard (USCG)~~ ] National Response Center at 1-800-424-8802, the cleanup contractor as identified under subdivision 3 g of 9 VAC 20-170-110, the emergency coordinator of the local jurisdiction, the local office of the state Health Department, and any federal or state wildlife or natural resource authority or private natural resource management entity whose reserves could be affected by the incident. Such verbal notification shall be followed by written notification to the department regional office within five days.

I. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines, the owner or operator of a receiving facility shall immediately take all necessary actions, in accordance with the receiving facility's Response and Mitigation Plan as specified under



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subdivision 3 of 9 VAC 20-170-110, to contain and remove such waste.

J. The owner or operator of the receiving facility shall have a placard located at the facility where it will be readily visible to persons involved in waste handling indicating the individuals responsible for notifying the appropriate department regional office, the [ USCG ] National Response Center, and the cleanup contractor as identified under subdivision 3 g of 9 VAC 20-170-110, in the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines.

1. The telephone numbers for the individuals responsible for notification shall be visibly and legibly displayed on the placard.

2. The telephone numbers for the individuals responsible for notification shall be designated by the owner or operator of the receiving facility.

3. The individuals responsible for notification must be a supervisory employee responsible for waste handling activities or an officer of the company owning or operating the receiving facility who is responsible for some aspect of waste handling activities (e.g., vice president in charge of operations).

K. Adequate numbers and types of properly maintained equipment shall be available for operation. Provision shall be made for substitute equipment to be available within 24 hours should the former become inoperable or unavailable. In the event of a deposit of solid wastes or regulated medical wastes into state waters or adjoining shorelines, and initiation of cleanup activities, operation shall not be continued unless adequate cleanup equipment is available on site and cleanup is proceeding in an effective and expeditious manner.

L. The receiving facility shall operate under the direct supervision of a Class I waste management facility operator licensed by the Board for Waste Management Facility Operators. During the facility's operating hours, the licensed operator shall be present at the facility or be readily available to direct the facility personnel in the proper handling of solid wastes or regulated medical wastes.

M. An operating record to include date, quantity by weight or volume, source and type of the wastes received and processed shall be maintained on site for at least three years and be made available to the department for examination or use when requested. A copy of the manifest shall be maintained in the operating record.

N. The owner or operator shall conduct daily inspections of the receiving facility. The inspection shall include, but is not limited to, visual inspection of the integrity of the containers, equipment, and loading, unloading, and receiving areas to ensure that the provisions of this chapter are met. The owner or operator shall keep an inspection log or summary including at least the date and time of inspection, the printed name and the handwritten signature of the inspector, a notation of observations made and the date and nature of any repairs or corrective action. The log or summary shall be kept on site as part of the operating record.

O. All new or modified receiving facilities shall be inspected by the department to verify that the provisions of this chapter and the permit have been met prior to the commencement of operations. All facilities shall be inspected by the department regional office on at least a quarterly basis to verify that the provisions of this chapter and the permit are met. These inspections may include, but are not limited to, documentation verification and visual inspections of the receiving facility and containers.

P. The specifications and methods adopted by the owner or operator to meet these waste handling practice standards shall be identified in the Operation and Maintenance manual.

## **9 VAC 20-170-110. Operation and Maintenance Manual.**

The Operation and Maintenance Manual shall contain the following information:

1. Housekeeping and recordkeeping procedures, on-site traffic control, schedules for waste loading and unloading, wastewater and storm water collections, odor control, noise control, and methods of enforcement of traffic flow plans for the waste transfer vehicles.

2. A description of the basic operation and maintenance measures adopted by the receiving facility to implement the requirements of 9 VAC 20-170-90 and 9 VAC 20-170-100; and

3. A Response and Mitigation Plan. The plan shall include the following information:

a. Name of the facility, geographic location on the applicable 7.5 minute USGS quadrangle map, and the access routes to the facility by road and water;

b. Name of the facility operators and owners, including address and telephone number;

c. A physical description of the facility consisting of a plan of the facility which identifies the waste loading and unloading areas, staging areas, cranes, wharves, roadways, pollution control devices, diversionary structures within the facility boundary, and adjacent easements and leased property;

d. A complete listing, including 24-hour numbers, of all federal, state and local agencies, to be notified in the event of a deposit of wastes to state waters or adjoining shorelines due to any facility operation or failure of the integrity of the containers. This listing shall include the appropriate department regional office, the [ USCG ] National Response Center, the cleanup contractor as identified under subdivision 3 g of this section, the emergency coordinator of the local jurisdiction, the local office of the state Health Department and any federal or state wildlife or natural resource authority or private natural resource management entity whose reserves could be affected by the incident described in 9 VAC 20-170-100 H. This list shall also include the adjacent property owners;

e. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list;

f. The position title, address and phone number of the individuals authorized to act on behalf of the owner or operator to initiate containment and cleanup actions and ensure compliance with all applicable federal, state and local requirements. These individuals shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are undertaken;

g. Identification and [ ~~insurance~~ assurance ] by contract or other means acceptable to the department of the availability of the facility and/or private personnel and equipment necessary to contain and cleanup the worst case circumstance. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the on-site and off-site equipment, and means to conduct a monitoring program to assess the effects of the incident, shall be included;

h. Assessment of the worst case circumstance, including measures to limit the dispersion of floating and sinking wastes as well as those wastes that are miscible in water, the recovery strategy, disposal plan and monitoring plan. For the purpose of this chapter, the worst case circumstance is (i) the instantaneous release of the contents of the largest maximum number of waste handling ~~container capable of utilization at the facility,~~ containers that may be on site at any given time and (ii) the instantaneous release of the contents of the maximum number of waste handling containers that may be on a barge traveling to the facility which is deposited into ~~near-shore~~ state waters. Facilities shall take into consideration the types of wastes that may be solid wastes or regulated medical wastes; the forms of wastes that may be solid, liquid, semisolid or contained gaseous materials; and the dispersion of the wastes due to downstream flow or tidal influences within 72 hours of the event;

i. Identification and location of natural resources at risk due to the worst case circumstance listed in subdivision 3 h of this section. These resources are, but are not limited to, all surface waters as indicated on the applicable USGS quadrangle maps, groundwater, public and agricultural water supplies, public and private water wells and springs, state or federal wildlife management areas, wildlife refuges, public or private management areas, sanctuaries, shoreline habitats, wetlands, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks. The identification shall include priorities for protection, the means of protecting these resources and respective monitoring programs to ensure protection and recovery of these resources and their beneficial uses; and

j. Identification of risks to human health due to the worst case circumstance listed in subdivision 3 h of this section. These risks shall include water borne and air borne

pathogens; alterations of the physical, chemical or biological properties of the affected waters that would deny or prevent full beneficial uses of these waters; and the impairment or destruction of commercial or recreational fisheries, including shellfish. The identification shall include priorities of the risks and means of notification of closure of affected areas, if necessary. The facility shall provide for the monitoring and restoration of the affected areas in cooperation with the local emergency coordinator, health department and fisheries regulatory agencies.

## Article 2. Facility Closure.

### 9 VAC 20-170-120. Closure standards.

A. The owner or operator shall close the receiving facility in a manner that minimizes the need for further maintenance, and controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the escape of residual waste, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere.

B. At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment systems, containers, contaminated subsoils, and structures and equipment contaminated with waste.

C. The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of wastes.

### 9 VAC 20-170-130. Closure plan and amendment of plan.

A. The owner or operator of a receiving facility shall prepare a written closure plan. The plan shall identify the steps necessary to completely close the facility at its full operation. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

B. The owner or operator with the approval of the department may amend his closure plan at any time during the active life of the facility. At least 45 days prior to the submittal of the amended plan for the department's approval, the owner or operator shall publish a notice in a major local newspaper of general circulation informing the public that he intends to amend the closure plan. Results of the public participation effort including a summary of and the permittee's response to the comments received shall be submitted along with the amended closure plan for approval. The approved plan shall be placed in the operating record.

C. At least 90 days prior to beginning closure of the receiving facility, the owner or operator shall notify the [ ~~director~~ department ] of the intent to close.

### 9 VAC 20-170-140. Inspection.

The department shall inspect all receiving facilities that have been closed to determine if the closing is complete and adequate. It shall notify the owner of a closed facility, in

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writing, if the closure is satisfactory, and shall order necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with this part.

[ ~~PART III.~~ PART IV. ]  
PERMITTING OF [ OFF-LOADING ] RECEIVING  
FACILITIES.

## 9 VAC 20-170-150. Applicability.

A. This part applies to a receiving facility [ ( ) as defined under 9 VAC 20-170-10 [ ] that off-loads solid waste or regulated medical waste ] and its owner or operator.

B. Each [ off-loading ] receiving facility's permit shall be limited to one site and shall be nontransferable between sites.

## 9 VAC 20-170-160. Compliance dates.

No new or existing facilities shall receive any solid wastes or regulated medical wastes from a ship, barge, or other vessel without a permit issued in accordance with this part.

## 9 VAC 20-170-170. Permit by rule.

The owner or operator of the [ off-loading ] receiving facility shall be deemed to have a solid waste management facility permit if the provisions in 9 VAC 20-170-180 and 9 VAC 20-170-190 are met.

## 9 VAC 20-170-180. Permit certification procedures.

A. The owner or operator of a receiving facility shall submit the permit certification fee in accordance with 9 VAC 20-170-190 and a certification package including the following documents:

1. A notice of intent which notifies the [ ~~director~~ department ] of his intent to operate such a facility and a statement certifying that the siting standards have been met by the facility in accordance with 9 VAC 20-170-80;
2. Plans and specifications of the receiving facility and a certificate signed by a registered professional engineer that the facility has been designed and constructed in accordance with 9 VAC 20-170-90 ~~C, D and E~~;
3. An Operation and Maintenance Manual and a statement certifying that the Operation and Maintenance Manual will be implemented prior to the commencement of operation in accordance with 9 VAC 20-170-110;
4. A certification from the governing body of the county, city or town in which the facility is or is to be located that the location and operation of the facility is consistent with all applicable ordinances. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, a certification from the governing body that it has held a public hearing to receive public comment on the proposed facility;
5. A disclosure statement for all key personnel;
6. Results of the public participation effort conducted in accordance with the requirements contained in subsection B of this section, including a summary of and the applicant's response to the comments received; and

7. A closure plan and a statement certifying that a closure plan has been prepared in accordance with 9 VAC 20-170-120.

## B. Public participation.

1. Before the initiation of any construction of a new receiving facility or operation of an existing facility, the owner or operator shall publish a notice as a display ad in a major local newspaper of general circulation informing the public that he intends to construct and/or operate a facility eligible for a permit by rule. The notice shall include:

- a. A brief description of the new or existing facility;
- b. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met;
- c. Announcement of a 30-day comment period in accordance with subdivision 4 of this subsection, and the name and address of the owner's or operator's representative where comments shall be sent;
- d. Announcement of the date, time, and place for a public meeting in accordance with subdivision 3 of this subsection; and
- e. Location where copies of the documentation to be submitted to the department in support of the permit by rule notification and any supporting documents can be viewed and copied.

2. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The owner or operator shall hold a public meeting not earlier than 15 days after the publication of the notice required in subdivision 1 of this subsection and no later than seven days before the close of the 30-day comment period. The meeting shall be held to the extent practicable in the vicinity of the new or existing facility.

4. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin on the date the owner or operator publishes the notice in the local newspaper.

C. Upon receiving the certifications and other required documents, the director will review and make determination of the technical and administrative completeness of the certification package within 60 days. If the applicant's submission is incomplete, the applicant will be notified that the facility will not be considered to have a permit by rule until the missing certifications or other documents are submitted and approved.

D. Change of ownership. A permit by rule shall not be transferred by the permittee to a new owner or operator without proper notification to and approval by the department. In the event that the property transfer takes place without proper closure, at least 30 days in advance of the property transfer, the new owner shall notify, in writing, the department of the sale, agree to abide by the provisions of this chapter,

and submit a disclosure statement and an updated Operation and Maintenance Manual in accordance with subsection A of this section. Upon receipt and approval of such notification, the [ department director ] will release the old owner from [ his ] closure [ obligation ] and issue a new permit by rule in the name of the new owner.

E. Facility modifications. The owner or operator of a facility operating under a permit by rule may modify its permit by rule by furnishing the department the permit fee in accordance with 9 VAC 20-170-190 and a new documentation required under subsection A of this section, as applicable. Whenever modifications in the permit by rule affect the provisions of the approved closure plan, the owner or operator shall also submit an amended closure plan in accordance with 9 VAC 20-170-130 and subdivision A 7 of this section.

F. Loss of permit by rule status. In the event that a facility operating under a permit by rule violates any applicable siting, design, construction, or closure provisions [ ~~of Article 4 (9 VAC 20-170-80 et seq.) of Part II~~ ] of this chapter, or the owner or operator fails to submit the inspection fee in accordance with 9 VAC 20-170-190, the owner or operator of the facility will be considered to be operating an unpermitted facility and shall be required to either obtain a new permit by rule in accordance with subsection A of this section or close the facility in accordance with [ ~~Article 2 (9 VAC 20-170-120 et seq.) of Part II of~~ ] this chapter.

G. Revocation or amendment of permits. Any permit issued by the director pursuant to this chapter may be revoked, amended or suspended in accordance with the provisions of § 10.1-1409 and Chapter [ ~~4-4 40~~ ] (§ [ ~~9-6-14 2.2-4000~~ ] et seq.) of Title [ ~~9 2.2~~ ] of the Code of Virginia.

**9 VAC 20-170-190. Permit fee requirements.**

A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any owner or operator of a receiving facility seeking a new permit by rule or seeking a modification to an existing permit by rule. It also establishes schedules and procedures pertaining to the payment and collection of inspection fees from any owner or operator of a receiving facility.

**B. Payment, deposit and use of fees.**

1. Due date. All permit certification fees are due on the submittal day of the certification package. The inspection fees for the first year or portion of a year are due as part of the permit certification. Thereafter, all inspection fees are due March 1.
2. Method of payment. Fees shall be paid by check, draft or postal money order made payable to "Treasurer of Virginia/DEQ", and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240.
3. Incomplete payments. All incomplete payments will be deemed nonpayments.
4. Late payment. No certifications will be deemed complete until the department receives proper payment is received by the department. In the event that the inspection fee is not

received by the department on or prior to March 1, the owner or operator of the facility will be considered to be operating an unpermitted facility.

~~[ 5. Deposit and use of fees. The department shall collect the permit fees pursuant to this chapter and deposit them into a separate account within the Virginia Waste Management Board Permit Program Fund. All moneys collected shall be used solely for the purposes of this chapter.~~

6. 5.] Fee schedules. Each certification for a permit by rule or each certification for a modification to a permit by rule is a separate action and shall be assessed a separate fee. The amount of the permit certification fee is based on the costs associated with the permitting program required by this chapter. An inspection fee will be collected annually and its amount is based on the costs associated with the inspections program conducted by the department on at least a quarterly basis. The fee schedules are shown in the following table.

Type of Action	Fee
Initial certification	\$6,200
Modification	
with a closure plan amendment	\$2,500
without a closure plan amendment	\$1,250
Inspections	\$10,000

~~[ PART IV:  
STANDARDS FOR VESSELS TRANSPORTING SOLID  
WASTES OR REGULATED MEDICAL WASTES.~~

**9 VAC 20-170-200. Design/construction.**

~~A. Containers used to transport solid wastes or regulated medical wastes shall meet the design/construction standards as specified under 9 VAC 20-170-90 A and B.~~

~~B. The vessel transporting solid wastes or regulated medical wastes in containers in compliance with subsection A of this section shall be designed and constructed in accordance with the provisions of 46 CFR Part 42 and be certified for ocean service.~~

**9 VAC 20-170-210. Operation.**

~~A. Containers used to transport solid wastes or regulated medical wastes shall be stacked in accordance with state law, and be secured and maintained so as to prevent the escape of wastes, liquids, and odors and to prevent the loss or spillage of wastes during transport, normal handling, and in the event of accident.~~

~~B. Containers shall be tested and certified in accordance with 9 VAC 20-170-100 B.~~

~~C. The owner or operator of the vessel shall not transport solid wastes or regulated medical wastes in containers not meeting the requirements of this chapter, nor such containers shall be transported without a properly signed manifest, as specified under 9 VAC 20-170-100 D. The owner or operator of the vessel shall sign and date each copy of the manifest to certify that the waste covered by the manifest was received. Note any significant discrepancies on each copy of the manifest. A copy of the properly signed manifest shall be maintained on~~

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~~board during shipment and be delivered to the receiving facility upon arrival.~~

~~D. The owner or operator of a vessel that transports solid wastes or regulated medical wastes shall secure the containers to assure that any deposit of waste into state waters during transport is prevented. The vessel shall be loaded, unloaded, operated, and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of solid wastes or regulated medical wastes during transport, normal operation, and in the event of an accident.~~

~~E. All vessels transporting solid wastes or regulated medical wastes shall maintain aboard a valid conditional permit issued by the U. S. Coast Guard in accordance with 33 CFR Part 151, and a valid Load Line Certificate and all subsequent endorsements demonstrating compliance with 46 USC Chapter 51.~~

~~F. In the case of barges transporting solid wastes or regulated medical wastes, the operator of the towing vessel shall carry a valid Operator Uninspected Towing Vessel License issued by the U. S. Coast Guard in accordance with 46 CFR Part 10.~~

~~G. The owner or operator of a vessel shall immediately notify the appropriate department regional office, Department of Emergency Services, the USCG National Response Center at 1-800-424-8802, and the cleanup contractor as identified under subdivision 3 i of 9 VAC 20-170-220, in the event of a deposit of solid wastes or regulated medical wastes into state waters. Such verbal notification shall be followed by written notification to the appropriate department regional office within five days.~~

~~H. In the event of a deposit of solid wastes or regulated medical wastes into state waters, the owner or operator of a vessel shall immediately take all necessary actions in accordance with the vessel's Response and Mitigation Plan as specified under subdivision 3 of 9 VAC 20-170-220 to contain and remove such wastes.~~

~~I. The owner or operator of a vessel shall have a placard located at the vessel where it will be readily visible to persons involved in waste handling indicating the individual responsible for notifying the department regional office, Department of Emergency Management, the United States Coast Guard (USCG) National Response Center, and the cleanup contractor as identified under subdivision 3 i of 9 VAC 20-170-220, in the event of a deposit of solid wastes or regulated medical wastes into state waters.~~

~~1. The telephone number for the individuals responsible for notification shall be visibly and legibly displayed on the placard.~~

~~2. The telephone number for the individuals responsible for notification shall be designated by the owner or operator of the vessel.~~

~~3. The individuals responsible for notification must be a supervisory employee responsible for waste handling activities or an officer of the company owning or operating the vessel, who is responsible for some aspect of waste handling activities (e.g. vice president in charge of operations).~~

~~J. The owner or operator of a vessel shall provide the department with a current copy of: (i) a valid conditional permit; (ii) a valid Load Line Certificate and all subsequent endorsements; and (iii) all ABS or other classification society's survey and inspection reports. Any updated information shall be provided to the department whenever it becomes available to the owner or operator of a vessel.~~

~~K. The owner or operator of the vessel shall conduct routine inspections of the vessel and the containers to ensure that the provisions of this chapter are met. These inspections shall include, but are not limited to, visual inspections of the integrity of the vessel and containers.~~

~~L. The specifications and methods adopted by the owner or operator to meet the operation standards shall be identified in the Operation and Maintenance Manual.~~

## **9 VAC 20-170-220. Operation and Maintenance Manual.**

~~The Operation and Maintenance Manual shall include the following information:~~

~~1. Housekeeping and recordkeeping procedures;~~

~~2. A description of the basic operation and maintenance standards adopted by the vessel to implement the requirements of 9 VAC 20-170-210; and~~

~~3. A Response and Mitigation Plan. The plan shall include the following information:~~

~~a. The name, address, and telephone number of the owners and operators of the vessel;~~

~~b. The vessel's name and official number;~~

~~c. The vessel's area of operation and an operation area map;~~

~~d. The vessel's transport capacity (gross tonnage);~~

~~e. The type of wastes transported (solid wastes or regulated medical wastes);~~

~~f. A complete listing, including 24-hour numbers, of all federal, state and local agencies, to be notified in the event of a deposit of solid wastes or regulated medical wastes into state waters;~~

~~g. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list;~~

~~h. The position title, address and phone number of the individuals authorized to act on behalf of the owner or operator to initiate containment and cleanup actions and ensure compliance with all applicable federal, state and local requirements. These individuals shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are undertaken;~~

~~i. Identification and insurance by contract or other means acceptable to the department of the availability of private personnel and equipment necessary to contain and cleanup the wastes. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding~~

~~between the owner/operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and means to conduct a monitoring program to assess the effects of the incident, shall be included; and~~

~~j. Identification of measures to contain and remove any floating and sinking wastes as well as those wastes that are miscible in water. The measures shall include implementation of a removal strategy, disposal plan, and monitoring plan. The owner or operator of the vessel shall take into consideration the types of wastes that may be solid wastes or regulated medical wastes; the forms of wastes that may be solid, liquid, semisolid or contained gaseous materials; and the dispersion of the wastes due to downstream flow or tidal influences within 72 hours of the event.~~

**9 VAC 20-170-230. Inspection.**

~~The department shall inspect the moored vessels and containers periodically to verify that the provisions of this chapter are met. The inspection may include, but is not limited to, documentation verification, and visual inspections of the vessel and containers.~~

**PART V.**

**REGISTRATION OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES.**

**9 VAC 20-170-240. Applicability.**

~~This part applies to a vessel and any owner or operator of a vessel transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth to the extent allowable under state law.~~

**9 VAC 20-170-250. Registration requirements.**

~~A. No vessel shall transport any solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law, without a valid registration number.~~

~~B. Prior to transporting any solid wastes or regulated medical wastes within the navigable waters of the Commonwealth to the extent allowable under state law, the owner or operator of the vessel shall submit the registration fee, as specified in 9 VAC 20-170-260, and a registration package including the following documents:~~

- ~~1. Owner/operator/vessel information:
 
  - ~~a. The name, address, and telephone number of the owners and operators of the vessel;~~
  - ~~b. The vessel's name and official number;~~
  - ~~c. The vessel's area of operation, and an operation area map;~~
  - ~~d. The vessel's transport capacity (gross tonnage); and~~
  - ~~e. The type of wastes transported (solid wastes or regulated medical wastes);~~~~

~~2. An Operation and Maintenance Manual and a statement certifying that an Operation and Maintenance Manual has been developed and implemented for the vessel prior to the commencement of operation in accordance with 9 VAC 20-170-220;~~

~~3. A copy of a valid conditional permit issued by the USCG to the vessel as required by 33 CFR Part 151 Subpart B;~~

~~4. A copy of a Loading Guidance Manual approved by the ABS;~~

~~5. A valid Certificate of Financial Responsibility for the vessel from both the owner and operator or a complete application for a Certificate of Financial Responsibility and evidence of financial responsibility acceptable by the board from both the owner and operator in accordance with Part VI (9 VAC 20-170-270 et seq.) of this chapter; and~~

~~6. A copy of the signed certification statement as follows;~~

~~I, (Full name of Chief Executive), am chief executive officer of (legal name of firm) and do here by affirm that all the information provided in this registration package is correct to the best of my knowledge; and I further affirm that neither this firm, any antecedent firm to this firm, nor any of the officers of this or antecedent firms has been convicted of a felony in any state.~~

~~C. Within 60 days of receiving a technically and administratively complete registration package including acceptable evidence of financial responsibility in accordance with Part VI of this chapter, the department will issue a registration number to the vessel. The registration number shall expire one year from the issuance date.~~

~~D. In cases where the owner or operator wishes to register for an additional vessel, within 30 days of receipt of a technically and administratively complete registration package, including acceptable evidence of financial responsibility and the registration fee, as specified in 9 VAC 20-170-260, the department will issue a registration number to the additional vessel. If the registration package indicates the Certificate of Financial Responsibility previously issued to the owner and operator is still valid, the registration shall expire on the same date of the existing Certificate of Financial Responsibility.~~

~~E. At least 60 days prior to the expiration date of the registration, the owner or operator of the vessel shall submit an updated registration package in accordance with 9 VAC 20-170-250 B, including an application for the renewal of the Certificate of Financial Responsibility from the owner and operator of the vessel in accordance with 9 VAC 170-310 C, and the registration fee in accordance with 9 VAC 20-170-260, to the department for the renewal of the registration number.~~

~~F. Within 30 days following the change of any information under 9 VAC 20-170-250 B, the owner or operator of the vessel shall notify the department of that change. Failure to notify the department nullifies the registration and invalidates the registration number.~~

~~G. Whenever the owner or operator of a vessel fails to comply with the provisions of this part or this part no longer applies to a vessel and the owner or operator of a vessel, the registration number shall be terminated by the department.~~

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## **9 VAC 20-170-260. Registration fee requirements.**

~~A. Purpose. The purpose of this section is to establish schedules and procedures pertaining to the payment and collection of fees from any owner or operator of the vessel seeking a registration of the vessel or seeking a renewal of an existing registration of the vessel.~~

~~B. Payment, deposit and use of fees.~~

~~1. Due date. All registration fees are due on the submittal day of the registration package.~~

~~2. Method of payment. Fees shall be paid by check, draft, or postal money order made payable to "Treasurer of Virginia/DEQ", and shall be sent to the Department of Environmental Quality, Receipts Control, P.O. Box 10150, Richmond, VA 23240.~~

~~3. Incomplete payments. All incomplete payments will be deemed nonpayments.~~

~~4. Late payment. No registrations will be deemed complete until proper payment is received by the department.~~

~~5. Deposit and use of fees. The department shall collect the registration fees pursuant to this chapter and deposit them into a separate account within the Virginia Waste Management Board Permit Program Fund. All monies collected shall be used solely for the purposes of this chapter.~~

~~6. Fee schedules. Each registration or each renewal of the registration is a separate action and shall be assessed a separate fee. The amount of the registration fee is based on the costs associated with administration and enforcement of this chapter as a results of such operations including, but not limited to, the inspection and monitoring of these vessels to ensure compliance with this chapter. The fee schedules are shown in the following table.~~

<del>Type of Action</del>	<del>Fee</del>
<del>Initial Registration</del>	<del>\$8,000</del>
<del>Each additional vessel per operator</del>	<del>\$5,500</del>
<del>Renewal</del>	<del>\$6,000</del>

### **PART V.**

#### **OFF-LOADING FEES COLLECTED BY RECEIVING FACILITIES.**

## **9 VAC 20-170-195. Off-loading fee requirements. ]**

(NOTE: Final action on 9 VAC 20-170-195 was published and subsequently suspended in 19:18 VA.R. 2678-2680 May 19, 2003.)

**[ 9 VAC 20-170-200 through 9 VAC 20-170-260. (Reserved.) ]**

### **PART VI.**

#### **FINANCIAL RESPONSIBILITY REQUIREMENTS FOR VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES.**

## **9 VAC 20-170-270. General purpose and scope.**

A. This part sets forth the procedures by which an owner and operator of a vessel transporting solid wastes or regulated

medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law, may establish and maintain evidence of financial responsibility to cover liability of the owner and operator arising from a deposit of solid wastes or regulated medical wastes into state waters.

B. In order to ensure that the costs associated with protecting public health, welfare and property from the consequences of such a deposit of solid wastes or regulated medical wastes are to be recovered from the owner and operator of a vessel transporting solid wastes or regulated medical waste, the owner and operator of such a vessel shall obtain one or a combination of the financial mechanisms described in this part.

C. The director may reject the proposed evidence of financial responsibility if the mechanism or mechanisms submitted do not adequately ensure that funds will be available to accomplish the purpose of this part.

## **9 VAC 20-170-280. Applicability**

A. This part applies to all persons who own or operate a vessel transporting solid wastes or regulated medical wastes [ for the purposes of commercial carriage as cargo ] on the navigable waters of the Commonwealth, to the extent allowable under state law, unless otherwise exempt.

B. For purposes of this part, when a vessel is chartered by demise, the demise charterer rather than the title owner is the owner of the chartered vessel.

C. Owners or operators of such vessels who are federal or state government entities whose debts and liabilities are the debts or liabilities of the United States or the Commonwealth, are exempt from this part.

D. If separate, nonexempt persons own or operate a vessel subject to this part, the owner and operator shall be jointly and severally liable for meeting the requirements of this part. If either the owner or operator is exempt, as provided in subsection C of this section, then the other person shall be responsible for meeting the requirements of this part. If both the owner and the operator are exempt, as provided in subsection C of this section, then the requirements of this part are not applicable to that vessel.

## **9 VAC 20-170-290. Certificate of Financial Responsibility.**

A. No vessel shall transport solid waste or regulated medical waste upon the navigable waters of the Commonwealth, to the extent allowable under state law, without a valid Certificate of Financial Responsibility (certificate).

B. Application requirements.

1. Each owner and operator shall file an application for a certificate with the department. If the owner and operator are the same entity, only one application is required to be filed with the department. The application shall be in the standard form approved by the board. The application and all supporting documents shall be in English. All monetary terms must be expressed in United States dollars.

2. A certificate applicant may include more than one vessel on the application.

3. Each completed application form shall be accompanied by valid evidence of financial responsibility from the certificate applicant in accordance with 9 VAC 20-170-310, in the amounts specified in 9 VAC 20-170-300 and valid evidence of liability coverage in accordance with 9 VAC 20-170-330.

4. An authorized official of the certificate applicant shall sign the application. The title of the signer must be shown in the space provided on the application. The application must be accompanied by a written statement providing authority to sign, where the signer is not disclosed as an individual (sole proprietor) certificate applicant, a partner in a partnership certificate applicant, or a director, chief executive officer, or any other duly authorized officer of a corporate certificate applicant.

5. If, before the issuance of a certificate, the certificate applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificate applicant shall, within five business days of becoming aware of the change, notify the [ ~~director~~ department ], in writing, of the change.

#### C. Issuance and carriage requirements.

1. Within 60 days of receipt of a complete application and acceptable evidence of financial responsibility in accordance with subsection B of this section from both the owner and operator, the director will issue a Certificate of Financial Responsibility. The original certificate or a certified copy shall be carried aboard the vessel covered by the certificate and a copy shall remain on file with the department. The director shall issue an individual certificate for each vessel for which a completed application has been submitted by the owner and the operator.

2. Each vessel transporting solid wastes or regulated medical waste on the navigable waters of the Commonwealth, to the extent allowable under state law, shall carry an original or certified copy of a valid certificate in the name of the owner and operator. The carriage of a valid certificate or certified copy indicates compliance with this chapter. Failure to carry a valid certificate or certified copy subjects the vessel to enforcement action, except where a certificate is removed temporarily from a vessel for inspection by a state official.

3. The certificate applicant or an authorized officer of the certificate applicant may submit to the [ ~~director~~ department ] a letter requesting that additional vessels be added to a previously submitted application for an individual certificate. The letter must provide the following information: vessel name, vessel owner and operator, gross tonnage, and type of wastes to be transported. The certificate applicant or an authorized official also shall submit or cause to be submitted acceptable evidence of financial responsibility in accordance with subsection B of this section for these additional vessels.

#### D. Renewal requirements.

1. The Certificate of Financial Responsibility shall expire one year from the date of issuance.

2. Each owner and operator shall file a written application, in the form provided by the department, for the renewal of a certificate at least 60 days before the expiration date of the certificate. The certificate applicant shall identify in the renewal application any changes ~~which~~ that have occurred since the original application for which a certificate was filed, and set forth the correct information in full.

#### E. Denial or revocation of certificate.

1. The director may deny a certificate when a certificate applicant:

a. Willfully or knowingly makes a false statement in connection with an application for an initial or renewal certificate;

b. Fails to establish acceptable evidence of financial responsibility as required by this part;

c. Fails to comply with or respond to lawful inquiries, regulations, or orders of the department pertaining to the activities subject to this part; or

d. Fails to timely file requested statements, data, notifications, affidavits, or other information.

2. The director may revoke a certificate when a certificant:

a. Willfully or knowingly makes a false statement in connection with an application for an initial or a renewal certificate, or in connection with any other filing required by this part;

b. Fails to comply with or respond to lawful inquiries, regulations, or orders of the department pertaining to the activities subject to this part;

c. Fails to timely file required statements, data, notifications, or affidavits;

d. Fails to maintain acceptable evidence of financial responsibility as required by this part; or

e. Alters any certificate or copy of a certificate except as permitted by this part in connection with notarized certifications of copies.

3. The director shall advise the certificate applicant or certificant, in writing, of the intention to deny or revoke a certificate under subdivision 1 or 2 of this subsection and shall state the reason therefore. Written advice from the director that an incomplete application will be considered withdrawn unless it is completed within a stated period, shall be the equivalent of a denial.

4. If the intended revocation under subdivision 2 of this subsection is based on failure to timely file the required financial statements, data, notifications, or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless, before revocation, the certificant demonstrates to the satisfaction of the director that the required documents were timely filed or have been filed.

5. Except in the case of subdivisions 3 and 4 of this subsection, the director may deny or revoke a certificate only after [ a an informal fact-finding ] conference, or a waiver of a conference, in accordance with [ Chapter 40 ( )



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§ [ ~~9-6-14~~ 2.2-4000 ] et seq. [ ] of the Code of Virginia. A certificate subject to revocation under this subdivision remains valid until the director issues a written decision revoking the certificate.

## **9 VAC 20-170-300. Amount and scope of financial responsibility requirement.**

Each owner and operator of a vessel transporting solid waste and/or regulated medical waste upon the navigable waters of the Commonwealth, to the extent allowable under state law, shall demonstrate financial responsibility for the total cost of cleanup and containment of a solid waste and/or regulated medical waste deposit into state waters, and the potential impairment of beneficial use of these waters in the following amounts:

1. For each owner and operator of a vessel transporting solid wastes only: \$1 million or \$300 per gross ton of such vessel, whichever is larger. If the owner or operator owns or operates more than one vessel transporting waste, the amount of financial responsibility shall equal \$1 million or \$300 per gross ton of the owned or operated vessel with the largest transporting capacity, whichever is larger.

2. For each owner and operator of a vessel transporting regulated medical waste or a combination of regulated medical waste and solid waste: \$5 million or \$300 per gross ton of such vessel. If the owner or operator owns or operates more than one vessel transporting waste, the amount of financial responsibility shall equal \$5 million or \$300 per gross ton of the owned or operated vessel with the largest transporting capacity, whichever is larger.

## **9 VAC 20-170-310. Allowable financial mechanisms.**

A. Each owner and operator shall demonstrate financial responsibility by establishing and maintaining a financial mechanism, or combination of mechanisms, in the amounts specified in 9 VAC 20-170-300. The mechanisms used to demonstrate financial responsibility shall ensure that the funds necessary to meet the costs of cleanup and containment and the restoration of beneficial uses of state waters will be available whenever they are needed. The owner and operator shall provide continuous coverage until released by the director.

B. Each owner and operator shall submit the original financial mechanism or combination of mechanisms together with the application for a certificate as specified in 9 VAC 20-170-290 B.

C. Owners and operators shall demonstrate financial responsibility using one or more of the following financial mechanisms:

### **1. Trust fund.**

a. The owner or operator of a vessel may satisfy the requirements of subsection A of this section by establishing a trust fund that conforms to the requirements of this section and by submitting an originally signed trust agreement to the [ ~~director~~ department ]. The trustee for the trust fund shall be a bank or financial institution that has the authority to act as a trustee and whose trust operations are regulated and

examined by a federal agency or the State Corporation Commission.

b. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the director and the trustee. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator. The wording of the trust agreement must be identical to the wording specified in APPENDIX I, except that instructions in brackets must be replaced with the relevant information and the brackets deleted, and must be accompanied by a formal certification of acknowledgment as specified in APPENDIX I.

c. The owner or operator initially shall submit the original, signed trust agreement to the [ ~~director~~ department ] as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

d. The irrevocable trust fund, when established, must be funded for the full financial responsibility amount as specified in 9 VAC 20-170-300, or funded for part of the required amount and used in combination with other mechanisms that provide the remaining required amount.

e. If the value of the trust fund is greater than the required financial responsibility amount as specified in 9 VAC 20-170-300, the owner or operator may submit a written request to the [ ~~director~~ department ] for release of the excess.

f. If another financial mechanism as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the [ ~~director~~ department ] for release of the excess.

g. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subdivision 1 e or 1 f of this subsection, the director will instruct the trustee to release to the owner or operator such funds as the director deems appropriate, if any, in writing.

h. Whenever the required financial responsibility amount as specified in 9 VAC 20-170-300 changes after the establishment of the trust fund, the owner or operator shall compare the new amount with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the required amount, the owner or operator shall, within 60 days of the change in the required amount specified in 9 VAC 20-170-300, deposit a sufficient amount into the fund so that its value after payment at least equals the new financial responsibility amount, or obtain another financial mechanism or combination of mechanisms as specified in this part to cover the difference. If the value of the trust fund is greater than the new financial responsibility amount, the owner or operator may submit a written request to the [ ~~director~~ department ] for release of the amount that is in excess of the new amount.

i. After beginning a cleanup or containment operation in accordance with the approved Response and Mitigation Plan, an owner or operator or any other person authorized to conduct cleanup or containment, may

request reimbursement for cleanup or containment expenditures by submitting itemized bills to the [ ~~director~~ department ]. Within 60 days after receiving bills for cleanup or containment activities, the director shall instruct the trustee to make reimbursements in those amounts as the director determines are justified.

j. If [ ~~at any time after the trust is funded, the amount in the trust is reduced below the full amount of coverage required~~ the director approves reimbursements from the fund ] , the owner or operator providing the mechanism shall by the anniversary date of the trust:

(1) Replenish the value of the trust to equal the full amount of coverage required pursuant to ~~9 VAC 20-470-230~~ 9 VAC 20-170-300; or

(2) Acquire another financial responsibility mechanism for the amount by which the funds in the trust have been reduced.

## 2. Standby trust fund.

a. An owner or operator using any one of the mechanisms authorized by subdivisions 3 and 4 of this subsection or 9 VAC 20-170-330 C 3 and 4 must establish a standby trust fund when the mechanism is acquired and submit the original standby trust agreement to the [ ~~director~~ department ]. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

b. The standby trust agreement or trust agreement must be worded identically as specified in APPENDIX I or APPENDIX VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in APPENDIX I and APPENDIX VI.

c. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this section.

## 3. Surety bond guaranteeing payment.

a. An owner or operator may satisfy the requirements of subsection A of this section by obtaining a surety bond that conforms to the requirements of this section and submitting the original bond to the [ ~~director~~ department ]. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

b. The surety bond must be worded identically as specified in APPENDIX II, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

c. The owner or operator initially shall submit the original bond to the [ ~~director~~ department ] as a part of the

application for a certificate as specified in 9 VAC 20-170-290 B.

d. The surety bond shall name the vessel operator or owner as the principal and name the Commonwealth of Virginia as the obligee.

e. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. The surety's liability is limited to the penal sum of the bond.

f. The owner or operator who uses a surety bond to satisfy the requirements of subsection A of this section must establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the director under 9 VAC 20-170-360. This standby trust fund shall meet the requirements specified in subdivision 2 of this subsection.

g. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 increases to an amount greater than the penal sum of the bond, the owner or operator shall, within 60 days of the increase, cause the penal sum of the bond to be increased to an amount at least equal to the amount specified in 9 VAC 20-170-300 or obtain another financial mechanism or combination of mechanisms as specified in this [ ~~article~~ part ] to cover the increase. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 decreases, the penal sum of the bond may be reduced to the new amount following written approval by the director. The surety shall send the notice of an increase or decrease in the amount of the bond to the [ ~~director~~ department ] by certified mail within 60 days of the change.

## 4. Letter of credit.

a. An owner or operator may satisfy the requirements of subsection A of this section by obtaining an irrevocable standby letter of credit that satisfies the requirements of this section and by submitting the original letter of credit to the [ ~~director~~ department ]. The issuing institution shall be a bank or other financial institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

b. The owner or operator initially shall submit the original letter of credit to the [ ~~director~~ department ] as a part of the application for a certificate as specified in 9 VAC 20-170-290 B.

c. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in 9 VAC 20-170-300. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate evidence of financial responsibility in accordance with this part.

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d. The letter of credit must be worded identically as specified in APPENDIX III, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

e. An owner or operator who uses a letter of credit to satisfy the requirements of subsection A of this section must also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the board under 9 VAC 20-170-360. This standby trust fund must meet the requirements specified in subdivision 2 of this subsection.

f. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the amount specified in 9 VAC 20-170-300 or obtain another financial mechanism or combination of mechanisms as specified in this part to cover the increase. Whenever the financial responsibility amount specified in 9 VAC 20-170-300 decreases, the letter of credit may be reduced to the new amount following written approval by the director. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the [ ~~director~~ department ] by certified mail within 60 days of the change.

## 9 VAC 20-170-320. Multiple mechanisms.

An owner or operator may satisfy the requirements of this part by establishing more than one financial mechanism, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other mechanisms. The mechanisms shall be as specified in 9 VAC 20-170-310 C 1 through 4, except that evidence of financial responsibility in the amount at least equal to the amount specified in 9 VAC 20-170-300 may be provided by a combination of mechanisms, rather than a single mechanism.

## 9 VAC 20-170-330. Liability requirement.

A. The owner and operator of a vessel or a group of such vessels transporting solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth, to the extent allowable under state law, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or nonsudden accidental occurrences arising from a deposit of solid wastes and/or regulated medical waste into the navigable waters of the Commonwealth. The owner or operator shall establish and maintain liability coverage in the following amounts:

1. For sudden and/or nonsudden accidental occurrences, arising from the deposit of solid wastes from a vessel into the navigable waters of the Commonwealth, to the extent allowable under state law, at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs; and

2. For sudden and/or nonsudden accidental occurrences, arising from the deposit of regulated medical wastes, or a combination of solid wastes and regulated medical wastes, from a vessel into the navigable waters of the Commonwealth, to the extent allowable under state law, at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of legal defense costs.

B. Liability coverage shall include coverage for waste deposits that occur from loading and unloading the vessels.

C. An owner or operator may demonstrate liability coverage with the following mechanisms:

1. An insurance policy(s) that conforms to the requirements of this section from a qualified insurer.

- a. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

- b. Each insurance policy must be amended by an endorsement worded in no respect less favorable than the coverage as specified in APPENDIX IV, or evidenced by a certificate of insurance worded identically as specified in APPENDIX V, except that instructions in brackets must be replaced with the relevant information and the brackets deleted.

- c. The owner or operator initially shall submit an original certificate of insurance or endorsement and a copy of the entire insurance policy to the [ ~~director~~ department ] as a part of the application for a certificate as specified in 9 VAC 20-170-290 B. After the initial submission, the owner or operator shall submit an original certificate of insurance or endorsement evidencing policy renewal as a part of the application for renewal of the vessel's certificate as specified in 9 VAC 20-170-290 D.

- d. An owner or operator shall submit a copy of the entire insurance policy to the department within 30 days of the director's written request.

- e. Each insurance policy must be issued by an insurer that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia. The insurer shall not be a captive insurer.

- f. Each insurance policy shall provide first dollar coverage. The insurer shall be liable for the payment of all amounts within any deductible applicable to the policy to the damaged third party, as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in subdivisions 2 through 4 of this subsection.

2. A trust agreement as specified in 9 VAC 20-170-310 C 1 except that the amount of the trust shall be equal to the amount specified in subsection A of this section. The trust agreement must be worded identically as specified in APPENDIX VI, except that instructions in brackets are to be

replaced with the relevant information and the brackets deleted.

3. A surety bond as specified in 9 VAC 20-170-310 C [ 2 3 ] except that the amount of the bond shall be equal to the amount specified in subsection A of this section. The surety bond must be worded identically as specified in APPENDIX VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

4. A letter of credit as specified in 9 VAC 20-170-310 C [ 3 4 ] except that the face amount of the letter of credit shall be equal to the amount specified in subsection A of this section. The letter of credit must be worded identically as specified in APPENDIX VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. An owner or operator shall notify the [ ~~director~~ department ] in writing within 30 days:

1. Whenever a claim for bodily injury or property damages caused by a waste deposit into state waters is made against the owner or operator or an instrument providing financial responsibility for liability coverage under subsection A of this section; or

2. Whenever the amount of financial responsibility for liability coverage under subsection A of this section provided by a financial instrument authorized by subsection C of this section is reduced.

E. An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, trust funds, surety bonds, and letters of credit. The amounts of coverage demonstrated shall total at least the minimum amounts required by subsection A of this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial responsibility mechanisms under subsection C of this section, the owner or operator shall specify at least one such mechanism as "primary" coverage and shall specify other mechanism as "excess" coverage.

**9 VAC 20-170-340. Substitution of financial responsibility mechanisms by owner or operator.**

A. An owner or operator may substitute any alternate financial responsibility mechanism as specified in this part, provided that at all times the owner or operator maintains an effective financial responsibility mechanism or combination of mechanisms that satisfies the requirements of 9 VAC 20-170-310 C if the mechanism or mechanisms are submitted to comply with the requirements of 9 VAC 20-170-310 A and [ ~~subsection C of this section~~ 9 VAC 20-170-330 ] if the mechanism or mechanisms are submitted to comply with the requirements of [ ~~subsection A of this section~~ 9 VAC 20-170-330 A ].

B. After obtaining an alternate financial responsibility mechanism, or combination of mechanisms, as specified in this part and written approval from the director, an owner or operator may cancel [ ~~a the replaced~~ ] financial responsibility mechanism by providing notice to the provider of financial responsibility.

**9 VAC 20-170-350. Cancellation or nonrenewal by a provider of financial responsibility.**

A. Except as otherwise provided, a provider of financial responsibility may cancel or fail to renew a financial responsibility mechanism by sending a notice of termination by certified mail to the owner or operator and the [ ~~director~~ department ].

1. Termination of a surety bond or a letter of credit may not occur until 120 days after the date on which the [ ~~director~~ department ] and the owner or operator receive the notice of termination, as evidenced by the return receipts.

2. Termination of insurance coverage, except for nonpayment or misrepresentation by the insured may not occur until 60 days after the date on which the [ ~~director~~ department ] and the owner or operator receive the notice of termination, as evidenced by the return receipts. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 30 days after the date on which the [ ~~director~~ department ] and the owner or operator receives the notice of termination, as evidenced by the return receipts.

B. If a provider of financial responsibility cancels or fails to renew, the owner or operator must obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. [ ~~If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator must immediately notify the board of such failure and submit:~~

- ~~1. The name and address of the provider of financial responsibility;~~
- ~~2. The effective date of termination; and~~
- ~~3. The evidence of the financial responsibility mechanism subject to the termination maintained in accordance with 9 VAC 20-170-310 A or 9 VAC 20-170-340 A. ]~~

**9 VAC 20-170-360. Drawing on a financial responsibility mechanism.**

A. The director may require the surety or institution issuing a letter of credit to place the amount of funds stipulated by the board, up to the limit of funds provided by the financial responsibility mechanism, into the standby trust if:

1. a. The owner or operator fails to obtain and submit an alternate financial responsibility mechanism, or combination of mechanisms within 60 days after receiving notice of cancellation of the surety bond or letter of credit described in this subsection; or

b. The director determines or ~~suspects~~ has a reasonable belief that a deposit of solid wastes and/or regulated medical wastes into state waters has occurred and so notifies the owner and operator, or the owner or operator has notified the [ ~~director pursuant to 9 VAC 20-170-210~~ department ] of a waste deposit into state waters from a vessel covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

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B. The director may draw on a standby trust fund or funds when:

1. The director makes a final determination that a waste deposit has occurred and immediate or long-term cleanup and/or containment for the waste deposit is needed, or the beneficial uses of state waters have been impaired as a result of the waste deposit and the owner and operator, after appropriate notice and opportunity to comply, have not conducted cleanup or containment [ ~~as required under 9 VAC 20-170-210 H~~ ]; or

2. The director has received either:

a. Certification from the owner or operator and the third-party liability claimants and from attorneys representing the owner or operator and the third-party liability claimants that a third-party liability claim should be paid. The certification must be worded identically as specified in APPENDIX IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted;

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by a waste deposit from a vessel covered by financial responsibility under this part and the board determines that the owner or operator has not satisfied the judgment.

C. If the director determines that the amount of cleanup and/or containment costs or beneficial use impact costs and third-party liability claims eligible for payment under subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial responsibility, the first priority for payment shall be the cleanup and containment activities necessary to protect human health and the environment. The board shall direct payment from the standby trust fund for third-party liability claims in the order in which the board receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

## **9 VAC 20-170-370. Replenishment of letters of credit or surety bonds.**

A. If at any time after a standby trust is funded upon the instruction of the director with funds drawn from a letter of credit or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator providing the mechanism shall by the anniversary date of the financial mechanism from which the funds were drawn:

1. Replenish the value of the financial responsibility mechanism to equal the full amount of coverage required; or

2. Acquire another financial responsibility mechanism for the amount by which funds in the standby trust have been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided under 9 VAC 20-170-300 [ , if the owner or operator is demonstrating for cleanup or containment, ] or 9 VAC 20-170-340 A if the

owner or operator is demonstrating financial responsibility for liability coverage. If a combination of mechanisms was used to provide the financial responsibility funds [ ~~which that~~ ] were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

## **9 VAC 20-170-380. Incapacity of owners, operators or financial institution.**

A. An owner or operator shall notify the [ ~~director~~ department ] by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.

B. An owner or operator who fulfills the requirements of this part by obtaining a trust fund, a letter of credit, a surety bond, or an insurance policy, will be deemed to be without the required financial responsibility in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing a surety bond, letter of credit, or insurance policy to issue such mechanisms. The owner or operator shall establish another financial responsibility mechanism, or combination of mechanisms, within 60 days of such event. If the owner or operator does not obtain alternate coverage within 60 days after such notification, he shall immediately notify the [ ~~director~~ department ] in writing.

## **9 VAC 20-170-390. Service of process.**

A. When executing the forms required by this part, each certificate applicant shall designate on the face of the application, a person located in Virginia as its agent for service of process for purposes of this part and for receipt of notices of designations and presentations of claims under this regulation. Each designated agent shall acknowledge [ his designation by providing ] the [ ~~director~~ department ] with a letter showing that he has agreed [ ~~in advance~~ ] to act as the registered agent for service of process for the certificate applicant or certificant in question.

B. If any certificate applicant or certificant desires, for any reason, to change any designated agent, the certificate applicant or certificant shall notify the [ ~~director~~ department ] of the change and furnish the relevant information, including the new agent's acknowledgment in accordance with subsection A of this section. In the event of death, disability, or unavailability of a designated agent, the certificate applicant or certificant shall designate another agent in accordance with paragraph A of this section within 10 days of knowledge of any such event. The certificate applicant or certificant shall submit the new designation to the [ ~~director~~ department ]. The director may revoke a certificate if a certificate applicant or certificant fails to designate and maintain an agent for service of process.

C. If a designated agent can not be served because of death, disability, unavailability, or similar event and another agent has not been designated under this section, then service of process on the director will constitute valid service of process. Service of process on the director will not be effective unless the server

1. Sends the certificate applicant or certificant by registered mail, at its last known address on file with the director a

copy of each document served on the [ ~~director department~~]; and

2. Attests to this registered mailing, at the time process is served upon the director, indicating that the intent of the mailing is to effect service of process on the certificate applicant or certificant and that service on the designated agent is not possible, stating the reason why.

**9 VAC 20-170-400. Release from financial responsibility requirements.**

Within 60 days after termination of vessel registration is accomplished [ ~~pursuant to 9 VAC 20-170-250 G~~ ], the director shall notify the owner and operator in writing that they are no longer required to maintain financial responsibility and liability coverage for the vessel. Such notice shall release the owner and operator only from the requirements for financial responsibility for the vessel; it does not release him from legal responsibility for meeting any other requirements of this chapter.

APPENDIX I.

(NOTE: Instructions in [ ~~parentheses~~ brackets ] are to be replaced with the relevant information and the [ ~~parentheses~~ brackets ] deleted.)

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the vessel owner or operator], a [State] [corporation, partnership, association, proprietorship], the "Grantor," and [name of corporate trustee], a [State corporation] [national bank], the "Trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that the owner and operator of a vessel transporting solid and/or regulated medical waste upon the navigable waters of the Commonwealth must provide assurance that funds will be available when needed for cleanup or containment of a waste deposit into such waters,

[Insert the following paragraph if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310 C 1:

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the vessels identified herein,]

[Insert the following paragraph if this Trust is established as a standby trust agreement:

Whereas the Grantor has elected to establish [insert either "a surety bond," or "letter of credit"] to provide all or part of such financial responsibility for its covered vessels and is required to establish a standby trust fund able to accept payments from the instrument,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

A. The term "fiduciary" means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of this trust fund, or has any authority or responsibility to do so, or who has any authority or responsibility in the administration of this trust fund.

B. The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

C. The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Vessels. [ Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310 C 1: ] This Agreement pertains to vessels and amounts identified on attached Schedule A. (NOTE: On Schedule A, for each vessel list, as applicable, the vessel name, gross tonnage, owner and operator and the amount of financial responsibility demonstrated by this Agreement.)

[Insert the following paragraph if this Trust is established as a standby trust agreement:

This Agreement pertains to the [identify the financial responsibility mechanism, either a letter of credit or a surety bond from which the standby trust fund is established to receive payments.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality, Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-310 C 1: The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto.] [Insert the following sentence if the fund is established as a standby trust fund: The Fund is established initially as a standby to receive payments and shall not consist of any property.] Such property and any other property subsequently transferred to the Trustee is referred to as the fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund will be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee undertakes no responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments to discharge any liabilities of the Grantor established by the Commonwealth of Virginia's Department of Environmental Quality.

Section 4. Payment for Containment and Clean up of a Waste Deposit. The Trustee will make such payments from the Fund as the Department of Environmental Quality, Commonwealth of Virginia will direct, in writing, to provide for the payment of the costs of cleanup and containment of any deposit of waste from a vessel covered by this Agreement or the costs to restore any beneficial uses impaired by such a waste deposit. The Trustee will reimburse such persons as specified by the Department of Environmental Quality, Commonwealth of

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Virginia, from the Fund for expenditures in such amounts as the Department of Environmental Quality will direct, in writing. In addition, the Trustee will refund to the Grantor such amounts as the Department of Environmental Quality specifies in writing. Upon refund, such funds will no longer constitute part of the Fund as defined herein.

*Section 5. Payments Comprising the Fund.* Payments made to the Trustee for the fund will consist of cash or securities acceptable to the Trustee.

*Section 6. Trustee Management.* The Trustee will invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with investment guidelines and objectives communicated in writing to the Trustee from time to time by the Grantor, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee or any other fiduciary will discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of any enterprise of a like character and with like aims; except that:

A. Securities or other obligations of the Grantor, or any other owner or operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), will not be acquired or held, unless they are securities or other obligations of the federal or a state government;

B. The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

C. The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

*Section 7. Commingling and Investment.* The Trustee is expressly authorized in its discretion:

A. To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate subject to all of the provisions thereof, to be commingled with the assets of other trusts participating herein. To the extent of the equitable share of the Fund in any such commingled trust, such commingled trust will be part of the Fund; and

B. To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., of one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustees may vote such shares in its discretion.

*Section 8. Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

A. To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by private contract or at public auction. No person dealing with the Trustee will be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other dispositions;

B. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

C. To register any securities held in the fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States government, or any agency or instrumentality thereof with a Federal Reserve Bank, but the books and records of the Trustee will at all times show that all such securities are part of the Fund;

D. To deposit any cash in the fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

E. To compromise or otherwise adjust all claims in favor of or against the Fund.

*Section 9. Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund will be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee will be paid from the Fund.

*Section 10. Annual Valuation.* The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30 days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

*Section 11. Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Grantor,

with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee will be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.** The Trustee will be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

**Section 13. Successor Trustee.** The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon acceptance of the appointment by the successor trustee, the Trustee will assign, transfer and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee and the date on which he assumes administration of the trust will be specified in writing and sent to the Grantor, the Director of the Department of Environmental Quality, Commonwealth of Virginia, and the present trustees by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section will be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests and instructions by the Grantor to the Trustee will be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee will be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests, and instructions by the Director of the Department of Environmental Quality, Commonwealth of Virginia, to the Trustee will be in writing, signed by the director and the Trustee will act and will be fully protected in acting in accordance with such orders, requests and instructions. The Trustee will have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Commonwealth of Virginia's Department of Environmental Quality hereunder has occurred. The Trustee will have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or the Commonwealth of Virginia's Department of Environmental Quality, except as provided for herein.

**Section 15. Notice of Nonpayment.** If a payment has been made under Section 4 of this Trust, the Grantor shall, on or before the anniversary date of the establishment of the Fund following such a payment, either make payments to the Trustee in amounts sufficient to cause the Trust to return to its value immediately prior to the payments made under Section 4, or shall provide written proof to the Trustee that other financial assurance as required by 9 VAC 20-170-10 et seq. has been obtained equaling the amount necessary to return the Trust to its value prior to the payments made under

Section 4. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director of the Department of Environmental Quality, Commonwealth of Virginia.

**Section 16. Amendment of Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust will be irrevocable and will continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, will be delivered to the Grantor.

**Section 18. Immunity and Indemnification.** The Trustee will not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia, issued in accordance with this Agreement. The Trustee will be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 19. Choice of Law.** This Agreement will be administered, construed and enforced according to the laws of the Commonwealth of Virginia.

**Section 20. Interpretation.** As used in the Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement will not affect the interpretation of the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

(Signature of Grantor)

By: [Title] [Date]

Attest:

[Title] [Date]

[Seal]

[Signature of Trustee]



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By  
Attest:  
[Title]  
[Seal] [Date]  
Certification of Acknowledgment:  
COMMONWEALTH OF VIRGINIA  
STATE OF  
CITY/COUNTY OF

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that [she/he] resides at [address]; that [she/he] is [title] of [corporation], the corporation described in and which executed the above instrument; that [she/he] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that [she/he] signed [her/his] name thereto by like order.

[Signature of Notary Public]

## SCHEDULE A

### IDENTIFICATION OF COVERED VESSELS

The Trust Agreement, by and between [insert Grantor Name and Trustee Name] dated [insert date of Agreement] is applicable to the following vessels:

Total Financial Responsibility Amount:

Vessel Name	Gross tons	Owner	[ Operator ]
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### APPENDIX II

(NOTE: instructions in parentheses brackets are to be replaced with the relevant information and the parentheses brackets deleted.)

### SURETY BOND GUARANTEEING PAYMENT

Date bond executed:.....

Effective date:.....

Principal: [legal name and business address]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:.....

Surety: [name and business address]

Vessels covered by this bond (see attached Schedule A):.....

Penal sum of bond: \$.....

Surety's bond number:.....

Know all men by these present, That we, the Principal and Surety hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, (hereinafter called the Department) in the above penal sum for the payment of which we bind ourselves, our heirs, executors,

administrators, successors and assigns, jointly and severally; provided that, where the Surety[ies] are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of each sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required to have a registration number issued by the Department of Environmental Quality, Commonwealth of Virginia, in order to transport solid or regulated medical waste upon the navigable waters of the Commonwealth, and

Whereas, said Principal is required to provide financial assurance for the cleanup and containment of a waste deposit from a vessel transporting solid and/or regulated medical waste upon the navigable waters of the Commonwealth and for the costs of restoring any beneficial uses impaired as a result of such a waste deposit as a condition of operation pursuant to 9 VAC 20-170-10 et seq.,

Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance,

Now, therefore the conditions of this obligation are such that if the Principal shall faithfully pay or cause to be paid any sum or sums for which the Principal is obligated to pay to clean up or contain a waste deposit from a covered vessel pursuant to 9 VAC 20-170-10 et seq. or restore any beneficial uses impaired from such a deposit, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

Or, if the Principal shall provide alternate financial assurance as specified in the Department's regulations and obtain the director's written approval of such assurance, within 60 days of the date notice of cancellation is received by the Director of the Department of Environmental Quality from the Surety, then this obligation will be null and void, otherwise it is to remain in full force and effect for the life of the vessel identified above.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the Department of Environmental Quality, Commonwealth of Virginia, that the Principal has been found in violation of the requirements of the Department's regulations, the Surety must forfeit the penal sum of the bond and deposit the entire amount of the bond into the standby trust established for this purpose.

The Surety hereby waives notification of amendments to any plans, orders, applicable laws, statutes, rules, and regulations and agrees that such amendments shall in no way alleviate its obligation on this bond.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the

obligation of the Surety hereunder exceed the amount of said penal sum.

The Surety may cancel the bond by sending written notice of cancellation to the owner or operator and to [ the Director of ] the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation cannot occur during the 120 days beginning on the date of receipt of the notice of cancellation by the [ director department ] as shown on the signed return receipt.

The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

In witness whereof, the Principal and Surety have executed this Surety Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to the wording specified in the relevant regulations of the Commonwealth of Virginia, Department of Environmental Quality.

Principal

Signature(s):.....

Name(s) and Title(s) [typed].....

Corporate Surety

Name and Address:.....

State of Incorporation:.....

Liability Limit: \$....

Signature(s):.....

Name(s) and Title(s) [typed].....

Corporate Seal:

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Surety Bond [insert bond number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
APPENDIX III			

APPENDIX III

(NOTE: Instructions in parentheses brackets are to be replaced with the relevant information and the parentheses brackets deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT

Director  
Department of Environmental Quality  
P.O. Box 10009  
Richmond, Virginia 23240-0009

Dear [Sir or Madam]:

We hereby establish our Irrevocable Letter of Credit No.[...] in your favor at the request and for the account of [vessel owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars [\$....], available upon presentation of

1. Your sight draft, bearing reference to this letter of credit No.[...] together with
2. Your signed statement declaring that the amount of the draft is payable pursuant to regulations issued under the authority of the Department of Environmental Quality, Commonwealth of Virginia.

The following vessels are included in the amount of this letter of credit: (See attached Schedule of Covered Vessels).

This letter of credit is effective as of [date] and will expire on [date at least one year later], but such expiration date will be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you and [owner or operator's name] by certified mail that we decide not to extend the Letter of Credit beyond the current expiration date. In the event you are so notified, unused portion of the credit will be available upon presentation of your sight draft for 120 days after the date of receipt by you as shown on the signed return receipt; in addition, the unused portion of the credit will be available for an additional 90 days from the stated expiration date upon presentation of your sight draft and your signed statement declaring that there is a compliance procedure pending.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we will duly honor such draft upon presentation to us, and we will pay to you the amount of the draft promptly and directly.

I hereby certify that I am authorized to execute this letter of credit on behalf of [issuing institution] and that the wording of this letter of credit is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

Attest:

[Signature and title of official of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
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## APPENDIX IV

(NOTE: Instructions in parentheses brackets are to be replaced with the relevant information and the parentheses brackets deleted.)

### ENDORSEMENT FOR LIABILITY COVERAGE

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 20-170-330 of the Transportation of Solid and Medical Waste on State Waters Regulations. The coverage applies to the vessels listed on the attached Schedule A for sudden accidental occurrences and/or nonsudden accidental occurrences. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 9 VAC 20-170-330.

(c) Whenever requested by the Director of the Department of Environmental Quality, Commonwealth of Virginia or the Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the director or the Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of a covered vessel, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

Attached to and forming part of policy No. \_\_\_\_\_ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this \_\_\_\_ day of \_\_\_\_\_, [ 49 20 ] \_\_\_\_\_. The effective date of said policy is \_\_\_\_ day of \_\_\_\_\_, [ 49 20 ] \_\_\_\_.

I hereby certify that the wording of this endorsement is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

### SCHEDULE A

#### IDENTIFICATION OF COVERED VESSELS

Insurance Policy [insert policy number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
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### APPENDIX V

(NOTE: Instructions in parentheses brackets are to be replaced with the relevant information and the parentheses brackets deleted.)

### CERTIFICATE OF INSURANCE FOR LIABILITY COVERAGE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under 9 VAC 20-170-330 of the Transportation of Solid and Medical Waste on State Waters Regulations. The coverage applies to the vessels listed on the attached Schedule A for sudden accidental occurrences and/or nonsudden accidental occurrences. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number \_\_\_\_\_, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in 9 VAC 20-170-330.

(c) Whenever requested by the Director of the Department of Environmental Quality, Commonwealth of Virginia or a Regional Administrator of the U.S. Environmental Protection Agency (EPA), the Insurer agrees to furnish to the director or Regional Administrator a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance

coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of a covered vessel, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by [~~the Director of~~] the Department of Environmental Quality, Commonwealth of Virginia.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by [~~the Director of~~] the Department of Environmental Quality, Commonwealth of Virginia.

I hereby certify that the wording of this instrument is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Insurance Policy [insert policy number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
APPENDIX VI			

APPENDIX VI

(NOTE: Instructions in parentheses brackets are to be replaced with the relevant information and the parentheses brackets deleted.)

TRUST AGREEMENT FOR THIRD PARTY LIABILITY COVERAGE

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the vessel owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of \_\_\_\_\_" or "a national bank"], the "trustee."

Whereas, the Virginia Waste Management Board has established certain regulations applicable to the Grantor, requiring that an owner and operator of a vessel transporting solid and/or regulated medical waste on the navigable waters of the Commonwealth must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from the transport by water of solid and/or regulated medical waste,

[Insert the following paragraph if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-330 C 2:

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the vessels identified herein,]

[Insert the following paragraph if this Trust is established as a standby trust agreement:

Whereas, the Grantor has elected to establish [insert either "a surety bond," or "letter of credit"] to provide all or part of such financial responsibility for its covered vessels and is required to establish a standby trust fund able to accept payments from the instrument,]

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Vessels. This Agreement pertains to vessels and amounts identified on attached Schedule A. (NOTE: On Schedule A, for each vessel list, as applicable, the vessel name, gross tonnage, owner and operator and the amount of financial responsibility demonstrated by this Agreement.)

[Insert the following paragraph if this Trust is established as a standby trust agreement:

This Agreement pertains to the [identify the financial responsibility mechanism, either a letter of credit or a surety bond from which the standby trust fund is established to receive payments.]

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by sudden and/or nonsudden accidental occurrences arising from a deposit of solid and/or regulated medical waste into the navigable waters of the Commonwealth from a vessel covered by this Agreement, in the amounts of [insert "\$1 million per occurrence and \$2 million annual aggregate for accidental occurrences arising from a deposit of solid waste into navigable waters" and/or "\$3 million per occurrence and \$6 million annual aggregate for occurrences arising from a deposit of regulated medical waste into navigable waters"], except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

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(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor].

This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or motor vehicle.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

[Insert the following sentence if this Trust is established as the financial responsibility mechanism pursuant to 9 VAC 20-170-330 C 2: The Fund is established initially as property consisting of cash or securities, which are acceptable to the Trustee, described in Schedule B attached hereto.] [Insert the following sentence if the fund is established as a standby trust fund: The Fund is established initially as a standby to receive payments and shall not consist of any property.] Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor

established by the Department of Environmental Quality, Commonwealth of Virginia.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

### Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrence arising from a deposit of solid and/or regulated medical waste into navigable waters from a covered vessel should be paid in the amount of \$[ ].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by an accidental occurrence arising from a deposit of solid and/or regulated medical waste into navigable waters from one or more of the Grantor's vessels covered by this Agreement.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

**Section 7. Commingling and Investment.** The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

**Section 8. Express Powers of Trustee.** Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

**Section 9. Taxes and Expenses.** All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid

from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

**Section 10. Annual Valuations.** The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Director of the Department of Environmental Quality, Commonwealth of Virginia a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

**Section 11. Advice of Counsel.** The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**Section 12. Trustee Compensation.** The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

**Section 13. Successor Trustee.** The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Director of the Department of Environmental Quality, Commonwealth of Virginia, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

**Section 14. Instructions to the Trustee.** All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall

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be in writing, signed by the Director of the Department of Environmental Quality, Commonwealth of Virginia, or his designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Department of Environmental Quality, Commonwealth of Virginia hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director of the Department of Environmental Quality, Commonwealth of Virginia, except as provided for herein.

**Section 15. Notice of Nonpayment.** If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the Director of the Department of Environmental Quality, Commonwealth of Virginia.

**Section 16. Amendment of Agreement.** This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia if the Grantor ceases to exist.

**Section 17. Irrevocability and Termination.** Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in this section.

**Section 18. Immunity and Indemnification.** The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director of the Department of Environmental Quality, Commonwealth of Virginia issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from

and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**Section 19. Choice of Law.** This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia.

**Section 20. Interpretation.** As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

[Signature of Grantor]

[Title]

Attest:

[Title]

[Seal]

[Signature of Trustee]

Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 9 VAC 20-170-240 or 9 VAC 20-170-260 of this chapter.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address]; that [she/he] is [title] of [corporation], the corporation described in and which executed the above instrument; that [she/he] knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that [she/he] signed [her/his] name thereto by like order.

[Signature of Notary Public]

## SCHEDULE A

### IDENTIFICATION OF COVERED VESSELS

The Trust Agreement, by and between [insert Grantor Name and Trustee Name] dated [insert date of Agreement] is applicable to the following vessels:

Total Financial Responsibility Amount:

Vessel Name      Gross tons      Owner      Operator

APPENDIX VII

(NOTE: Instructions in parentheses brackets are to be replaced with the relevant information and the parentheses brackets deleted.)

PAYMENT BOND FOR THIRD PARTY LIABILITY COVERAGE

Date bond executed:.....

Effective date:.....

Principal: [legal name and business address]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation:.....

Surety: [name and business address]

Vessels covered by this bond (see attached Schedule A):.....

Penal sum of bond: \$....

Surety's bond number:.....

Purpose: This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

- (1) Virginia Waste Management Act, Title 10.1, Code of Virginia (1950), as amended.
(2) Transportation of Solid and Medical Wastes on State Waters Regulations, 9 VAC 20-170-10 et seq.

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth. Such obligation does not apply to any of the following:

- (a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.
(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

- (1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or
(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal].

This exclusion applies:

- (A) Whether [insert principal] may be liable as an employer or in any other capacity; and
(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft or motor vehicle.

(e) Property damage to:

- (1) Any property owned, rented, or occupied by [insert principal];
(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;
(3) Property loaned to [insert principal];
(4) Personal property in the care, custody or control of [insert principal];
(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety becomes liable on this bond obligation.

(4) The Surety shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by an accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth should be paid in the amount of \$[ ].

[Signature]



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Principal

[Notary] [Date]

[Signature(s)]

Claimant(s)

[Notary] [Date]

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by accidental occurrences arising from the transport of [insert "solid waste" or "regulated medical waste"] by a covered vessel on the navigable waters of the Commonwealth.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety furnishes notice to the Director of the Department of Environmental Quality, Commonwealth of Virginia forthwith of all claims filed and payments made by the Surety under this bond.

(7) The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and the Director of the Department of Environmental Quality, Commonwealth of Virginia, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the director, as evidenced by the return receipt.

(8) The Principal may terminate this bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the Director of the Department of Environmental Quality, Commonwealth of Virginia.

(9) The Surety hereby waives notification of amendments to applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety and that the wording of this surety bond is identical to the wording specified in the relevant regulations of the Commonwealth of Virginia, Department of Environmental Quality.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY[IES]

[Name and address]

State of incorporation: \_\_\_\_\_

Liability Limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

Bond premium: \$ \_\_\_\_\_

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Surety Bond [insert bond number] is applicable to the following vessels:

Vessel Name	Gross tons	Owner	Operator
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APPENDIX VIII

(NOTE: Instructions in brackets are to be replaced with the relevant information and the brackets deleted.)

IRREVOCABLE STANDBY LETTER OF CREDIT FOR  
THIRD PARTY LIABILITY COVERAGE

[Name and Address of Issuing Institution]

Director

Department of Department of Environmental Quality

629 East Main Street

P.O. Box 10009

Richmond, Virginia 23240-0009

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in favor of any and all third-party liability claimants, at the request and for the account of [insert owner's or operator's name and address] for third-party liability awards or settlements up to U.S. dollars [\$ \_\_\_\_\_] per occurrence and the annual aggregate amount of U.S. dollars [\$ \_\_\_\_\_], for accidental occurrences available upon presentation of a signed draft, bearing reference to this letter of credit No. \_\_\_\_\_, and

1. A signed certificate reading as follows:

Certification of Valid Claim

The undersigned, as parties [insert principal and insert name and address of third-party claimants], hereby certify that the claim of bodily injury and/or property damage arising from a waste deposit into navigable waters by a covered vessel transporting solid and/or regulated medical

waste should be paid in the amount of \$ \_\_\_\_\_. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which insert principal is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that insert principal would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of insert principal under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of insert principal arising from, and in the course of, employment by insert principal; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by insert principal. This exclusion applies:

(A) Whether insert principal may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who shall pay damages because of the injury to persons identified in paragraphs (1) and (2).

Signatures

Principal

Signatures

Claimant(s)

or

2. A valid final court order establishing a judgement against the principal for bodily injury or property damage arising from a waste deposit into navigable waters from a covered vessel transporting solid and/or regulated medical waste.

The provisions of this letter of credit are applicable to the vessels indicated on the attached Schedule of Covered Vessels.

This letter of credit is effective as of date and shall expire on date at least one year later, but such expiration date shall be automatically extended for a period of at least one year on date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director and owner's or operator's name by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered insert "primary" or "excess" coverage.

We certify that the wording of this letter of credit is identical to the wording specified in the relevant regulations of the Department of Environmental Quality, Commonwealth of Virginia.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

SCHEDULE A

IDENTIFICATION OF COVERED VESSELS

Letter of credit [insert letter of credit number] is applicable to the following vessels:

Vessel Name Gross tons Owner Operator

APPENDIX IX

(NOTE: Instructions in parentheses brackets are to be replaced with the relevant information and the parentheses brackets deleted.)

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of [insert vessel owner or operator] and [insert name and address of third party claimant] hereby certify that the claim of bodily injury [and/or] property damage caused by a sudden and/or nonsudden accidental occurrence arising from a waste deposit from [owner or operator] vessel into state waters should be paid in the amount of \$[ ].

[Signatures]

Vessel Owner or Operator

Attorney for Owner or Operator

[Notary]

[Date]

[Signature(s)]

Claimant(s)

Attorney(s) for Claimant(s)

[Notary]

[Date]

PART VII.

COMPLIANCE OF VESSELS TRANSPORTING SOLID WASTES OR REGULATED MEDICAL WASTES WITH FEDERAL STATUTES AND REGULATIONS [ AND STATE SPILL RESPONSE REQUIREMENTS ].

9 VAC 20-170-410. General provisions.

[ A. All vessels used to transport solid waste or regulated medical waste on state waters shall be in full compliance with all applicable requirements of the U.S. Coast Guard, the U.S. Department of Transportation and any other federal or state agency having jurisdiction regarding the design and operation of such vessels.

B. 33 CFR Part 151 (effective July 1, 2000) and 46 CFR Part 42 (effective October 1, 2000) are incorporated by reference.

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Vessels must comply with federal regulations 33 CFR Part 151 (effective July 1, 2002) and 46 CFR Part 42 (effective October 1, 2002). These regulations apply to vessels transporting solid wastes or regulated medical wastes on state waters and are enforced by the U. S. Coast Guard. The owner or operator of a vessel shall immediately notify the appropriate regional office of the department, the Virginia Department of Emergency Management, and the National Response Center at 1-800-424-8802 in the event of a deposit of solid wastes or regulated medical wastes into state waters. Such verbal notification shall be followed by written notification to the appropriate department regional office within five days. The owner or operator of a vessel from which there is spillage or loss to state waters of wastes shall immediately take all such actions as may be necessary to contain and remove such wastes from state waters.

## PART VIII. VARIANCE.

### 9 VAC 20-170-420. Petitioning for variance or exemption.

A. Any person regulated by this chapter may petition the department to grant a variance or an exemption from any requirement of this chapter subject to the provisions of this section. Any petition submitted to the department is also subject to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The petition shall be submitted to the department by certified mail and shall include:

1. The petitioner's name and address;
2. A statement of petitioner's interest in the proposed action;
3. A description of desired action and a citation of the regulation from which a variance is requested;
4. A description of need and justification for the proposed action, including impacts from existing operations;
5. Information demonstrating that the requested variance will meet the purposes and objectives of the relevant regulatory provision and of the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia);
6. The duration of the variance, if applicable;
7. The potential impact of the variance on public health or the environment;
8. Other information believed by the applicant to be pertinent; and
9. The following statement signed by the petitioner or authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

C. Effects of the decisions:

1. When the director renders a decision under this section in accordance with the procedures contained in subsection B of this section, he may:

- a. Deny the petition;
- b. Grant the variance as requested; or
- c. Grant a modified or partial variance.

2. When a modified variance is granted, the director may:

- a. Specify the termination date of the variance;
- b. Include a schedule for:
  - (1) Compliance, including increments of progress, by the facility with each requirement of the variance; and
  - (2) Implementation by the facility of such control measures as the director finds necessary in order that the variance may be granted.

D. The director will evaluate the application and issue a draft notice tentatively denying the petition, granting the variance as requested, or granting a modified or partial variance. Notification of this tentative decision will be provided by newspaper advertisement in the locality where the applicant is located. The director will accept comment on the tentative decision for 30 days, and shall hold a public hearing if a request is received or at his discretion if there is no request. The director will issue a final decision after receipt of comments and after the hearing (if any).

E. The director may grant the variance if the applicant demonstrates to the satisfaction of the director that:

1. The proposed variance will meet the goals and purposes of the provisions from which a variance is sought;
2. The variance does not conflict with federal or state law or regulations.

F. In the event of a declared emergency by the Governor, a temporary variance may be granted and the public comment period may be held after the variance is granted. In any event, notice of the public comment period shall be published within 90 days after the variance is granted. ]

### DOCUMENTS INCORPORATED BY REFERENCE

Rules for Certification of Cargo Containers, 1987, American Bureau of Shipping.

[ ~~Recommended Practices for Installation of Underground Liquid Storage Systems, 2000, Petroleum Equipment Institute.~~ ]

**NOTICE:** The form used in administering 9 VAC 20-170, Transportation of Solid and Medical Wastes on State Waters Regulations, is listed below. The added form is published.

### [ FORMS

Application for Certification of Financial Responsibility (3/03.) ]

APPLICATION FOR CERTIFICATE OF FINANCIAL RESPONSIBILITY

<p><i>COMMONWEALTH OF VIRGINIA</i></p> <p>DEPARTMENT OF ENVIRONMENTAL QUALITY</p> <p>APPLICATION FOR VESSEL CERTIFICATE OF FINANCIAL RESPONSIBILITY</p>		<p><b>GENERAL</b> (PART I OF 4 PARTS)</p> <p>Initial certificate     [    ] [check appropriate box] Renewal certificate    [    ]</p>
<p>1. (a) Legal name of applicant</p>		<p><b>INSTRUCTIONS</b></p> <p>Please type or print and submit this application to Director, Waste Program Coordination, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240-0009. The application is in four parts: Part I - General; Part II - Evidence of Financial Responsibility; Part III - Declaration; Part IV - Concurrence of Agent. Applicants must answer all applicable questions. If a question does not apply, answer A not applicable. Incomplete applications will be returned. If additional space is required, supplemental sheets may be attached. All information must be provided in the English language.</p>
<p>(b) Trade name (if any)</p>		
<p>3. State applicant's legal form of organization, i.e., whether operating as an individual corporation, partnership, association, joint stock company, business trust or other organized group of persons (whether incorporated or not) or as a receiver, trustee, or other liquidating agent and briefly describe current business activities and length of time engaged therein.</p>		
<p>(a) If a corporation, association, or other organization, indicate:</p>		
<p>State in the United States, or foreign country, in which incorporated or organized</p>		<p>Date of incorporation or organization</p>
<p>(b) If a partnership, provide name and address of each partner:</p>		
<p>4. Name and address of applicant's registered agent in Virginia.</p>		

Application Form 3/28/2003

Vessel Certificate of Financial Responsibility

VA.R. Doc. No. R98-255; Filed May 12, 2003, 4:09 p.m.

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

**Title of Regulation:** 12 VAC 35-11. Public Participation Guidelines (amending 12 VAC 35-11-10 through 12 VAC 35-11-90; adding 12 VAC 35-11-15 and 12 VAC 35-11-110; repealing 12 VAC 35-11-100).

**Statutory Authority:** §§ 2.2-4007 and 37.1-10 of the Code of Virginia.

**Effective Date:** July 2, 2003.

**Agency Contact:** Wendy V. Brown, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 371-0092 or e-mail [wbrown@dmhmrsas.state.va.us](mailto:wbrown@dmhmrsas.state.va.us).

### Summary:

*The amendments clarify that the board rather than the department has the legal authority to promulgate regulations and include new provisions for periodic review of regulations. Additionally, the proposed provisions incorporate the use of electronic technology to facilitate public participation in the rulemaking process.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:5 VA.R. 762-766 November 18, 2002, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

**12 VAC 35-11-10. [ No change from proposed. ]**

**12 VAC 35-11-15. 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 Mental Health, Mental Retardation and Substance Abuse Services Board.*

*"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.*

*"Notification lists" means lists used by the board to notify persons or entities pursuant to these regulations. Such lists may include lists maintained electronically through a state website (e.g., Virginia Regulatory Townhall) or by any other means.*

*[ "Virginia Register" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.). ]*

*"Virginia Regulatory Townhall" means the state website that is accessible to the public and used to document regulatory changes and solicit public participation in the regulatory*

*development process. The website address for the Virginia Regulatory Townhall is <http://www.townhall.state.va.us>.*

**12 VAC 35-11-20. [ No change from proposed. ]**

**12 VAC 35-11-30. [ No change from proposed. ]**

**12 VAC 35-11-40. Petition for rulemaking.**

A. As provided in § ~~9-6-14-7.1~~ 2.2-4007 of the Code of Virginia, any person may petition the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.
2. The number and title of the regulation to be addressed [ , if applicable ].
3. [ ~~A description of the regulatory problem or need to be addressed~~ *The substance and purpose of the rulemaking that is requested* ].
4. A recommended addition, deletion, or amendment to the regulation.
- [ 5. *A reference to the legal authority of the board to take the action requested.* ]

C. The ~~Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ shall receive, consider and respond to a petition [ ~~within 180 days as provided in § 2.2-4007 A of the Code of Virginia.~~ ].

D. Nothing herein shall prohibit the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ from receiving information from the public and proceeding on its own motion for rulemaking.

**12 VAC 35-11-50. Notice of Intended Regulatory Action.**

A. The Notice of Intended Regulatory Action (NOIRA) shall [ ~~state the purpose of the action and a brief statement of the need or problem the proposed action will address~~ *describe the subject matter and intent of the planned regulation* ].

B. The ~~Notice of Intended Regulatory Action NOIRA~~ shall indicate whether the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ intends to hold a public hearing on the proposed regulation after it is published. If the ~~Department of Mental Health, Mental Retardation and Substance Abuse Services board~~ does not intend to hold a public hearing, it shall state the reason in the ~~Notice of Intended Regulatory Action NOIRA~~.

C. The ~~Notice of Intended Regulatory Action~~ shall state that a ~~public hearing will be scheduled, if, during the 30-day comment period, the Department of Mental Health, Mental Retardation and Substance Abuse Services receives requests for a hearing from at least 25 persons.~~ *If, prior to the close of the 30-day comment period on the NOIRA, the board receives*

requests for a public hearing on the proposed regulation from at least 25 persons, such hearing shall be scheduled.

12 VAC 35-11-60 through 12 VAC 35-11-110. [ No change from proposed. ]

VA.R. Doc. No. R02-77; Filed May 12, 2003, 9:57 a.m.

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Title of Regulation: 12 VAC 35-40. Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children (repealing 12 VAC 35-40-10 through 12 VAC 35-40-340).

Title of Regulation: 12 VAC 35-45. Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children (adding 12 VAC 35-45-10 through 12 VAC 35-45-200).

Statutory Authority: §§ 37.1-10, 37.1-179.1, and 37.1-182 of the Code of Virginia.

Effective Date: August 1, 2003.

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-1747, FAX (804) 692-0066 or e-mail landerson@dmhmrsas.state.va.us.

Summary:

The action repeals the Mandatory Certification/Licensure Standards for Treatment Programs for Children (12 VAC 35-40) and replaces them with the proposed Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children (12 VAC 35-45). Services covered by the regulation include a wide range of residential services from small group homes to large residential treatment facilities.

The majority of the changes reorganize and streamline the regulatory requirements and delete provisions that are redundant or that conflict with other regulations. The changes delete or revise provisions that were outdated as a result of changes in current treatment practices to reflect current standards of care. The provisions regarding behavior management and time-out practices are amended to require that time limits for time outs be developmentally appropriate. A provision is added to require providers to monitor medication errors on a quarterly basis and use that information to aid in staff development.

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.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 19:3 VA.R. 424-430 October 21, 2002, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

CHAPTER 45. REGULATIONS FOR PROVIDERS OF MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE RESIDENTIAL SERVICES FOR CHILDREN.

12 VAC 35-45-10. Definitions.

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

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help a resident obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, or social functioning.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities, which provide for support and problem solving. Such interventions take place between provider staff and the resident, families, or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

"Department" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Medication" means prescribed and over-the-counter drugs.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to a resident by (i) persons legally permitted to administer medications or (ii) the resident at the direction and in the presence of persons legally permitted to administer medications.

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, or training needs of a child or

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adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, and family therapy necessary to treat the child. Active treatment shall be required. The service must provide active treatment or training beginning at admission and it must be related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs, including but not limited to personal care, habilitation or academic educational needs of the resident.

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent a resident receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the resident in an instance in which there is an imminent risk of a resident harming himself or others, including staff when nonphysical interventions are not viable and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the resident for medical, diagnostic, or surgical purposes and the related post-procedure care processes when the use of such a device is not a standard practice for the resident's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit when the resident does not have the option to remove the device. The device may limit a resident's movement and prevent possible harm to the resident (e.g., bed rail or geri-chair) or it may create a passive barrier to protect the resident (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the resident receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the resident's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent a resident from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:

a. To intervene in or redirect a potentially dangerous encounter in which the resident may voluntarily move away from the situation or hands-on approach; or

b. To quickly de-escalate a dangerous situation that could cause harm to the resident or others.

[ "Serious incident" means:

1. Any accident or injury requiring treatment by a physician;
2. Any illness that requires hospitalization;
3. Any overnight absence from the facility without permission;
4. Any runaway; or
5. Any event that affects, or potentially may affect, the health, safety or welfare of any resident being served by the provider. ]

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Service" or "services" means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to residents with mental illness, mental retardation, or substance addiction or abuse.

"Social skill training" means activities aimed at developing and maintaining interpersonal skills.

"Time out" means assisting a resident to regain emotional control by removing the resident from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

**12 VAC 35-45-20 through 12 VAC 35-45-190. [ No change from proposed. ]**

## **12 VAC 35-45-200. Emergency reporting.**

A. Any serious incident, [ ~~accident, serious injury~~ as defined by these regulations, unexplained absence ] or death of a resident [ ; ~~any overnight absence from the facility without permission; any runaway; and any other unexplained absence~~ ] shall be reported to the Office of Licensing within 24 hours. Such reports shall include:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the placing agency, guardian, or other applicable authorities; and
6. The name of the person to whom the report was made.

B. In the case of a serious injury or death, the report shall be made on forms approved by the department.

VA.R. Doc. No. R02-78; Filed May 12, 2003, 9:58 a.m.

**TITLE 16. LABOR AND EMPLOYMENT**

**DEPARTMENT OF LABOR AND INDUSTRY**

**Title of Regulation:** 16 VAC 15-10. Public Participation Guidelines (amending 16 VAC 15-10-10, 16 VAC 15-10-20, 16 VAC 15-10-40, 16 VAC 15-10-50, 16 VAC 15-10-80, 16 VAC 15-10-90, and 16 VAC 15-10-100).

**Statutory Authority:** §§ 2.2-4007 and 40.1-6 of the Code of Virginia.

**Effective Date:** July 2, 2003.

**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.

**Summary:**

*This regulation sets out procedures to be followed by the Department of Labor and Industry to ensure that the public and all parties interested in regulation adopted by the agency have a full and fair opportunity to participate at every stage. The regulation is amended to conform to the current requirements of the Administrative Process Act. Also, with the advances in information technology, amendments include the agency website and other Internet resources.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:25 VA.R. 3521-3525 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; however, the changes from the proposed regulation are printed below.

**16 VAC 15-10-10 through 16 VAC 15-10-40. [No change from proposed].**

**16 VAC 15-10-50. Public involvement with formulation of regulations.**

A. The commissioner shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The commissioner shall consider the petition and provide a response within 180 days respond in accordance with the Administrative Process Act.

B. The petition, at a minimum, shall contain the following information:

1. Name, mailing address and telephone number of petitioner;
2. E-mail address of petitioner, if applicable;
- 2- 3. Petitioner's interest in the proposed action;

~~3- 4. Substance and purpose of the requested rulemaking including recommended regulation or addition, deletion or amendment to a specific regulation;~~

~~4- 5. Statement of need and justification for the proposed action;~~

~~5- 6. Statement of impact on the petitioner and other affected persons; [ and ]~~

~~7. Reference to legal authority of the agency to take the action requested; and~~

~~6- 8. Supporting documents, as applicable.~~

**16 VAC 15-10-80 through 100. [No change from proposed].**

VA.R. Doc. No. R02-15; Filed May 9, 2003, 3:10 p.m.

**SAFETY AND HEALTH CODES BOARD**

**Title of Regulation:** 16 VAC 25-50. Boiler and Pressure Vessel Regulations (amending 16 VAC 25-50-20, 16 VAC 25-50-150, 16 VAC 25-50-340, and 16 VAC 25-50-440; adding 16 VAC 25-50-445).

**Statutory Authority:** § 40.1-51.6 of the Code of Virginia.

**Effective Date:** July 2, 2003.

**Agency Contact:** Fred P. Barton, Boiler Safety Compliance Director/Chief Boiler Inspector, Department of Labor and Industry, Powers-Taylor Building, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 786-3262, FAX (804) 371-2324 or e-mail fpb@doli.state.va.us.

**Summary:**

*The amendments eliminate possible conflicts with a recently enacted statute (§ 40.1-51.19 of the Code of Virginia) governing hobby boilers; allow certificate fees to be paid by credit card; adopt current Part CW of ANSI/ASME-CSD-1 provisions for burner controls and safety devices; and update references to prevailing National Fire Protection Association, American Society of Mechanical Engineers and National Board Codes.*

**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.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:26 VA.R. 3769-3772 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.

**16 VAC 25-50-20. [ No change from proposed. ]**

**16 VAC 25-50-150. [ No change from proposed. ]**

**16 VAC 25-50-340. Burner controls and safety devices.**

Gas Fired burner installations shall conform to the requirements of the following nationally recognized standards



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including: the American Gas Association, Underwriters Laboratories, [ *Part CG (General)*, ] *Part CW (Steam and Waterside Control)* of ANSI/ASME-CSD-1 or National Fire Protection Association (NFPA) No. 85 series as applicable.

**16 VAC 25-50-440. [ No change from proposed. ]**

**16 VAC 25-50-445. [ No change from proposed. ]**

## DOCUMENTS INCORPORATED BY REFERENCE

4998 2001 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical Engineers.

National Board Bylaws, National Board of Boiler and Pressure Vessel Inspectors, August 8, 1996.

ANSI/NB 23, 4998 2001 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors.

ASME B31.1, ASME Code for Pressure Piping, American National Standards Institute, 4995 and Addenda through 1997 1998.

NFPA 85C, ~~Standards for the Prevention of Furnace Explosions/Implosions in Multiple Burner Boiler Furnaces,~~ 4994 85 *Boiler and Combustion Systems Hazards*, 2001 Edition, National Fire Protection Association.

[ *Part CG (General)*, ] *Part CW (Steam and Waterside Control)* and *Part CF (Combustion Side Control) Flame Safeguard* of ANSI/ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers, 4992 1998, American Society of Mechanical Engineers.

"Boiler Blowoff Equipment," National Board of Boiler and Pressure Vessel Inspectors, Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991.

API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, Sixth Edition, June 1989, American Petroleum Institute.

VA.R. Doc. No. R02-16; Filed May 13, 2003, 10:55 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### AUCTIONEERS BOARD

Title of Regulation: **18 VAC 25-10. Public Participation Guidelines (amending 18 VAC 25-10-10 through 18 VAC 25-10-50, and 18 VAC 25-10-90).**

Statutory Authority: §§ 2.2-4007 and 54.1-602 of the Code of Virginia.

Effective Date: July 3, 2003.

Agency Contact: Marian H. Brooks, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail [auctioneers@dpor.state.va.us](mailto:auctioneers@dpor.state.va.us).

## 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.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:24 VA.R. 3229-3230 August 12, 2002, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

**18 VAC 25-10-10. [ No change from proposed. ]**

**18 VAC 25-10-20. [ No change from proposed. ]**

**18 VAC 25-10-30. Placement on the mailing list; deletion.**

Any person 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 on the list will be provided all information stated in 18 VAC 25-10-20. Individuals and organizations periodically may be requested to indicate their desire to continue to receive documents or be deleted from the list. When mail [ ~~or electronic notifications~~ *are* ] returned as undeliverable, individuals and organizations will be deleted from the list. [ *When electronic notifications are returned as undeliverable over more than one day, individuals and organizations will be deleted from the list.* ]

**18 VAC 25-10-40. [ No change from proposed. ]**

**18 VAC 25-10-50. [ No change from proposed. ]**

**18 VAC 25-10-90. [ No change from proposed. ]**

VA.R. Doc. No. R01-226; Filed May 14, 2003, 10:12 a.m.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: **18 VAC 65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18 VAC 65-20-70, 18 VAC 65-20-130, 18 VAC 65-20-140, and 18 VAC 65-20-500; adding 18 VAC 65-20-151, 18 VAC 65-20-152, 18 VAC 65-20-153, and 18 VAC 65-20-154; repealing 18 VAC 65-20-150).**

Statutory Authority: §§ 54.1-2400 and 54.1-2816.1 of the Code of Virginia.

Effective Date: July 2, 2003.

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](mailto:elaine.yeatts@dhp.state.va.us).

Summary:

The amendments establish continuing education requirements for funeral service licensees, funeral directors and funeral embalmers in compliance with Chapter 270 of the 2002 Acts of Assembly. The proposed amendments (i) require each licensee to take a minimum of five hours of continuing education provided by a board-approved continuing education provider, (ii) set forth approved continuing education providers and criteria for approval of continuing education providers, and (iii) provide for extensions or waivers of the requirements.

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.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:8 VA.R. 1169-1177 December 30, 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 65-20-70. [ No change from proposed. ]**
- 18 VAC 65-20-130. [ No change from proposed. ]**
- 18 VAC 65-20-140. [ No change from proposed. ]**
- 18 VAC 65-20-150. [ No change from proposed. ]**
- 18 VAC 65-20-151. [ No change from proposed. ]**
- 18 VAC 65-20-152. Continuing education providers.**

A. Unless disqualified by action of the board, courses offered by the following providers are approved for continuing education credit:

1. Local, state or federal government agencies;
2. Regionally accredited colleges and universities; or
3. Board-recognized national, regional, state and local associations or organizations as follows:
  - a. National Funeral Directors Association and state chapters;
  - b. National Funeral Directors and Morticians Association and state chapters;
  - c. [ Association of ] Independent Funeral Homes [ Association ] of Virginia;
  - d. Cremation Association of North America;
  - e. American Board of Funeral Service Education;
  - f. International Conference of Funeral Service Examining Boards; [ and ]
  - g. [ Virginia Morticians Association; and
  - h. ] Other similar associations or organizations as approved by action of the board.

B. Course providers not listed in subsection A of this section may apply for approval by the board as continuing education providers.

1. To be considered for board approval, a continuing education provider shall submit 60 days prior to offering a continuing education course:
  - a. Documentation of an instructional plan and course objectives for continuing education courses that meet the criteria set forth in 18 VAC 65-20-151 B;
  - b. A syllabus of the course or courses to be offered with the credentials of the course instructors, a description of each session, including number of continuing education hours; and
  - c. The continuing education provider fee set forth under 18 VAC 65-20-70.

2. Board approval of continuing education providers under this subsection shall expire on July 1 of each year and may be renewed upon resubmission of documentation on courses and instructors and the provider fee as required by the board.

3. Continued approval of a continuing education provider may be granted without submission of the provider fee if the provider submits a statement that courses and instructors offered for the coming year will not change from the previous year. If there will be additions or alterations to the continuing education offerings of a provider, resubmission of documentation and a provider fee is required.

C. Continuing education providers approved under subsection A or B or this section shall:

1. Maintain and provide to the board upon request documentation of the course titles and objectives and of licensee attendance and completion of courses for a period of three years;
2. Monitor attendance at classroom or similar educational experiences for compliance with law and regulations; and
3. Provide a certificate of completion for licensees who successfully complete a course.

- 18 VAC 65-20-153. [ No change from proposed. ]**
- 18 VAC 65-20-154. [ No change from proposed. ]**
- 18 VAC 65-20-500. [ No change from proposed. ]**

**FORMS. [ No change from proposed. ]**

VA.R. Doc. No. R02-73; Filed May 12, 2003, 10:12 a.m.

**DEPARTMENT OF HEALTH PROFESSIONS**

**Title of Regulation: 18 VAC 76-30. Public Participation Guidelines (adding 18 VAC 76-30-10 through 18 VAC 76-30-120).**

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

**Effective Date: July 2, 2003.**

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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.

Summary:

*The regulations provide guidelines for public participation in the regulatory process of the department and are intended to enable electronic communication, notification and comment in the development of regulations. The regulations provide for notification lists, documents required to be sent to those on the lists, requirements for petitioning the department to begin rulemaking, notices and hearings required for each stage of the process, and the appointment and duration of advisory committees formed to address a specific regulatory issue.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:8 VA.R. 1177-1180 December 30, 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. R02-261; Filed May 12, 2003, 10:07 a.m.

## 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.

Effective Date: July 2, 2003.

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.

Summary:

*The 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 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.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:10 VA.R. 1480-1484 January 27, 2003, 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 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~~ ,osteopathic medicine, ] or [ ~~a doctor of~~ ] podiatry licensed by the board shall provide, upon initial request or whenever there is a change in [ ~~what the information that~~ ] 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;
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;

40. 9. Whether there is access to translating services for non-English speaking patients at the primary *and secondary* practice [ ~~setting settings~~ ] and which, if any, foreign languages are spoken in the practice; and

44. 10. Whether the physician or podiatrist participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients-;

11. 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

12. 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 [ *while under investigation* ] 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~~ have not yet become final ].

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. [ No change from proposed. ]**

**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 osteopathic medicine~~ ], 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.

2. The specialty in which the doctor was practicing at the time the incident occurred that resulted in the paid claim.

3. The total amount of the paid claim in United States dollars.

4. The city, state, and country in which the paid claim occurred.

B. The board shall [ ~~not release individually identifiable numeric values of reported paid claims but shall~~ ] use the information provided to determine the relative frequency of paid claims described in terms of the number of doctors in each specialty and the percentage who have made malpractice payments 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. [ No change from proposed. ]**

**NOTICE:** The forms used in administering 18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic, are not being published due to the large number; however, the name of each form is listed below.

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The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Instructions for Completing Application to Practice Medicine for Graduates of Approved Institutions (rev. 12/02).

Instructions for Completing an Application to Practice Medicine for Graduates of Nonapproved Institutions (rev. 12/02).

Instructions for Completing PMLEXIS Examination/License Application (rev. 9/01).

Instructions for Completing Chiropractic Endorsement Application (rev. 1/02).

Instructions for Completing Podiatry Endorsement Application (rev. 1/03).

Instructions for Completing Osteopathic National Boards Endorsement Application (rev. 4/02).

Form A, Claims History Sheet (rev. 12/02).

Form B, Activity Questionnaire (rev. 12/02).

Form C, Clearance from Other State Boards (rev. 12/02).

Form E, Disciplinary Inquiry (rev. 12/02).

Application for a License to Practice Medicine and Surgery (rev. 12/02).

Application for a License to Practice Osteopathic Medicine (rev. 12/02).

Application for a License to Practice Podiatry (rev. 1/03).

Form H, Virginia Request for Podiatry Disciplinary Action (rev. 1/03).

Form I, National Board of Podiatric Medical Examiners Request for Scores on Part I and II (rev. 1/03).

Requirements and Instructions for an Intern/Resident License (rev. 1/03).

Intern/Resident, Form A, Memorandum from Associate Dean of Graduate Medical Education (rev. 1/03).

Intern/Resident, Form B, Certificate of Professional Education (rev. 12/02).

Application for a Temporary License for Intern/Resident Training Program (rev. 1/03).

Form H, Report of Clinical Rotations (rev. 12/02).

Instructions for Completing an Application for a Limited License to Practice Medicine as a Full-time Faculty Member or as a Full-time Fellow (rev. 3/03).

Application for a Limited License to Practice Medicine as a Full-time Faculty Member or as a Full-time Fellow (rev. 2/03).

Form G, Request for Status Report of Educational Commission for Foreign Medical Graduates Certification (rev. 12/02).

Form L, Certificate of Professional Education (rev. 12/02).

Continued Competency Activity and Assessment Form (rev. 4/00).

Instructions for Reinstatement of Medicine and Surgery Licensure Application (rev. 1/03).

Application for Reinstatement of License to Practice Medicine (rev. 1/03).

Form A, MD Reinstatement, Claims History Sheet (rev. 1/03).

Form B, MD Reinstatement, Activity Questionnaire Form (rev. 1/03).

Form C, MD Reinstatement, State Questionnaire Form (rev. 1/03).

MD Reinstatement, Disciplinary Inquiries to Federation of State Medical Boards (rev. 1/03).

Instructions for Reinstatement of Osteopathy Licensure Application (rev. 3/03).

Application for Reinstatement of License to Practice Osteopathy (rev. 3/03).

Form A, Osteopathy Reinstatement, Claims History (rev. 3/03).

Instructions for Reinstatement of Chiropractic Licensure Application (rev. 3/03).

Application for Reinstatement of License to Practice Chiropractic (rev. 3/03).

Instructions for Reinstatement of Podiatry Licensure Application (rev. 1/03).

Application for Reinstatement of License to Practice Podiatry (rev. 1/03).

Application for Reinstatement of License to Practice Medicine/Osteopathy After Petition for Reinstatement Denied or License Revoked (rev. 3/03).

Application for Reinstatement of License to Practice Medicine/Osteopathy (rev. 2/03).

Application for Reinstatement of License to Practice Chiropractic (rev. 3/03).

Renewal Notice and Application, 0101 Medicine and Surgery (rev. 12/02).

Renewal Notice and Application, 0102 Osteopathy and Surgery (rev. 12/02).

Renewal Notice and Application, 0103 Podiatry (rev. 12/02).

Renewal Notice and Application, 0104 Chiropractic (rev. 12/02).

Renewal Notice and Application, 0108 Naturopath (rev. 12/02).

Renewal Notice and Application, 0109 University and Limited License (rev. 12/02).

Renewal Notice and Application, 0116 Interns and Residents (rev. 12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

[ *Guidelines for Completing the Practitioner Profile Questionnaire* (rev. 12/02).

*Practitioner's Help Section* (rev. 11/02).

*Practitioner Questionnaire* (rev. 11/02). ]

VA.R. Doc. No. R02-215; Filed May 12, 2003, 10:05 a.m.

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**Title of Regulation: 18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18 VAC 85-40-10, 18 VAC 85-40-40, 18 VAC 85-40-45, 18 VAC 85-40-50, 18 VAC 85-40-60, 18 VAC 85-40-61, 18 VAC 85-40-65; adding 18 VAC 85-40-35, 18 VAC 85-40-66; repealing 18 VAC 85-40-80.**

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

**Effective Date:** July 2, 2003.

**Agency Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

**Summary:**

*The amendments establish requirements for 20 hours of continuing education per biennium from an approved sponsor or organization. Additional provisions address exemptions or extensions of time for compliance, documentation requirements, and evidence of continuing education for reinstatement or reactivation of an inactive license. The regulations also revise sections pertaining to approval of examination or the receipt of examination results to make the regulations more adaptable to computerized testing and allow the board to accept equivalent education to that required for credentialing by the National Board on Respiratory Care if another equivalent, national credential becomes available. Fees have been moved to Part I, General Provisions, without change.*

**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.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:2 VA.R. 341-348 October 7, 2002, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

**18 VAC 85-40-10 through 18 VAC 85-40-50. [ No change from proposed. ]**

**18 VAC 85-40-60. Renewal of license.**

A. Every licensed respiratory care practitioner intending to continue his licensure shall biennially in each odd-numbered year in his birth month:

1. Register with the board for renewal of his license;
2. Pay the prescribed renewal fee at the time he files for renewal; ~~and~~
3. ~~Engage~~ *Attest that he has engaged* in active practice as defined in 18 VAC 85-40-10. [ *or present other documented evidence acceptable to the board that he is prepared to resume practice* ] ; *and*
4. *Attest to having met the continuing education requirements of 18 VAC 85-40-66.*

B. A respiratory care practitioner whose licensure has not been renewed by the first day of the month following the month in which renewal is required shall pay a late fee as prescribed in ~~18 VAC 85-40-80~~ 18 VAC 85-40-35.

**18 VAC 85-40-61 through 18 VAC 85-40-80. [ No change from proposed. ]**

**FORMS. [ See 19:18 VA.R. 2717 May 19, 2003. ]**

VA.R. Doc. No. R02-30; Filed May 12, 2003, 10:10 a.m.

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**Title of Regulation: 18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (amending 18 VAC 85-101-10, 18 VAC 85-101-30 through 18 VAC 85-101-60, 18 VAC 85-101-100, 18 VAC 85-101-130, 18 VAC 85-101-140, 18 VAC 85-101-150, and 18 VAC 85-101-151; adding 18 VAC 85-101-25 and 18 VAC 85-101-61; repealing 18 VAC 85-101-80, 18 VAC 85-101-90, and 18 VAC 85-101-160).**

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

**Effective Date:** July 2, 2003.

**Agency Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

**Summary:**

*The amendments address concerns about the adequacy of training for the limited licensees and provide greater clarity for the regulated entities. Amendments require persons training as a radiologic technologist-limited to gain practical experience in the radiologic procedures for which they are seeking licensure, and provisions are established for a traineeship similar to that currently in effect for the radiologic technologists. In addition, the scope of practice for the limited licensee is further specified to exclude certain procedures for which they are not trained or tested.*

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*Regulations for endorsement are eliminated since the grandfathering provisions expired in 1999; persons licensed in other states who are seeking licensure in Virginia are licensed based on passage of the national examination. Finally, provisions for the implementation of continuing education requirements are added.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:6 VA.R. 965-971 December 2, 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. R02-145; Filed May 12, 2003, 10:10 a.m.

## BOARDS OF NURSING AND MEDICINE

Title of Regulation: **18 VAC 90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-10, 18 VAC 90-30-70, and 18 VAC 90-30-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: July 2, 2003.

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.

Summary:

*The regulation is amended to ensure that certifying agencies providing professional certification necessary for licensure as a nurse practitioner are accredited by an accrediting agency recognized by the U.S. Department of Education or are deemed acceptable to the National Council of State Boards of Nursing. An amendment is also added to create a specialty category of nurse practitioner.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:1 VA.R. 93-95, September 23, 2002, with the additional changes in the forms list shown below. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out; however, the changes to the forms are noted below.

**NOTICE:** The forms used in administering 18 VAC 90-30, Regulations Governing the Licensure of Nurse 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 Department of Health Professions, 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 Licensure--Nurse Practitioner (rev. 4/04 10/02 ).*

*Application for Licensure as a Nurse Practitioner (rev. 4/04 10/02 ).*

*Renewal Notice and Application, Nurse Practitioner, 0024 (rev. 2004 1/03 ). ]*

VA.R. Doc. No. R02-142; Filed May 12, 2003, 10:08 a.m.

## BOARD OF NURSING HOME ADMINISTRATORS

Title of Regulation: **18 VAC 95-20. Regulations of the Board of Nursing Home Administrators (amending 18 VAC 95-20-10, 18 VAC 95-20-175, 18 VAC 95-20-200, 18 VAC 95-20-220, 18 VAC 95-20-230, 18 VAC 95-20-300, 18 VAC 95-20-310, 18 VAC 95-20-330, 18 VAC 95-20-340, 18 VAC 95-20-380, and 18 VAC 95-20-390; repealing 18 VAC 95-20-290).**

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

Effective Date: July 2, 2003.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1717, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

Summary:

*The amendments allow additional hours of credit in an administrator-in-training program for persons with certain educational or professional credentials. Amendments also clarify certain sections and enable a trainee to work in a practicum or administrator-in-training program outside of Virginia in a licensed nursing care facility under the supervision of a nursing home administrator licensed in that jurisdiction.*

*Amendments to the proposed regulation permit up to five of the required 20 hours to be obtained through Internet or self-study courses and specify that, in order to receive credit in an AIT program, a registered nurse must have four years in an administrative-level supervisory position within the past five consecutive years.*

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:6 VA.R. 971-979 December 2, 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; however, the changes from the proposed regulation are printed below.

## 18 VAC 95-20-10. Definitions.

The following words and terms when used in this chapter shall have the definitions ascribed to them in § 54.1-3100 of the Code of Virginia:

Board

Nursing home

Nursing home administrator

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

"*Accredited institution*" means any degree-granting college or university accredited by an accrediting body approved by the United States Department of Education or any diploma-granting program approved by the Virginia Board of Nursing.

"*A.I.T.*" means a person enrolled in the administrator-in-training program in nursing home administration in a licensed nursing home.

"*Administrator-of-record*" means the licensed nursing home administrator designated in charge of the general administration of the facility and identified as such to the facility's licensing agency.

"*Approved sponsor*" means an individual, business or organization approved by the National Association of Boards of Examiners for Long Term Care Administrators or by an accredited education institution to offer continuing education programs in accordance with this chapter.

~~["*Classroom hour*" means 60 minutes of attendance in a program for obtaining continuing education. ]~~

"*Continuing education*" means the educational activities which serve to maintain, develop, or increase the knowledge, skills, performance and competence recognized as relevant to the nursing home administrator's professional responsibilities.

"*Full time*" means employment of at least 35 hours per week.

~~["*Hour*" means 60 minutes of participation in a program for obtaining continuing education. ]~~

"*Internship*" means a practicum or course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.

~~"*N.A.B.*" means the National Association of Boards of Examiners for Long Term Care Administrators.~~

"*National examination*" means a test used by the board to determine the competence of candidates for licensure as administered by the National Association of Boards of Examiners for Long Term Care Administrators or any other examination approved by the board.

~~"*Practicum*" means a course of study as part of a degree or post-degree program designed especially for the preparation of candidates for licensure as nursing home administrators that involves supervision by an accredited college or university of the practical application of previously studied theory.~~

"*Preceptor*" means a nursing home administrator currently licensed in Virginia and registered or recognized by the a nursing home administrator licensing board to conduct an administrator-in-training (A.I.T.) program.

"*State examination*" means a test used by the Board of Nursing Home Administrators to determine competency of a candidate relevant to regulations and laws in Virginia ~~for purposes of licensure governing nursing home administration.~~

## 18 VAC 95-20-175. Continuing education requirements.

A. In order to renew a nursing home administrator license, an applicant shall attest on his renewal application to completion of 20 [ ~~classroom~~ ] hours of approved continuing education for each renewal year.

1. Up to [ *five of the 20 hours may be obtained through Internet or self-study courses and up to* ] 10 continuing education hours in excess of the number required may be transferred or credited to the next renewal year.

2. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following initial licensure.

B. In order for continuing education to be approved by the board, it shall be related to health care administration and shall be approved by the National Association of Boards of Examiners for Long Term Care Administrators or by an accredited institution.

C. Documentation of continuing education.

1. The licensee shall retain in his personal files *for a period of three renewal years* complete documentation of continuing education including evidence of attendance [ *or participation* ] as provided by the approved sponsor for each course taken.

2. Evidence of attendance ~~may shall be a wall certificate or an original computerized document~~ provided by the approved sponsor and shall include:

- a. Date or dates the course was taken;
- b. Hours [ ~~attended~~ *of attendance or participation* ] ;
- c. Participant's name; and
- d. Signature of an authorized representative of the approved sponsor.

3. If contacted for an audit, the licensee shall forward to the board by the date requested a signed affidavit of completion on forms provided by the board and evidence of attendance [ *or participation* ] as provided by the approved sponsor.

D. The board may grant an extension of up to one year or an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the administrator, such as a certified illness, a temporary disability, mandatory military service, or officially declared disasters.

## 18 VAC 95-20-200. Reinstatement for nursing home administrator license or preceptor registration.

A. The board may reinstate a nursing home administrator license or preceptor registration that was not renewed within one year of the initial expiration date.

B. An applicant for nursing home administrator license reinstatement shall apply on a reinstatement form provided by



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the board, submit the reinstatement fee, and provide one of the following:

1. Evidence of ~~attendance at the equivalent of 20 [ classroom ]~~ hours of continuing education for each year since the last renewal, *not to exceed a total of 60 hours.*
2. Evidence of active practice in another state or U.S. jurisdiction or in the U.S. armed services during the period licensure in Virginia was lapses.
3. Evidence of requalifying for licensure by meeting the requirements prescribed in 18 VAC 95-20-220 or 18 VAC 95-20-225.

C. An applicant for preceptor reinstatement shall apply on a reinstatement form provided by the board, submit the reinstatement fee, and meet the current requirements for a preceptor in effect at the time of application for reinstatement.

## 18 VAC 95-20-220. Qualifications for initial licensure.

One of the following sets of qualifications is required for licensure as a nursing home administrator:

1. Degree and ~~practicum~~ *practical* experience. The applicant shall (i) hold a baccalaureate or higher degree in nursing home administration or a health care administration field from an accredited college or university; (ii) have completed ~~a 400-hour practicum (see 18 VAC 95-20-10) not less than a 320-hour internship in a licensed nursing home administration as part of the degree program under the supervision of a preceptor registered by the board;~~ and (iii) have received a passing grade on the state examination and the national examination;
2. Certificate program. The applicant shall (i) hold a baccalaureate or higher degree from an accredited college or university; (ii) ~~[ have completed ]~~ successfully ~~[ complete ]~~ a program with a minimum of 21 semester hours study in ~~long-term care nursing home administration or health care administration~~ from an accredited college or university; (iii) ~~[ have completed ]~~ successfully ~~[ complete ]~~ ~~a 400-hour practicum (see 18 VAC 95-20-10) not less than a 400-hour internship in a licensed nursing home as part of the certificate program under the supervision of a preceptor registered by the board;~~ and (iv) have received a passing grade on the state examination and the national examination; or
3. Administrator-in-training program. The applicant shall have (i) successfully completed an A.I.T. program which meets the requirements of Part IV (18 VAC 95-20-300 et seq.) of this chapter and (ii) received a passing grade on the state examination and the national examination.

**18 VAC 95-20-230 through 18 VAC 95-20-300. [ No change from proposed. ]**

## 18 VAC 95-20-310. Required hours of training.

A. The A.I.T. program shall consist of 2,000 hours of continuous training in a facility as prescribed in 18 VAC 95-20-330 to be completed within 24 months. An extension may be granted by the board on an individual case basis. The board may ~~grant credit toward~~ *reduce* the required hours for

applicants with certain qualifications as prescribed in subsection B, ~~and C, or D~~ of this section.

B. An A.I.T. applicant with prior health care work experience may request approval to receive a maximum 1,000 hours of credit toward the total 2,000 hours as follows:

1. Applicant shall have been employed full time for four of the past five consecutive years immediately prior to application as an assistant administrator or director of nursing in a training facility as prescribed in 18 VAC 95-20-330 ~~or in a nursing facility licensed by another jurisdiction in the United States;~~

2. Applicants with experience as a hospital administrator shall have been employed full time for three of the past five years immediately prior to application as a hospital administrator-of-record or an assistant hospital administrator in a hospital setting having responsibilities in all of the following areas:

- a. Regulatory;
- b. Fiscal;
- c. Supervisory;
- d. Personnel; and
- e. Management.; or

3. ~~Applicants who hold a license as a registered nurse [ and who have had at least four years of supervisory experience shall have held an administrative level supervisory position for at least four of the past five consecutive years, ] in a training facility as prescribed in 18 VAC 95-20-330.~~

C. An A.I.T. applicant with the following educational qualifications ~~may request approval to receive a maximum of 1,000 hours of credit toward the total 2,000 hours shall meet these requirements:~~

1. An applicant with a master's or a baccalaureate degree in health care administration or a comparable field ~~with no internship shall complete 320 hours in an A.I.T. program;~~ or
2. An applicant with ~~both a bachelor's degree and an internship in health care administration, long-term care or a comparable field.~~ a master's degree in an unrelated field shall complete 1,000 hours in an A.I.T. program;
3. An applicant with a baccalaureate degree in an unrelated field shall complete 1,500 hours in an A.I.T. program; or
4. An applicant with 60 semester hours of education in an accredited college or university shall complete 2,000 hours in an A.I.T. program.

~~D. An A.I.T. applicant with a bachelor's degree in health care administration, long-term care or a comparable field may request approval to receive a maximum of 500 hours of credit toward the total 2,000 hours.~~

~~E. D.~~ An A.I.T. shall be required to serve weekday, evening, *night* and weekend shifts to receive training in all areas of nursing home operation.

**18 VAC 95-20-330 through 18 VAC 95-20-390. [ No change from proposed. ]**

**NOTICE:** The forms used in administering 18 VAC 95-20, Regulations of the Board of Nursing Home Administrators, 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 Nursing Home Administrators, 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 [ *Nursing Home Administrator* ] Licensure (rev. [ ~~4/98~~ 11/02 ]).

Endorsement Certification Form [ *A* ] (rev. ~~4/98~~ 11/02 ).

Application for Administrator-in-Training [ *Registration* ] (rev. ~~4/98~~ 3/03 ).

Application for Preceptor Registration (rev. ~~4/98~~ 11/02 ).

Application for Reinstatement of License (rev. ~~4/98~~ 11/02).

~~Form Letter and Affidavit of Completion for Required CE Documentation (rev. 10/98).~~

Renewal Notice and Application (rev. ~~7/97~~ 2002).

VA.R. Doc. No. R02-8; Filed May 12, 2003, 10:14 a.m.

## BOARD OF OPTOMETRY

**Title of Regulation:** 18 VAC 105-20. Regulations Governing the Practice of Optometry (adding 18 VAC 105-20-75).

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

**Effective Date:** July 2, 2003.

**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.

### Summary:

*The amendment complies with Chapter 740 of the 2002 Acts of Assembly, which mandates that the board promulgate regulations for an out-of-state practitioner to be licensed to volunteer his services to a nonprofit organization that has no paid employees and offers health care to underprivileged populations throughout the world. The added section sets forth the information and documentation that must be provided prior to such service to ensure compliance with the statute.*

## CHAPTER 20. REGULATIONS OF THE VIRGINIA BOARD GOVERNING THE PRACTICE OF OPTOMETRY.

### **18 VAC 105-20-75. Registration for voluntary practice by out-of-state licensees.**

*Any optometrist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:*

- 1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice. An incomplete application will not be considered;*
- 2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;*
- 3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;*
- 4. Pay a registration fee of \$10; and*
- 5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 2 of § 54.1-3202 of the Code of Virginia.*

**NOTICE:** The forms used in administering 18 VAC 105-20, Regulations Governing the Practice of Optometry, 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 Optometry, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Optometry Licensure Applicant Instructions (rev. 11/02).

Form A, Application for a License to Practice Optometry (rev. 11/02).

~~Form B, Licensure Verification (rev. 11/02).~~

Diagnostic Pharmaceutical Agents Endorsement Application (rev. 11/02).

Professional Designation Application (rev. 11/02).

Professional Designation Application Letter (rev. ~~7/04~~ 12/02).

Application for Reinstatement (rev. 11/02).

License Renewal Notice and Application, 0601, Optometrist (rev. ~~5/02~~ 12/02).

License Renewal Notice and Application, 0603, Professional Designation (rev. 12/02).

Clearance from Other State Boards (eff. 11/02).

Application for Registration for Volunteer Practice (eff. 12/02).

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# Final Regulations

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*Sponsor Certification for Volunteer Registration (eff. [ 42/02 01/03 ] ).*

VA.R. Doc. No. R02-290; Filed May 12, 2003, 10:05 a.m.

## BOARD OF PHARMACY

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Health Professions will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (amending 18 VAC 110-20-170, 18 VAC 110-20-330, and 18 VAC 110-20-411).

**Statutory Authority:** §§ 54.1-2400 and 54.1-3309 of the Code of Virginia.

**Effective Date:** July 2, 2003.

**Summary:**

*The amendments eliminate the requirement that each pharmacy maintain a current copy of the Virginia Voluntary Formulary and eliminate a reference to repealed § 32.1-87 of the Code of Virginia, which established the Virginia Formulary. By enactment of Chapter 639 of the 2003 Acts of Assembly, the Formulary has been deleted from the Code of Virginia. The regulation is also amended to specify that compounding of pharmaceuticals must be in accordance with new provisions established in § 54.1-3410.2 of the Code of Virginia by enactment of Chapter 509 of the 2003 Acts of Assembly.*

**Agency Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.state.va.us.

### 18 VAC 110-20-170. Required minimum equipment.

The pharmacist-in-charge shall be responsible for maintaining the following equipment:

1. A current dispensing information reference source.
2. A set of Prescription Balances, sensitive to 15 milligrams, and weights or an electronic scale.
3. A copy of the current Virginia Drug Control Act and board regulations.
4. A current copy of the Virginia Voluntary Formulary.
- 5- 4. Other equipment, supplies, and references consistent with the pharmacy's scope of practice and with the public safety.

### 18 VAC 110-20-330. Labeling of prescription as to content and quantity.

Unless otherwise directed by the prescribing practitioner, any drug dispensed pursuant to a prescription shall bear on the label of the container, in addition to other requirements of §§ 54.1-3410 and 54.1-3463 of the Code of Virginia, the following information:

1. The drug name and strength, when strength is applicable:
  - a. For any drug product possessing a single active ingredient, the generic name of the drug shall be included on the label.
  - b. If a generic drug is dispensed when a prescription is written for a brand name drug, the label shall contain the generic name followed by the words "generic for" followed by the brand name of the drug prescribed, and, ~~in accordance with § 32.1-87 A of the Code of Virginia,~~ the label shall also contain the generic's brand name or the manufacturer or distributor of the drug dispensed.
2. The number of dosage units or, if liquid, the number of milliliters dispensed.

### 18 VAC 110-20-411. General requirements.

Products intended for parenteral administration or ophthalmic instillation shall be compounded using aseptic processing and in accordance with § 54.1-3410.2 of the Code of Virginia.

VA.R. Doc. No. R03-205; Filed May 12, 2003, 10:07 a.m.

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**Title of Regulation:** 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (adding 18 VAC 110-20-75).

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

**Effective Date:** July 2, 2003.

**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.

**Summary:**

*The amendments establish registration requirements for voluntary pharmacist practice by out-of-state licensees.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

### 18 VAC 110-20-75. Registration for voluntary practice by out-of-state licensees.

*Any pharmacist who seeks registration to practice on a voluntary basis pursuant to subdivision 12 of § 54.1-3301 of the Code of Virginia under the auspices of a publicly supported, all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world shall:*

1. *File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;*
2. *Provide a complete list of each state in which he has held a pharmacist license and a copy of any current license;*
3. *Provide the name of the nonprofit organization and the dates and location of the voluntary provision of services;*
4. *Pay a registration fee of \$10; and*
5. *Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 12 of § 54.1-3301 of the Code of Virginia.*

**NOTICE:** The forms used in administering 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, 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 Pharmacy, 6603 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

- Application for Registration as a Pharmacy Intern (rev. 12/02).
- Affidavit of Practical Experience, Pharmacy Intern (rev. 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. 11/02).
- Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. 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).
- Renewal Notice and Application, 0201 Pharmacy (rev. 12/02).
- Renewal Notice and Application, 0202 Pharmacist (rev. 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. 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. 11/02).
- Closing of a Pharmacy (rev. 11/02).
- Application for Approval of a Robotic Pharmacy System (rev. 11/02).
- Notice of Inspection Fee Due for Approval of Robotic Pharmacy System (rev. 11/02).
- Application for Approval of an Innovative (Pilot) Program (rev. 11/02).
- Application for Registration as a Pharmacy Technician (12/02).
- Application for Approval of a Pharmacy Technician Training Program (12/02).
- Application for Registration for Volunteer Practice (eff. 12/02).*
- Sponsor Certification for Volunteer Registration (eff. [ ~~12/02~~ 1/03 ] ).*

VA.R. Doc. No. R02-291; Filed May 12, 2003, 10:15 a.m.

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# Final Regulations

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## REAL ESTATE BOARD

Title of Regulation: **18 VAC 135-40. Time-Share Regulations (amending 18 VAC 135-40-20, 18 VAC 135-40-50, 18 VAC 135-40-60, 18 VAC 135-40-80, 18 VAC 135-40-110, [ 18 VAC 135-40-140, ] 18 VAC 135-40-150, 18 VAC 135-40-160, 18 VAC 135-40-420, and 18 VAC 135-40-430; repealing 18 VAC 135-40-10, 18 VAC 135-40-30, 18 VAC 135-40-40, 18 VAC 135-40-70, 18 VAC 135-40-90, 18 VAC 135-40-120, 18 VAC 135-40-130, 18 VAC 135-40-170 through 18 VAC 135-40-410, and 18 VAC 135-40-440 through 18 VAC 135-40-530).**

Statutory Authority: § 55-396 of the Code of Virginia.

Effective Date: July 2, 2003.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475 or e-mail oneal@dpor.state.va.us.

Summary:

*The amendments eliminate duplication with the statutes, streamline the explanation of the registration and annual report process, and further clarify the regulations.*

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.

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 18:23 VA.R. 3061-3075 July 29, 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 135-40-10 through 18 VAC 135-40-90. [ No change from proposed. ]**

**18 VAC 135-40-110. Time-share marketing standards.**

A. No promise, assertion, representation or statement of fact or opinion in connection with a time-share marketing activity shall be made which is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances or features of the time-share project or a time-share.

~~B. There shall be no indication that an improvement will be built or placed in the time share project unless the developer has sufficient financial assets and a bona fide intention to complete the improvement as represented.~~

~~C. B.~~ No promise, assertion, representation or statement of fact or opinion made in connection with a time-share marketing activity and relating to a time-share project not registered shall, by its express terms, induce, solicit or encourage a contract for sale or performing some other act which would create or purport to create a legal or equitable interest in the time-share other than a security interest in [ or ] a nonbinding reservation of the time-share, when to do so

would circumvent the provisions of ~~this~~ *the Virginia Real Estate Time-Share Act.*

**18 VAC 135-40-120. [ No change from proposed. ]**

**18 VAC 135-40-130. [ No change from proposed. ]**

**[ 18 VAC 135-40-140. Preparation and distribution of public offering statement.**

A. The public offering statement shall be clear and legible with pages numbered sequentially. ~~Only a blank cover or a cover bearing identifying information may be used. Except as elsewhere provided, no portion of the public offering statement may be underscored, italicized or printed in larger, heavier or different color type than the remainder of the public offering statement.~~ The first ~~page(s)~~ *page* of the public offering statement shall conform to the specimen appended as Appendix A to this chapter and made a part hereof.

B. The developer may include as part of the public offering statement a receipt page printed in such a way that the developer may obtain verification that a prospective purchaser has received the public offering statement. The receipt page shall include the effective date of the public offering statement as well as a place for the date of delivery and signature lines for the prospective purchaser. The authorized receipt page in proper form, duly executed, shall be evidence that the public offering statement was delivered.

C. The developer shall distribute a current public offering statement to any prospective purchaser before such purchaser executes a contract to purchase a time-share. ]

**18 VAC 135-40-150. Nature of information to be included in public offering statement.**

A. The provisions of ~~§ 55-374.1~~ *§ 55-374* of the Code of Virginia and 18 VAC 135-40-100 ~~through 18 VAC 135-40-399~~ of this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement [ ~~and, thereby, to protect the interests of purchasers of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered~~ ].

B. The requirements for disclosure are not exclusive. In addition to expressly required information, the developer shall disclose all other available information which may reasonably be expected to affect the decision of the ordinarily prudent purchaser to accept or reject the offer of a time-share. The developer shall disclose any additional information necessary to make the required information not misleading. No information may be presented in such a fashion as to obscure the facts, to encourage a misinterpretation of the facts or otherwise to mislead a purchaser.

C. No information shall be incorporated by reference to an extrinsic source which is not readily available or already known to an ordinary purchaser. Whenever required information is not known or not reasonably available, such fact shall be stated in the public offering statement with a brief explanation. Whenever special circumstances exist which would render required disclosure inaccurate or misleading, the required disclosure shall be modified to accomplish the purpose of the requirement or the disclosure shall be omitted,

provided that such modification or omission promotes full and accurate disclosure.

~~D. Disclosure shall be made of pertinent facts, events, conditions or other states of affairs which the developer has reason to believe will occur or exist in the future or which the developer intends to cause to occur or to exist in the future. Disclosure relating to future facts, events, or conditions shall be limited by the provisions of subsection F hereof.~~

~~E. D.~~ The public offering statement shall be as brief as is consistent with full and accurate disclosure. In no event shall the public offering statement be made so lengthy or detailed as to discourage close examination. Duplication and unnecessary legal language is discouraged.

~~F. E.~~ Expressions of opinion in the public offering statement shall be deemed inconsistent with full and accurate disclosure unless there is *ample an existing* foundation in fact for the opinion *expressed therein*; provided, however, that this sentence shall not affect in any way the developer's duty to set forth a projected budget for the time-share estate program's operation.

~~G. F.~~ Except for brief excerpts ~~therefrom~~, the public offering statement shall not incorporate verbatim portions of the time-share instrument or other documents. *The developer is encouraged in the public offering statement to direct the purchaser's attention may be directed* to pertinent portions of the [ *time-share* ] instrument or documents attached to the public offering statement ~~which are too lengthy to incorporate verbatim where required disclosures can be found, and if incorporated by reference, shall be deemed to be a part of the public offering statement.~~

~~H. G.~~ Maps, photographs and drawings may be utilized in the public offering statement, provided that such ~~utilization~~ use promotes full and accurate disclosure of the *required characteristics [ of and material circumstance affecting the time-share project and the characteristics of the time-share(s) being offered ]*.

**18 VAC 135-40-160. Readability of public offering statement.**

The public offering statement shall be clear and understandable. The public offering statement may be written in narrative, question and answer, or other form selected by the developer so long as all information required by the [ *Virginia* ] Real Estate Time-Share Act and this chapter is included in a clear and understandable manner. *Use of defined terms in the [ Virginia ] Real Estate Time-Share Act in writing the public offering statement is encouraged.* Determination as to compliance with the ~~standards of this paragraph~~ *are section* is within the exclusive discretion of the board.

**18 VAC 135-40-170 through 18 VAC 135-40-420. [ No change from proposed. ]**

**18 VAC 135-40-430. Filing of amended public offering statement.**

A. The developer shall ~~promptly~~ file with the board a copy of [ *an the* ] amended public offering statement [ *generated pursuant to 18 VAC 135-40-420* ]. ~~Unless subsection D hereof~~

~~applies, the developer shall, as a part of such filing, update the application for registration on file with the board either by filing a new application or by advising the board of changes in the information contained in a previously filed application or file new or substitute documents. In the case of a public offering statement (i) amended other than in connection with a material change or (ii) presumed current pursuant to 18 VAC 135-40-450 of this chapter the filing shall indicate the date of amendment. The filing shall be dated by the developer and its receipt dated by the board. The amended public offering statement shall be effective upon its receipt by the board.~~

~~B. Unless subsection D hereof applies, the board shall issue a notice of filing within five business days following receipt in proper form of the materials required by subsection A hereof. The board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with 18 VAC 135-40-420 of this chapter. At such time as the board affirmatively determines that the amendment complies with 18 VAC 135-40-420 of this chapter but not later than the 30th day following issuance of the notice of filing, it shall enter an order designating the amended form and content of the public offering statement to be used. Such order shall provide that previous orders designating the form and content of the public offering statement for use are superseded.~~

~~C. If the board determines, pursuant to subsection B hereof, that an amendment to the public offering statement does not comply with 18 VAC 135-40-420 of this chapter it shall immediately, but in no event later than the 20th day following issuance of the notice of filing enter an order declaring the amendment not in compliance with 18 VAC 135-40-420 of this chapter and specifying the particulars of such noncompliance. In the case of a public offering statement amended other than in connection with a material change, the order shall relate back to the date of amendment. If neither of the orders provided for by this subsection C and subsection B hereof are entered within the time allotted, the amendment shall be deemed to comply with 18 VAC 135-40-420 of this chapter. The developer may, at a time, correct and refile an amended public offering statement; provided, however, that if an order of noncompliance has been entered with respect to the amendment, all of the provisions of subsections A and B hereof and this subsection C shall apply to such refiling.~~

~~D. If the material change which resulted in amendment of the public offering statement was an expansion of the time share project, the developer shall file an amendment to the application for registration of the additional units, provided, that no such amendment need be filed for units previously registered. Any such amendment to the application for registration shall be subject to all of the provisions of Part II (18 VAC 135-40-50 et seq.) and the board shall observe the procedures of 18 VAC 135-40-430 of this chapter in regard to the application. Documents then on file with the board and not changed in connection with the creation of additional units need not be refiled, provided that the amendment indicates that such documents are unchanged.~~

~~E. In each case in which an amendment B. When an amended document [ pursuant to 18 VAC 135-40-420 ] is filed~~

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# Final Regulations

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~~pursuant to this section and the manner of its amendment is with the board, and the amendments are not apparent on the face of the document, the developer shall provide an indication of the manner and extent of amendment document shall be redlined, highlighted or otherwise marked to indicate the changes.~~

**18 VAC 135-40-440 through 18 VAC 135-40-530. [ No change from proposed. ]**

**NOTICE:** The forms used in administering 18 VAC 135-40, Time-Share Regulations, 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 Real Estate Board, 3600 W. Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Appendix A -- *Public Offering Statement* [ (eff. 7/03) ].

*Application for Registration of Time-Share.*

VA.R. Doc. No. R01-118; Filed May 14, 2003, 12:04 p.m.



## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

**Title of Regulation: 22 VAC 40-220. Agency Placement Adoptions -- Guiding Principles (repealing 22 VAC 40-220-10 and 22 VAC 40-220-20).**

**Statutory Authority: §§ 63.1-25 and 63.1-56 of the Code of Virginia.**

**Effective Date: July 2, 2003.**

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

**Summary:**

*The regulation, which sets forth guiding principles for local departments of social services in providing agency placement adoption services, is repealed as the state and federal laws reflected in the regulation are no longer in effect.*

**Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.**

**REGISTRAR'S NOTICE:** The proposed regulation was adopted as published in 19:6 VA.R. 994-995 December 2, 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. R02-152; Filed May 9, 2003, 2:07 p.m.



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# EMERGENCY REGULATIONS

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## TITLE 22. SOCIAL SERVICES

### STATE BOARD OF SOCIAL SERVICES

**Title of Regulation:** 22 VAC 40-293. Locality Groupings (adding 22 VAC 40-293-10 and 22 VAC 40-293-20).

**Statutory Authority:** § 63.2-217 of the Code of Virginia and Chapter 899 of the 2002 Acts of Assembly (Item 353, paragraph F).

**Effective Dates:** July 1, 2003, through June 30, 2004.

**Preamble:**

*The emergency regulation is necessary as provided by the 2002 Appropriation Act, Item 353, Paragraph F (Chapter 899, 2002 Acts of Assembly), which specifies that regulations regarding changing Temporary Assistance for Needy Families (TANF) locality groupings be established within 280 days of the effective date of the act. The regulation is not otherwise exempt under the provisions of § 2.2-4006 A 4 of the Administrative Process Act. This action establishes regulations by which local boards of social services may request changes in their locality groupings, which is used to determine the amount of payment for TANF families.*

*This is a new regulation that is being established. Currently, localities are placed in groupings that determine the payment levels for TANF. Procedures to change locality groupings have never been regulated. These regulations provide the rules for these changes, including the data to be provided to the State Board of Social Services, the requirement that funds be available as determined by the commissioner, and the ability to change data sources being relied upon with the consent of the state board. Also, recipients of TANF in a locality that switches to a lower locality grouping shall continue to receive TANF assistance at the level established prior to regrouping.*

**Agency Contact:** Mark Golden, TANF Manager, Department of Social Services, 730 East Broad Street, 7th Floor, Richmond, VA 23219, telephone (804) 692-1731, FAX (804) 225-2321, e-mail mxg2@dss.state.va.us.

CHAPTER 293.  
LOCALITY GROUPINGS.

**22 VAC 40-293-10. Definitions.**

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

*"Locality groupings" means the placement of a locality into either Group I, Group II, or Group III, which determines the Temporary Assistance for Needy Families (TANF) payment level for families residing in that locality.*

*"Standard of assistance" means the TANF payment standard that is graduated by family size.*

*"State Board" means the State Board of Social Services.*

**22 VAC 40-293-20. Changing locality groupings.**

*A. A locality may change standard of assistance locality groupings by approval of the State Board. The local board of social services shall request the change in writing to the State Board of Social Services and shall provide:*

*1) the most recently available fair market rent data from the U.S. Department of Housing and Urban Development. Other data sources may be used upon approval of the State Board. Such data shall include a comparison of shelter costs in the petitioning locality and adjacent localities; and*

*2) data showing the proportion of TANF recipients to the general population of the locality, in the case of a request to change to a lower locality grouping. Such data shall include a comparison of the proportion of TANF recipients in the petitioning locality and adjacent localities; and*

*3) documentation that the request to change locality groupings has been reviewed by the local governing body.*

*B. The Department of Social Services shall prepare a fiscal impact statement. The fiscal impact statement shall include the cost of benefits, the cost of altering information systems, and associated administrative costs. If the fiscal impact statement demonstrates increased costs, the Commissioner of the Department of Social Services must certify that funds are available for increased costs.*

*C. If the State Board approves a request to be reclassified into a locality grouping with lower standards of assistance, such reclassification shall be phased in by providing that eligibility and the amount of benefits in cases open at the time of such reclassification shall continue to be determined using the standards in effect in the former locality grouping at the time of the reclassification.*

*D. The State Board shall approve the request if:*

*1) within a locality and adjacent localities, it will achieve a higher degree of equity in public assistance payments; and*

*2) the data demonstrates that there is a disproportionate number of TANF recipients in the locality when compared to adjacent localities, in the case of a locality requesting a change to a lower locality grouping; and*

*3) funds are available for increased costs.*

/s/ Mark R. Warner

Governor

Date: May 8, 2003

VA.R. Doc. No. R03-204; Filed May 9, 2003, 2:08 p.m.

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# GOVERNOR

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EXECUTIVE ORDER NUMBER 44 (2003)

/s/ Mark R. Warner  
Governor

VA.R. Doc. No. R03-208; Filed May 14, 2003, 11:50 a.m.

## **SUPPORTING STATE EMPLOYEES WHO ARE CALLED TO ACTIVE DUTY**

By virtue of the authority vested in me as Governor, Commander-in-Chief of the armed forces of the Commonwealth, and as Chief Personnel Officer, under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to, Chapter 1 of Title 2.2 and Section 2.2-2100, Section 2.2-103, and Section 44-93.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby set forth a policy for supporting classified state employees who are called to active duty in the armed forces of the United States.

### **Importance of Supporting Classified State Employees Called to Active Duty**

The National Guard and reserve components of the armed forces of the United States are critical to our national defense. It is only right, indeed it is imperative, that our Commonwealth support our state employees who have been called to active duty, fighting in the cause of freedom. These fighting men and women leave behind families they must support and financial obligations that they must meet.

### **Establishing a Pay Supplement for State Employees Called to Active Duty**

I hereby direct the following:

1. That the Department of Human Resource Management, in cooperation with the Department of Planning and Budget, shall promulgate an appropriate policy establishing supplemental pay for classified state employees called to active duty military service in the Armed Forces of the United States, in cases where military pay is less than the employee's normal state pay. This policy shall provide, to the extent possible, for supplemental pay based on the difference between the state employee's normal salary and the active duty pay and allowances paid to the employee for serving in the armed forces of the United States.
2. I hereby charge my Secretaries of Administration and Finance with implementing this policy effective March 26, 2003.
3. This policy shall apply to all classified state employees.
4. I call upon the governing authority of all legislative, independent, and judicial agencies and institutions of higher education to strongly consider adopting similar policies. I also authorize heads of executive branch agencies to adopt similar policies for non-classified, full-time employees.

### **Effective Date of the Executive Order**

This Executive Order shall be effective immediately upon its signing and shall remain in full force and effect unless amended or rescinded by further Executive Order.

Given under my hand and the Seal of the Commonwealth of Virginia, this 26th day of March 2003.

EXECUTIVE ORDER NUMBER 45 (2003)

## **CONTINUING THE GOVERNOR'S COMMISSION ON NATIONAL AND COMMUNITY SERVICE**

Mindful of the importance of national and community service, and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-134 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Commission on National and Community Service, which was created in 2002.

The Commission is classified as a gubernatorial advisory commission in accordance with Section 2.2-2100 of the Code of Virginia.

The Commission shall be established to comply with the provisions of the National and Community Services Trust Act of 1993 and to advise the Governor on matters related to promotion and development of national service in the Commonwealth of Virginia. The Commission shall have the following specific duties:

1. To advise the Governor, the Secretaries of Health and Human Resources, Education, Natural Resources, and the Commissioner of the Department of Social Services on national and community service programs in Virginia and on fulfilling the responsibilities and duties prescribed by the federal Corporation for National Service.
2. To advise the Governor, the Secretaries of Health and Human Resources, Education, Natural Resources, and the Commissioner of the Department of Social Services on the development, implementation, and evaluation of Virginia's Unified State Plan that outlines strategies for supporting and expanding national and community service throughout the Commonwealth.
3. To promote the expansion of AmeriCorps programs to meet Virginia's most pressing human, educational, environmental, and public safety needs.
4. To work collaboratively with the Governor's Citizen Corps Initiative to promote volunteerism and public service throughout the Commonwealth.
5. To collaborate with the Virginia Department of Social Services and the Virginia Volunteerism Leadership Council to recognize and call attention to the significant community service contributions of Virginia citizens and organizations.
6. To encourage Virginians to answer the President's challenge to dedicate two years over the course of a lifetime to service to others.

7. To develop a plan for doubling, within four years, the number of Virginia service programs supported by the Corporation for National Service.
8. To highlight the significant voluntary contributions of Virginia citizens, businesses, and organizations.
9. To advise the Secure Virginia Panel on ways to integrate community service programs into the Commonwealth's preparedness efforts.
10. To promote and coordinate State programs offering opportunities for community service within the Commonwealth.

The Commission shall be comprised of no more than twenty-five voting members appointed by the Governor and serving at his pleasure. No more than 25 percent of voting members may be state employees.

The Governor may appoint additional persons at his discretion as ex-officio non-voting members. The voting members of the Commission shall elect the Chairman. Commission voting membership shall include representatives for the categories as outlined in federal regulations issued by the Corporation for National Service.

Such staff support as is necessary to support the Commission's work during the term of its existence shall be furnished by the Office of the Secretary of Health and Human Resources, the Department of Social Services, and any other executive branch agencies having definitely and closely related purposes, as the Governor may designate. An estimated 900 hours of staff time will be required to support the work of the Commission.

Funding necessary to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Commission, authorized by Section 2.2-135 of the Code of Virginia. Direct costs for this Commission are estimated at \$5,000.

Members of the Commission shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties.

The Commission shall meet at least quarterly upon the call of the Chairperson. The Commission shall make an annual report to the Governor and shall issue such other reports and recommendations as it deems necessary or as requested by the Governor.

This Executive Order shall be effective upon its signing and shall remain in force and effect until May 2, 2004 unless amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia this 1st day of May 2003.

/s/ Mark R. Warner  
Governor

VA.R. Doc. No. R03-209; Filed May 14, 2003, 11:50 a.m.

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# GENERAL NOTICES/ERRATA

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## STATE CORPORATION COMMISSION

AT RICHMOND, MAY 9, 2003

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2002-00014

Ex Parte: In re: proposed regulation relating to bank acquisitions of real estate brokerage subsidiaries

### DISMISSAL ORDER

On February 25, 2003, the Virginia Bankers Association ("VBA") and Virginia Association of Realtors ("VAR") requested that the State Corporation Commission ("Commission") cancel the hearing scheduled for March 4, 2003, in anticipation of the enactment of legislation that addresses the issues involved in this case. The VBA and VAR further requested that the Commission suspend action on the proposed regulation to allow such legislation to become effective on July 1, 2003, at which time this matter should be closed with no further action. Staff does not object.

On February 28, 2003, the Commission entered an Order in this case to cancel the hearing and continue the case generally pending further order of the Commission. Thereafter, the 2003 General Assembly enacted Chapters 536 and 558, which authorize state-chartered banks to own controlled subsidiary corporations that engage in the real estate brokerage business subject to application and approval by the Commission and various other conditions. This legislation will become effective on July 1, 2003.

Having considered Chapters 536 and 558 of the 2003 Acts of Assembly, and the joint request made by the VBA and VAR, the Commission finds that the General Assembly has addressed the issues involved in this case and that no further action should be taken in this matter. The Commission further finds that no purpose is served by keeping this matter pending on the active docket until the legislation becomes effective on July 1, 2003.

Accordingly, IT IS ORDERED THAT:

(1) Beginning July 1, 2003, applications submitted by state-chartered banks to acquire controlled subsidiary corporations that engage in the real estate brokerage business will be reviewed by the Commission in accordance with § 6.1-58.3 of the Code of Virginia.

(2) This case is dismissed.

(3) The papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: John G. "Chip" Dicks, Esquire, FutureLaw, L.L.C., 1015 East Main Street, Third Floor, Richmond, Virginia 23219; Joseph E. Spruill, III, General Counsel, Virginia Bankers Association, P.O. Box 462, Richmond, Virginia 23218; Raphael C. La Mura, Director of Legislative Affairs, Virginia Bankers Association, P.O. Box 462, Richmond, Virginia 23218; Walter C. Ayers, Executive Vice President,

Virginia Bankers Association, P.O. Box 462, Richmond, Virginia 23218; and to the Commissioner of Financial Institutions.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **Total Maximum Daily Loads (TMDLs) to Address Multiple Impairments in the Mossy Creek and Long Glade Run Watersheds**

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) to address multiple impairments in the Mossy Creek and Long Glade Run watersheds. The subject stream segments are identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standards for bacteria, the General Standard (benthics), or both. The bacteria impairments include 9.65 miles on Mossy Creek and 10.74 miles on Long Glade Run. The benthic impairment includes 9.65 miles on Mossy Creek.

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 public meeting on the development of TMDLs to address the impairments in the subject stream segments will be held on Tuesday, June 3, 2003, at 7 p.m. at North River Elementary School located at 3395 Scenic Highway in Mount Solon, Virginia.

The public comment period for this phase of the TMDL will end on July 2, 2003. A fact sheet on the development of the TMDLs for the bacteria and benthic impairments is available upon request. Questions or information requests should be addressed to Gary Flory. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Gary Flory, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7840, FAX (540) 574-7878, or e-mail [gflory@deq.state.va.us](mailto:gflory@deq.state.va.us).

### **THE VIRGINIA STATE BOARD OF HEALTH and THE VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

#### **Proposed Notice of Request for Certificate of Public Need Applications for Development of Additional Nursing Home Beds**

#### **Legal Notice of Request for Certificate of Public Need Applications.**

Pursuant to the authority vested in the State Board of Health ("Board") and the Department of Medical Assistance Services ("DMAS") by § 32.1-102.3:2 of the Code of Virginia, notice is hereby given of the issuance of a proposed Request for Applications ("RFA"). This RFA is a request for certificate of public need ("COPN") applications for projects that will result

in an increase in the number of beds in which nursing home services are provided in the Commonwealth of Virginia. The RFA process is outlined in 12 VAC 5-220-335 of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

### **Eligible Planning District and Total Nursing Home Beds Available for Authorization.**

In the review cycles established by this RFA, the Commissioner of Health will consider requests for COPNs that propose an increase in nursing home beds in the planning districts ("PD") identified below and that propose an increase in beds no greater than the number of available beds shown below for each planning district. COPN requests that propose an increase in nursing home beds in any other planning district, not identified below, or propose an increase in beds greater than the number of available beds shown below for each planning district will not be accepted for review.

Planning District 9, also known as Rappahannock-Rapidan Planning District, consisting of the counties of Culpeper, Fauquier, Madison, Orange, and Rappahannock.

Total nursing home beds available for authorization: 60.

Planning District 19, also known as Crater Planning District, consisting of the counties of Dinwiddie, Greensville, Prince George, Surry, and Sussex and the cities of Colonial Heights, Emporia, Hopewell, and Petersburg.

Total nursing home beds available for authorization: 60.

### **Evaluation of Need for Additional Nursing Home Beds.**

The "Nursing Home Services" component of the Virginia State Medical Facilities Plan ("SMFP") (12 VAC 5-360) contains a nursing home bed need forecasting method (12 VAC 5-360-40 C). This method has been employed by the Virginia Department of Health to compute a forecast of needed nursing home beds in 2006 in each of Virginia's twenty-two planning districts.<sup>1</sup>

Consistent with the Virginia State Medical Facilities Plan (12 VAC 5-360-40 A), no planning district is considered to have a need for additional nursing home beds unless the estimated average annual occupancy of all existing non-federal, Medicaid-certified nursing home beds in the planning district was at least 95% for the most recent three years for which bed utilization has been reported to the Virginia Department of Health (through nursing home filings with Virginia Health Information, Inc.).<sup>2</sup>

For purposes of this document, reporting years 1999 through 2001 are considered to be the most recent three years. The estimated average annual occupancy rates of some planning districts were adjusted to take into account certain regulatory sanctions (i.e., denial of payment for new admissions) that

could have affected the ability of some nursing homes to admit Medicare and/or Medicaid patients for varying periods of time during 1999 through 2001.

Also, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted nursing home beds authorized for the planning district that will be Medicaid-certified beds. The following table displays, by planning district, the nursing home gross bed need forecast for 2006, the current licensed bed inventory and authorized additions of nursing home beds, and the *net* bed need forecast for 2006.

The table also shows the estimated average annual occupancy rate of Medicaid-certified nursing home beds for each planning district for the reporting years 1999 through 2001, adjusted for regulatory sanctions in some cases, and identifies the status of each planning district with respect to authorized but uncompleted nursing home beds. The final column of the table states whether the planning district qualifies for additional nursing home beds for 2006.

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<sup>1</sup> For conduct of the certificate of public need program, the Virginia Department of Health continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than the new combined Planning District 23, Hampton Roads.

<sup>2</sup> The inventory and utilization of the Virginia Veterans Care Center are excluded, by regulation, from consideration in the determination of nursing home bed need.

# General Notices/Errata

## Nursing Home Bed Need Forecast and Whether a Planning District Qualifies for Additional Nursing Home Beds in 2006

Planning District	Bed Need Forecast For 2006	Existing and Authorized Beds	Projected Net Bed Need In 2006	Estimated Avg. Occupancy Medicaid Beds 1999-2001	Authorized But Uncompleted Medicaid Beds	Plan. District Qualifies for Additional NH Beds
1	550	620	(70)	94.6%	no	no--no need
2	537	547	(10)	89.4%	no	no--no need
3	1,203	1,422	(219)	93.4%	no	no--no need
4	766	839	(73)	89.3%	yes	no--no need
5	2,303	2,279	24	93.4%	yes	no--low occu.
6	1,517	1,528	(11)	93.4%	no	no--no need
7	927	972	(45)	90.4%	yes	no--no need
8	4,711	4,318	393	91.9%	no	no--low occu.
9	764	686	78	94.9%	no	yes--60 beds
10	1,114	1,027	87	93.0%	yes	no--low occu.
11*	1,460	1,492	(32)	96.4%	yes	no--no need
12	1,853	1,931	(78)	95.7%	yes	no--no need
13*	667	851	(184)	92.6%	no	no--no need
14	615	635	(20)	95.6%	no	no--no need
15	4,123	3,942	181	91.9%	yes	no--low occu.
16	733	731	2	93.9%	no	no--low occu.
17	453	462	(9)	89.5%	no	no--no need
18	636	575	61	91.2%	no	no--low occu.
19	1,078	1,015	63	96.9%	no	yes--60 beds
20	4,817	4,456	361	91.4%	no	no--low occu.
21	1,882	1,832	50	91.6%	no	no--low occu.
22	456	389	67	90.3%	no	no--low occu.

Sources:

- Virginia State Medical Facilities Plan (12 VAC 5-360)
- Virginia Employment Commission (population projections, 1999 series)
- 1998 Virginia Nursing Home Patient Survey, Virginia Association of Regional Health Planning Agencies (for age-specific nursing home use rates)
- Center for Quality Health Care Services and Consumer Protection, VDH (for bed inventory)

\*Note to table: RFAs were issued in 2002 for development of 60 additional nursing home beds in PD 11 and for 120 additional nursing home beds in PD 13. Because no COPN has yet been issued for the beds in PD 11, they are not included in the inventory data above.

**Basis for Review.**

The Commissioner, in his review of COPN requests submitted pursuant to this RFA, will consider each of the twenty factors enumerated at § 32.1-102.3 B of the Code of Virginia, as applicable. He will also consider applicable standards of the State Medical Facilities Plan (12 VAC 5-360 et. seq.).

**Projection of Potential Fiscal Impact.**

The Department of Medical Assistance Services projects total additional expenditures for medical services provided to

Medicaid recipients of approximately \$ 3.3 million for the fiscal year ending June 30, 2006, if all the beds included in this RFA are authorized and available for occupancy by June 30, 2005. This projection is based on the following principal assumptions:

Average proportion of beds filled during FY 2006	90%
Assumed Medicaid proportion of bed-days of service	70%
Average estimated payment rate per day (direct, indirect, and capital costs)	\$143.33
Estimated patient-pay portion	\$23.26

**Schedule for Review.**

COPN requests filed in response to this RFA shall be filed in accordance with the provisions of 12 VAC 5-220-355. The review schedules shown below will apply. Letters of intent and applications must be received by the Virginia Department of Health Division of COPN and by the Northwestern Virginia Health Systems Agency (for applications in PD 9) and by the Central Virginia Health Planning Agency (for applications in PD 19) by the dates shown below in order to qualify for consideration in the specified review cycle.

## Planning District 9:

Letter of intent must be received by November 1, 2003.

Application must be received by December 1, 2003.

Review cycle will begin on January 10, 2004.

## Planning District 19:

Letter of intent must be received by December 30, 2003.

Application must be received by January 30, 2004.

Review cycle will begin on March 10, 2004.

## **Application Fees.**

The Virginia Department of Health shall collect fees for COPN applications filed in response to this RFA. No application may be deemed to be complete for review until the required application fee is paid. The fee is one percent of the proposed capital expenditure for the project, but not less than \$1,000 or more than \$20,000.

## **DEPARTMENT OF SOCIAL SERVICES**

### **Periodic Review of Regulations**

Pursuant to Executive Order Number 21 (2002), the Department of Social Services is currently reviewing the below listed regulations to determine if they should be terminated, amended, or retained in their current form. The review will be guided by the principles listed in Executive Order Number 21 (2002) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulations' interference in private enterprise and life, essential need of the regulations, less burdensome and intrusive alternatives to the regulations, specific and measurable goals that the regulations are intended to achieve, and whether the regulations are clearly written and easily understandable.

The regulations are:

22 VAC 40-170, Voluntary Registration of Family Day Homes – Requirements for Contracting Organizations

22 VAC 40-180, Voluntary Registration of Family Day Homes – Requirements for Providers

Written comments may be submitted until June 23, 2003, in care of Doris Sherrod, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, Richmond, VA 23219-1284, by e-mail to [dss7@dss.state.va.us](mailto:dss7@dss.state.va.us), or by facsimile to (804) 692-2370.

### **Periodic Review of Regulations**

Pursuant to Executive Order Number 21 (2002), the Department of Social Services is currently reviewing the regulation, 22 VAC 40-890, Human Subject Research Regulation, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 21 (2002) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until June 23, 2003, in care of Sue Murdock, Policy and Planning Specialist II, Department of Social Services, Division of Policy and Research, 730 East Broad Street, Richmond, VA 23219-1284, by e-mail to [sjm2@dss.state.va.us](mailto:sjm2@dss.state.va.us), or by facsimile to (804) 692-2425.

## **STATE WATER CONTROL BOARD**

### **Proposed Consent Special Order Peoples Save Stations, Inc.**

The State Water Control Board (SWCB) proposes to issue a Consent Special Order (CSO) to Peoples Save Stations, Inc. regarding settlement of a civil enforcement action related to compliance with the Underground Storage Tank Program. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Steven B. Wright, DEQ West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The CSO may be examined at the department during regular business hours. Requests for copies should be sent to Mr. Wright at the address above or at (540) 562-6792.

## **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

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# CALENDAR OF EVENTS

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## 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](http://www.vipnet.org) or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD OF ACCOUNTANCY

† **June 25, 2003 - 10 a.m.** -- Open Meeting  
Holiday Inn-Richmond, 6531 West Broad Street, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action. A public comment period will be held at the beginning of the meeting. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpretative services should contact the board office at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the American with Disabilities Act.

**Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Suite 696, Richmond, VA 23230-4916, telephone (804) 367-8505, FAX (804) 367-2174, (804) 367-9753/TTY☎, e-mail [boa@boa.state.va.us](mailto:boa@boa.state.va.us).

### COMMONWEALTH COUNCIL ON AGING

**June 5, 2003 - 9 a.m.** -- Open Meeting  
Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular business meeting of the Public Relations Committee. Public comments are welcome.

**Contact:** Marsha Mucha, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

**June 5, 2003 - 10 a.m.** -- Open Meeting  
Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments are welcome.

**Contact:** Marsha Mucha, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312.

† **June 5, 2003 - 1 p.m.** -- Public Hearing  
Department for the Aging, 1600 Forest Avenue, Suite 102, Richmond, Virginia.♿ (Interpreter for the deaf provided upon request)

A meeting to receive public comment on Virginia's State Plan for Aging Services for 2003-2007.

**Contact:** Marsha Mucha, Department for the Aging, 1600 Forest Ave., Suite 102, Richmond, VA 23229, telephone (804) 662-9312, e-mail [mmucha@vdh.state.va.us](mailto:mmucha@vdh.state.va.us).

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

NOTE: EXTENSION OF PUBLIC COMMENT PERIOD

**August 5, 2003** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-320. Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act.** The purpose of the proposed action is to review the regulation for effectiveness and continued need, including the following: amending the regulation to (i) remove the currently named plants that are no longer considered globally rare and (ii) add those threatened or endangered plant and insect species that are considered rare both globally and in Virginia.

Statutory Authority: § 3.1-1025 of the Code of Virginia.

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

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**NOTE: EXTENSION OF PUBLIC COMMENT PERIOD**

**August 1, 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 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.

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**NOTE: EXTENSION OF PUBLIC COMMENT PERIOD**

**August 1, 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 Board of Agriculture and Consumer Services intends to amend regulations entitled: **2 VAC 5-440. Rules and Regulations for Enforcement of the Virginia Pest Law - Cotton Boll Weevil Quarantine.** The purpose of the proposed regulatory action is to amend the regulation to (i) establish the fixed date of July 1 as the official reporting and payment date for acreage assessment, (ii) reduce penalties assessed on farm operators for the late payment or nonpayment of fees from \$10 to \$5.00 per acre, and (iii) eliminate the mandate for destruction of the cotton crop for nonpayment of fees and assessments by farm operators.

Statutory Authority: § 3.1-188.23 of the Code of Virginia.

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

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**NOTE: EXTENSION OF PUBLIC COMMENT PERIOD**

**September 2, 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 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 a 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 Aquaculture Advisory Board

† **June 17, 2003 - 1 p.m.** -- Open Meeting


Virginia Farm Bureau Federation, 12580 West Creek Parkway, 3rd Floor, Conference 3-F, Richmond, Virginia. 

The board will meet to discuss issues related to Virginia aquaculture. For directions call 1-800-768-8323, extension 1155. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** T. Robins Buck, Board Secretary, Department of Agriculture and Consumer Services, 1100 Bank St., 2nd Floor, Richmond, VA 23219, telephone (804) 371-6094, FAX (804) 371-2945.

## Virginia Marine Products Board

† **June 17, 2003 - 6 p.m.** -- Open Meeting

The Best Western Sunset Beach Resort, 32246 Lankford Highway (U.S. Route 13), Cape Charles, Virginia. 

The board will hear and approve, if appropriate, the minutes of the previous board meeting, a report on finance, trade shows, festivals, industry tours, and calendar sales. Cooperative programs with the Virginia Department of Agriculture and Consumer Services and croaker exports are expected to be the subjects of additional meeting discussions. 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 Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Shirley Estes, Executive Director, Department of Agriculture and Consumer Services, 554 Denbigh Blvd., Suite B, Newport News, VA, telephone (757) 874-3474, FAX (757) 886-0671.




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# Calendar of Events

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## Virginia Peanut Board

† **June 12, 2003 - 8 a.m.** -- Open Meeting  
Virginia Peanut Growers Association Office, 23020 Main Street, Capron, Virginia. 

The board will meet to hear the chairman's report, elect officers for 2003-04 and approve the 2003-04 budget. The minutes of the last meeting will be heard and approved, if appropriate. The board's financial statement will be reviewed. 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 Russell C. Schools at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Russell C. Schools, Program Director, Department of Agriculture and Consumer Services, P.O. Box 356, Capron, VA 23829, telephone (434) 658-4573, FAX (434) 658-4531.


## Virginia Small Grains Board

**July 24, 2003 - 8 a.m.** -- Open Meeting  
Richmond Airport Hilton, 4700 South Laburnum Avenue, Richmond, Virginia. 

The board will review FY 2002-03 project reports and will receive 2003-04 project proposals. Minutes from the last board meeting and a current financial statement will be heard and approved, if appropriate. Additionally, action will be taken on any other new business that comes before the group. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date so that suitable arrangements can be made.


**Contact:** 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.

## STATE AIR POLLUTION CONTROL BOARD

† **July 2, 2003 - 9:30 a.m.** -- Public Hearing  
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. 

A public hearing to receive comments on the State Air Pollution Control Board's notice of intent to amend 9 VAC 5-91, Regulations for the Control of Motor Vehicle Emissions (Rev. MJ) for the control of motor vehicle emissions in Northern Virginia concerning high emitting vehicles identified by remote sensing. The NOIRA appears in this issue of the Virginia Register of Regulations. The comment period will close on July 3, 2003.


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

† **July 3, 2003 - 9:30 a.m.** -- Public Hearing  
Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, Virginia. 

A public hearing to receive comments on the State Air Pollution Control Board's notice of intent to amend 9 VAC 5-40, Existing Stationary Sources (Rev. G03), by adding a new rule concerning consumer products. The NOIRA appears in this issue of the Virginia Register of Regulations. The public comment period will close on July 3, 2003.

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


## ALCOHOLIC BEVERAGE CONTROL BOARD

**June 9, 2003 - 9 a.m.** -- Open Meeting  
**June 23, 2003 - 9 a.m.** -- Open Meeting  
**July 14, 2003 - 9 a.m.** -- Open Meeting  
**July 28, 2003 - 9 a.m.** -- Open Meeting  
**August 11, 2003 - 9 a.m.** -- Open Meeting  
† **August 25, 2003 - 9 a.m.** -- Open Meeting  
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. 

A meeting to receive and discuss 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, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4442, e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).


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

**June 5, 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 board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [APELSCIDLA@dpor.state.va.us](mailto:APELSCIDLA@dpor.state.va.us).

**June 5, 2003 - 2:30 p.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

An informal fact-finding conference of the Land Surveyor Section. 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, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 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.

## ART AND ARCHITECTURAL REVIEW BOARD

**June 6, 2003 - 10 a.m.** -- Open Meeting**July 11, 2003 - 10 a.m.** -- Open Meeting**August 1, 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](http://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

**June 4, 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) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail asbestos@dpor.state.va.us.

## COMPREHENSIVE SERVICES FOR AT-RISK YOUTH AND FAMILIES

### State Executive Council

**June 25, 2003 - 9 a.m.** -- Open Meeting**July 30, 2003 - 9 a.m.** -- Open Meeting**† August 27, 2003 - 9 a.m.** -- Open Meeting


Department of Social Services, 730 East Broad Street, Lower Level Room 3, Richmond, Virginia. 

A monthly council meeting. For traveling directions, please call (804) 692-1100.


**Contact:** Alan G. Saunders, Director, Office of Comprehensive Services for At-Risk 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.

## VIRGINIA AVIATION BOARD

**† June 17, 2003 - 3 p.m.** -- Open Meeting**† June 18, 2003 - 9 a.m.** -- Open Meeting

Ivor Massey Building, Richmond International Airport, Richmond, Virginia. 


A regular bimonthly meeting. Applications for state funding will be presented to the board and other matters of interest to the Virginia aviation community will be discussed. Individuals with disabilities should contact Carolyn Toth 10 days prior to the meeting if assistance is needed.

**Contact:** Carolyn Toth, Administrative Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3637, FAX (804) 236-3635, toll-free (800) 292-1034, (804) 236-3624/TTY , e-mail toth@doav.state.va.us.


## DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

### Statewide Rehabilitation Council for the Blind

**June 7, 2003 - 10 a.m.** -- Open Meeting

Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Blind and Vision Impaired on matters related to vocational rehabilitation services for the blind and visually impaired citizens of the Commonwealth.


**Contact:** James G. Taylor, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3111, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY , e-mail taylorjg@dbvi.state.va.us.

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# Calendar of Events

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## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

**June 16, 2003 - 10 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Conference Room C, Main Level, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

The board will conduct general business including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken.

**Contact:** Carolyn J. Elliott, Administrative Assistant, Chesapeake Bay Local Assistance Department, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 371-7505, FAX (804) 225-3447, toll-free (800) 243-7229, (800) 243-7229/TTY , e-mail celliott@cblad.state.va.us.


## STATE CHILD FATALITY REVIEW TEAM

**July 8, 2003 - 10 a.m.** -- Open Meeting  
Office of the Chief Medical Examiner, 400 East Jackson Street, Richmond, Virginia. 

The business portion of the State Child Fatality Review Team meeting, from 10 a.m. to 10:30 a.m., is open to the public. At the conclusion of the open meeting, the team will go into closed session for confidential case review.

**Contact:** Virginia Powell, Coordinator, State Child Fatality Review Team, 400 East Jackson St., Richmond, VA 23219, telephone (804) 786-6047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail vpowell@vdh.state.va.us.


## COMPENSATION BOARD

† **June 18, 2003 - 11 a.m.** -- Open Meeting  
Compensation Board, 202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

**Contact:** Cindy P. Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail cwaddell@scb.state.va.us.

## BOARD OF CONSERVATION AND RECREATION

† **June 11, 2003 - 9:30 a.m.** -- Open Meeting  
State Capitol, House Room 2, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting.

**Contact:** Leon E. App, Acting Deputy Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124, FAX (804) 786-6141, e-mail leonapp@dcr.state.va.us.

## DEPARTMENT OF CONSERVATION AND RECREATION

**June 2, 2003 - 6:30 p.m.** -- Open Meeting  
Jackson Elementary School, 4424 Fort Chiswell Road (U.S. Route 52), Cafeteria, Austinville, Virginia.

A meeting to continue preparation of a new master plan for the New River Trail State Park.

**Contact:** Robert Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rmunson@dcr.state.va.us.

**June 2, 2003 - 7 p.m.** -- Open Meeting  
**June 23, 2003 - 7 p.m.** -- Open Meeting  
Leesylvania State Park, Visitor Center, 2001 Daniel K. Ludwig Drive, Woodbridge, Virginia

A meeting to continue preparation of a new park master plan for Leesylvania State Park.


**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.

**June 3, 2003 - 3:30 p.m.** -- Open Meeting  
Fairy Stone State Park, Fayerdale Hall, 967 Fairystone Lake Drive Stuart, Virginia.

A meeting to continue preparation of a new master plan for the Fairy Stone State Park.

**Contact:** Robert Munson, Environmental Program Manager, Department of Conservation and Recreation, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-6140, FAX (804) 371-7899, e-mail rmunson@dcr.state.va.us.

## BOARD FOR CONTRACTORS

**June 10, 2003 - 9 a.m.** -- Open Meeting  
**June 17, 2003 - 9 a.m.** -- Open Meeting  
**June 24, 2003 - 9 a.m.** -- Open Meeting  
**July 15, 2003 - 9 a.m.** -- Open Meeting  
**July 22, 2003 - 9 a.m.** -- Open Meeting  
**July 29, 2003 - 9 a.m.** -- Open Meeting  
**August 6, 2003 - 1:30 p.m.** -- Open Meeting  
**August 12, 2003 - 9 a.m.** -- Open Meeting  
† **August 26, 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 the 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.

**July 9, 2003 - 9 a.m.** -- Open Meeting

† **August 20, 2003 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ♿

A regular meeting to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be conducted in closed session.

**Contact:** Eric L. Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.state.va.us.

**June 3, 2003 - 9 a.m.** -- Open Meeting

**July 1, 2003 - 9 a.m.** -- Open Meeting

**August 5, 2003 - 9 a.m.** -- Open Meeting

**August 6, 2003 - 1:30 p.m.** -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Informal fact-finding conferences for the Contractor Recovery Fund. 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:** Victoria S. Traylor, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561, FAX (804) 367-0194, (804) 367-9753/TTY ☎, e-mail perkins@dpor.state.va.us.

† **June 25, 2003 - 10 a.m.** -- Open Meeting

**August 6, 2003 - 10 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ♿

A regular meeting of the Tradesman/Education Committee to consider items of interest relating to the Tradesmen, Backflow Workers, Education and other appropriate matters relating to Tradesmen and the Board for Contractors.

**Contact:** Eric L. Olson, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail contractors@dpor.state.va.us.

## CRIMINAL JUSTICE SERVICES BOARD

**June 12, 2003 - 9 a.m.** -- Public Hearing

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to amend regulations entitled: **6 VAC 20-171. Regulations Relating to Private Security Services.** The purpose of the proposed action is to update minimum training standards and improve licensing, registration, certification, training requirements, fees and procedures.

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

**Contact:** Lisa R. Hahn, Private Security Services Chief, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-2356, FAX (804) 786-6344 or e-mail lhahn@dcjs.state.va.us.

† **June 12, 2003 - 11 a.m.** -- Open Meeting

General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A general business meeting.

**Contact:** Melissa Feeley, Assistant to the Director, Criminal Justice Services Board, Eighth St. Office Bldg., 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8718, FAX (804) 786-0588, e-mail mfeeley@dcjs.state.va.us.

## BOARD OF DENTISTRY

† **June 6, 2003 - 9 a.m.** -- Open Meeting

† **June 27, 2003 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

The Special Conference Committee will conduct an informal hearing. There will be no public comment period.

**Contact:** JeAnne Marshall, Administrative Assistant, Board of Dentistry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail JeAnne.Marshall@dhp.state.va.us.

## DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

**June 19, 2003 - 11 a.m.** -- Open Meeting

**July 17, 2003 - 11 a.m.** -- Open Meeting

† **August 21, 2003 - 11 a.m.** -- Open Meeting

Department of General Services, 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 Division of Engineering and Buildings to confirm meeting. Board Rules and Regulations can be obtained online at [www.dgs.state.va.us](http://www.dgs.state.va.us) under the DGS Forms, Form # DGS-30-904.

**Contact:** Freddie M. Adcock, Administrative Assistant, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎, e-mail fadcock@dgs.state.va.us.

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# Calendar of Events

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## VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP

† **June 3, 2003 - 11 a.m.** -- Open Meeting  
Department of Economic Development, 901 East Byrd Street,  
West Tower, 19th Floor, Richmond, Virginia. 

The Board of Directors will discuss issues pertaining to the Virginia Economic Development Partnership.


**Contact:** Kimberly M. Ellett, Senior Executive Assistant, Virginia Economic Development Partnership, P.O. Box 798, Richmond, VA 23218, telephone (804) 371-8108, FAX (804) 371-8112, e-mail kellett@yesvirginia.org.

## BOARD OF EDUCATION

**June 25, 2003 - 9 a.m.** -- Open Meeting

**July 23, 2003 - 9 a.m.** -- Open Meeting


NOTE: CHANGE IN MEETING LOCATION

General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency 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.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**June 3, 2003 - 7 p.m.** -- Open Meeting  
North River Elementary School, 3395 Scenic Highway, Mount Solon, Virginia. 


The first public meeting on the development of TMDLs to address multiple impairments in the Mossy Creek and Long Glade Run watersheds. The public comment period closes on July 2, 2003.

**Contact:** Gary Flory, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7840, FAX (540) 574-7878, e-mail gaflory@deq.state.va.us.

**June 11, 2003 - 7 p.m.** -- Open Meeting  
Fairlington Community Center, Room 10, 3308 South Stafford Street, Arlington, Virginia. 


The first public meeting on the development of the implementation plan for the bacteria TMDL for the Four Mile Run impaired segment located in Arlington and Fairfax Counties and the Cities of Falls Church and Alexandria. The public comment period closes on July 10, 2003.

**Contact:** Katherine Bennett, Department of Environmental Quality, 13901 Crown Court Woodbridge, VA 22193, telephone (703) 583-3896, FAX (703) 583-3841, e-mail kebennett@deq.state.va.us.

† **June 17, 2003 - 1:30 p.m.** -- Open Meeting  
State Capitol, House Room 1, Richmond, Virginia. 

The first meeting of the Limited Impact Development Task Force charged with (i) developing a certification process for low impact development techniques in achieving quantifiable pollution prevention or abatement results, (ii) developing such other guidance for local governments and the general public as necessary to promote a more complete understanding of the most effective use of low impact development techniques, (iii) recommending changes to existing statutes and regulations to facilitate the use of low impact development techniques, and (iv) developing a model ordinance for use by local governments. For purposes of this section, "low impact development" means a site-specific system of design and development techniques that can serve as an effective, low-cost alternative to existing stormwater and water quality control methods and that will reduce the creation of storm runoff and pollution and potentially reduce the need to treat or mitigate water pollution.


**Contact:** Kathy Frahm, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4376, FAX (804) 698-4346, e-mail krfrahm@deq.state.va.us.

**June 18, 2003 - 9 a.m.** -- Public Hearing  
Department of Environmental Quality, 629 East Main Street, First Floor Conference Room, Richmond, Virginia. 

A public hearing on a proposed revision to the Commonwealth of Virginia § 111(d)/129 Plan (Clean Air Act) for small municipal waste combustors. The hearing will be held to accept testimony concerning the proposed revision. The proposed revision consists of (i) emission limitations and other regulatory requirements; (ii) an inventory of emissions from the affected facilities; and (iii) other supporting documentation. The department is seeking comment on the overall plan, and on the issue of whether any regulations included in the plan should be submitted to the U.S. Environmental Protection Agency (EPA) as part of the plan.

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


## Litter Control and Recycling Fund Advisory Board

**August 13, 2003 - 10:30 a.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 

A regular meeting.

**Contact:** G. Steven Coe, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4029, FAX (804) 698-4424, e-mail gscoc@deq.state.va.us.

## Recycling Markets Development Council

† **August 20, 2003 - 10 a.m.** -- Open Meeting  
Henrico Training Center, 7701 East Parham Road, Glen Allen,  
Virginia. 

A regular meeting.

**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.

## VIRGINIA FIRE SERVICES BOARD

**June 5, 2003 - 9 a.m.** -- Open Meeting  
Richmond Fire Training Center.  (Interpreter for the deaf  
provided upon request)

A strategic planning session. Contact Christy King for  
details.

**Contact:** Christy King, Policy, Planning and Legislative  
Affairs Manager, Virginia Fire Services Board, 101 North 14th  
St., 18th Floor, Richmond, VA 23219, telephone (804) 371-  
0220, FAX (804) 371-0219, e-mail cking@vdfp.state.va.us.

**June 6, 2003 - 9 a.m.** -- Open Meeting  
Richmond Fire Training Center.  (Interpreter for the deaf  
provided upon request)


The following committees will meet: Fire Education and  
Training Committee (FEandT) at 9 a.m.; Administration and  
Policy (AandP) 10 minutes after the conclusion of FEandT;  
Fire Prevention and Control (FPandC) 10 minutes after the  
conclusion of AandP; Finance 10 minutes after the  
conclusion of FPandC.

**Contact:** Jennifer Cole, VFSB Clerk, Virginia Fire Services  
Board, 101 North 14th St., 18th Floor, Richmond, VA 23219,  
telephone (804) 371-0220, FAX (804) 371-0219, e-mail  
jcole@vdfp.state.va.us.

**June 7, 2003 - 9 a.m.** -- Open Meeting  
Richmond Fire Training Center  (Interpreter for the deaf  
provided upon request)

Contact Jennifer Cole for details.


**Contact:** Jennifer Cole, VFSB Clerk, Virginia Fire Services  
Board, 101 North 14th St., 18th Floor, Richmond, VA 23219,  
telephone (804) 371-0220, FAX (804) 371-0219, e-mail  
jcole@vdfp.state.va.us.

† **June 7, 2003 - 1 p.m.** -- Open Meeting  
State Capitol, Bell Tower area, Richmond, Virginia. 


A Virginia Fallen Firefighter memorial service. For more  
information please contact Kelli Turner.

**Contact:** Kelli Turner, Communications, Public Affairs and  
Education Manager, Virginia Fire Services Board, 101 North  
14th Street, 18th Floor, Richmond, VA 23219, telephone (804)  
371-0220, FAX (804) 371-0219, e-mail  
kturner@vdfp.state.va.us.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **June 4, 2003 - 9 a.m.** -- Open Meeting  
Department of Health Professions, Alcoa Building, 6603 West  
Broad Street, 5th Floor, Richmond, Virginia. 

A quarterly business meeting to include regulatory and  
disciplinary matters as may be presented on the agenda.  
Public comment will be received at the beginning of the  
meeting.

**Contact:** Elizabeth Young, Executive Director, Board of  
Funeral Directors and Embalmers, Alcoa Building, 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.

## BOARD OF GAME AND INLAND FISHERIES

† **June 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)

A meeting to address the Department of Game and Inland  
Fisheries' Fiscal Year 2003-2004 operating and capital  
budgets. The board may also discuss general and  
administrative issues. The board may elect to hold a dinner  
Thursday evening, June 5, or after the meeting on Friday,  
June 6, at a location and time to be determined. The board  
may hold a closed session at some time during the June 6  
meeting.

**Contact:** Phil Smith, Policy Analyst, Department of Game  
and Inland Fisheries, 4010 W. Broad St., Richmond VA  
23230, telephone (804) 367-1000, FAX (804) 367-0488, e-  
mail regcomments@dgif.state.va.us.


## CHARITABLE GAMING COMMISSION

† **June 26, 2003 - 10 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Conference  
Room B, Richmond, Virginia. 


The final meeting of the commission and presentation of the  
2002 Jennifer C. Byler Awards of Excellence.

**Contact:** Frances C. Jones, Administrative Staff Assistant,  
Charitable Gaming Commission, 101 N. 14th St., 17th Floor,  
Richmond, VA 23219, telephone (804) 786-3014, FAX (804)  
786-1079, e-mail jones@cgc.state.va.us.

## BOARD FOR GEOLOGY

**July 29, 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 E. Dick, Assistant Director, Board for  
Geology, 3600 W. Broad St., Richmond, VA 23230, telephone  
(804) 367-8595, FAX (804) 367-6128, (804) 367-9753/TTY ,  
e-mail geology@dpor.state.va.us.

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# Calendar of Events

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## STATE BOARD OF HEALTH


**July 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.

## DEPARTMENT OF HEALTH


### Biosolids Use Regulations Advisory Committee

**June 12, 2003 - 10 a.m.** -- Open Meeting  
The Virginia Farm Bureau, 12580 West Creek Parkway, Richmond, Virginia. 

A meeting to discuss proposed revisions to the regulations including land application site management practices.

**Contact:** C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1755, FAX (804) 786-5567, e-mail csawyer@vdh.state.va.us.

### Emergency Medical Services Advisory Board

**† August 8, 2003 - 1 p.m.** -- Open Meeting  
The Place at Innsbrook, 4036-C Cox Road, Glen Allen, Virginia. 

A regular 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.


### Sewage Handling and Disposal Advisory Committee

**† August 21, 2003 - 10 a.m.** -- Open Meeting  
Department of Health, 1500 East Main Street, Room 115, Richmond, Virginia.

A meeting to discuss regulations, new technologies and new products to recommend for approval to the State Health Commissioner for use in Virginia.

**Contact:** Donald J. Alexander, Division Director, Department of Health, 1500 E. Main St., Room 115, Richmond, VA 23219, telephone (804) 225-4030, FAX (804) 225-4003, e-mail dalexander@vdh.state.va.us.


## DEPARTMENT OF HEALTH PROFESSIONS

**June 20, 2003 - 9 a.m.** -- Open Meeting  
**August 15, 2003 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, 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.


## VIRGINIA INTERAGENCY COORDINATING COUNCIL

**June 11, 2003 - 9:30 a.m.** -- Open Meeting  
Henrico Area Mental Health, 10299 Woodman Road, Glen Allen, Virginia.  (Interpreter for the deaf provided upon request)


The Virginia Interagency Coordinating Council (VICC) meets quarterly to advise and assist the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, as the lead agency for Part C of (IDEA), early intervention for infants and toddlers with disabilities and their families. Discussion focuses on Virginia's implementation of the Part C program.

**Contact:** LaKeishia White, Part C Office Services Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, Infant and Toddler Connection of VA, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-3710, FAX (804) 371-7959, toll-free (800) 234-1448.

## JAMESTOWN-YORKTOWN FOUNDATION


**June 11, 2003 - Noon** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Room A, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Jamestown 2007 Steering Committee. Public comment will not be heard.

**Contact:** Stacey Ruckman, Jamestown 2007 Executive Assistant, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4659, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-7236/TTY , e-mail sruckman@jyf.state.va.us.


**August 6, 2003 - 2 p.m.** -- Open Meeting  
Location to be determined.  (Interpreter for the deaf provided upon request)

A meeting of the Jamestown 2007 Steering Committee's Executive Committee. Public comment will not be heard.

**Contact:** Stacey Ruckman, Jamestown 2007 Executive Assistant, Jamestown-Yorktown Foundation, P.O. Box 1607, Williamsburg, VA 23187, telephone (757) 253-4659, FAX (757) 253-5299, toll-free (888) 593-4682, (757) 253-7236/TTY , e-mail sruckman@jyf.state.va.us.

## STATE BOARD OF JUVENILE JUSTICE


NOTE: CHANGE IN MEETING DATE AND LOCATION

**† July 16, 2003 - 9 a.m.** -- Open Meeting  
Cedar Lodge Training Facility, 1701 Old Bon Air Road, Bon Air, Virginia. 


The meeting of the Committees of the Board for Secure Services and Nonsecure Services will meet at 9 a.m. to receive certification audit reports. The full board will meet at 10 a.m. to take certification action on the audited programs.

**Contact:** Donald Carignan, Regulatory Coordinator, State Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.va.state.us.


## DEPARTMENT OF LABOR AND INDUSTRY

**June 13, 2003 - 10 a.m.** -- Open Meeting  
Tyler Building (State Corporation Commission Building), Second Floor, Courtroom B, 1300 East Main Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting of the Safety and Health Codes Board.

**Contact:** Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St. Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail rlc@doli.state.va.us.


## Virginia Apprenticeship Council

**June 19, 2003 - 10 a.m.** -- Open Meeting  
J. Sargeant Reynolds Community College, North Run Business Park, 1630 East Parham Road, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A quarterly meeting.

**Contact:** Beverley Donati, Assistant Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.state.va.us.

## STATE LIBRARY BOARD


**† June 16, 2003 - 8:15 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. 

A meeting to discuss matters pertaining to The Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room;  
Executive Committee;  
Publications and Educational Services Committee, Conference Room B;  
Records Management Committee, Conference Room C.

9:30 a.m. - Archival and Information Services Committee, Orientation Room;  
Collection Management Services Committee, Conference Room B;  
Legislative and Finance Committee, Conference Room C.

10:30 a.m. - Library Board, Conference Room 2M.

**Contact:** Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY , e-mail jtaylor@lva.lib.va.us.

## LONGWOOD UNIVERSITY

**† June 12, 2003 - 1 p.m.** -- Open Meeting  
Ames Hull Springs Farm, 3430 Mt. Holly Road, Montross, Virginia.

A meeting to conduct routine business of the Board of Visitors.


**Contact:** Jeanne Hayden, Administrative Staff Assistant, Longwood University, 201 High St., Farmville, VA 23909, telephone (434) 395-2004, e-mail jhayden@longwood.edu.

**† June 13, 2003 - 9 a.m.** -- Open Meeting  
Ames Hull Springs Farm, 3430 Mt. Holly Road, Montross, Virginia.


A retreat to discuss and receive information regarding Ames Hull Springs Farm.

**Contact:** Jeanne Hayden, Administrative Staff Assistant, Longwood University, 201 High Street, Farmville, VA 23909, telephone (434) 395-2004, e-mail jhayden@longwood.edu.


## VIRGINIA MANUFACTURED HOUSING BOARD

**† June 19, 2003 - 10 a.m.** -- Open Meeting  
The Jackson Center, 501 North Second Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)


A regular meeting to handle complaints against licensees, claims to the Transaction Recovery Fund and carry out other activities to administer the Manufactured Housing Licensing and Transaction Recovery Fund.

**Contact:** Curtis L. Mclver, State Building Code Administrator, Virginia Manufactured Housing Board, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160, FAX (804) 371-7092, (804) 371-7089/TTY , e-mail cmciver@dhcd.state.va.us.

## MARINE RESOURCES COMMISSION

**June 24, 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:** Kathy Leonard, Executive Secretary, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2120, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY , e-mail kleonard@mrc.state.va.us.



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# Calendar of Events

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## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**June 7, 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 amend regulations entitled:

**12 VAC 30-70. Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care (adding 12 VAC 30-70-425 and 12 VAC 30-70-426).**

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

**12 VAC 30-90. Methods and Standards for Establishing Payment Rates for Long-Term Care (adding 12 VAC 30-90-17 and 12 VAC 30-90-18).**

The purpose of the proposed action is to promulgate permanent regulations to provide the authority to make supplemental payments to certain various provider types.

The agency does not intend to hold a public hearing on the proposed action.

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

Public comments may be submitted until April 11, 2003, to William Lessard, Reimbursement Analyst, Division of Reimbursement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680, or e-mail vsimmons@dmas.state.va.us.

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**July 5, 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 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 conform the Medicaid state plan's definition of unit dose pharmacy services to the same definition used by the Board of Pharmacy.

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

Public comments may be submitted until July 5, 2003, to Maryanne McNeil, Pharmacy Manager, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St.,

Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680, or e-mail vsimmons@dmas.state.va.us.

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**July 5, 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 amend regulations entitled: **12 VAC 30-120. Waiver Services.** The purpose of the proposed action is to modify existing waiver services to permit children who attain their sixth birthday to be automatically transitioned over to this waiver program from the mental retardation waiver program.

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

Public comments may be submitted until July 5, 2003, to Sherry Confer, Policy Analyst, Division of LTC, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680, or e-mail vsimmons@dmas.state.va.us.

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**August 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 Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-40. Eligibility Requirements.** The purpose of the proposed action is to simplify Medicaid eligibility requirements for counting income.

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

Public comments may be submitted until August 1, 2003, to Patricia Sykes, Manager, Division of Policy, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7959, FAX (804) 786-1680, or e-mail vsimmons@dmas.state.va.us.

## BOARD OF MEDICINE

**June 5, 2003 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, Board Room 2, Richmond, Virginia.

The board will conduct 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.

**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.

## Informal Conference Committee

**June 11, 2003 - 8:45 a.m.** -- Open Meeting

**July 16, 2003 - 9 a.m.** -- Open Meeting

Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

**June 25, 2003 - 9:15 a.m.** -- Open Meeting

Clarion Hotel, 3315 Orday Drive, Roanoke, Virginia.

**July 9, 2003 - 9:15 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

**July 31, 2003 - 9 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 Dixon, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail Peggy.Sadler@dhp.state.va.us.

## STATE BOARD FOR MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **July 17, 2003 - 6:30 p.m.** -- Public Hearing

Dumbarton Area Library, 6800 Staples Mill Road, Richmond, Virginia. (Interpreter for the deaf provided upon request)

**August 15, 2003** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations entitled **12 VAC 35-180, Regulations to Assure the Protection of Participants in Human Research**. The purpose of the proposed action is to comply with changes to the Code of Virginia and to be consistent with applicable federal requirements, including privacy requirements pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Statutory Authority: §§ 37.1-10 and 37.1-24.01 of the Code of Virginia.

**Contact:** Mary Nash Shawver, Planning Coordinator, Office of Substance Abuse Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218, telephone (804) 786-0825, FAX (804) 786-4320, e-mail mshawver@dmhmrsas.state.va.us.

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

**June 2, 2003 - 9 a.m.** -- Open Meeting

Virginia Housing Development Authority, 601 South Belvidere Street, 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.

† **June 9, 2003 - 10 a.m.** -- Open Meeting

Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the Olmstead Task Force. Public comment will be heard from 10 a.m. until 1:15 p.m. Telephone conferencing will be available. Video conferencing will be held from four remote sites: Northern Virginia Training Center, Central Virginia Training Center, Southeastern Virginia Training Center, and Southwestern Virginia Mental Health Institute.

**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.

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Virginia Gas and Oil Board

† **June 17, 2003 - 9 a.m.** -- Open Meeting

Virginia Highlands Community College, Southwest Virginia Higher Education Center, Abingdon, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to consider petitions filed by applicants. The public may address the board on individual items as they are called for hearing. Information concerning the docket items can be viewed from 8 a.m. to 5 p.m. Monday through Friday at the office of the Department of Mines, Minerals and Energy, Division of Gas and Oil, 230 Charwood Drive, Abingdon, Virginia. All questions should be directed to the division. Special accommodations for the disabled will be made available at the hearing on request. Anyone needing special accommodations should contact the department by June 10, 2003.

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# Calendar of Events

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**Contact:** Bob Wilson, Division Director, Department of Mines, Minerals and Energy, P.O. Box 1416, Abingdon, VA 24212, telephone (276) 676-5423, (800) 828-1120/TTY ☎, e-mail [bxw@mme.state.va.us](mailto:bxw@mme.state.va.us).

## DEPARTMENT OF MOTOR VEHICLES

### Medical Advisory Board

† **July 9, 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:** J. C. Branche, R. N., Assistant Division Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond VA 23220, telephone (804) 497-7188, FAX (804) 367-1604, toll-free (800) 435-5137, (800) 272-9268/TTY ☎, e-mail [dmvj3b@dmv.state.va.us](mailto:dmvj3b@dmv.state.va.us).

## VIRGINIA MUSEUM OF FINE ARTS

**June 18, 2003 - 10 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, CEO Building Parlor, Richmond, Virginia. ♿

A meeting for staff to update the Expansion Committee. The meeting will be held in closed session. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail [sbroyles@vmfa.state.va.us](mailto:sbroyles@vmfa.state.va.us).

**June 19, 2003 - Noon** -- Open Meeting  
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia. ♿

An annual meeting of the Executive/Finance Committee to approve the museum's budget. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail [sbroyles@vmfa.state.va.us](mailto:sbroyles@vmfa.state.va.us).

## VIRGINIA MUSEUM OF NATURAL HISTORY

**June 9, 2003 - 10 a.m.** -- Open Meeting  
LeClair Ryan Consulting, 1010 First Union Building, 213 South Jefferson Street, Roanoke, Virginia. ♿

A meeting of the Executive Committee to discuss management and direction of the museum.

**Contact:** Cindy Rorrer, Administrative Assistant, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (276) 666-8616, FAX (276) 632-6487, (276) 666-8638/TTY ☎, e-mail [crorrer@vmnh.org](mailto:crorrer@vmnh.org).

## BOARD OF NURSING

**July 14, 2003 - 9 a.m.** -- Open Meeting  
**July 16, 2003 - 9 a.m.** -- Open Meeting  
**July 17, 2003 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿

A panel of the board will conduct formal hearings with licensees or certificate holders. Public comment will not be received.

**Contact:** Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail [nursebd@dhp.state.va.us](mailto:nursebd@dhp.state.va.us).

## Special Conference Committee

**June 3, 2003 - 9 a.m.** -- Open Meeting  
**June 9, 2003 - 9 a.m.** -- Open Meeting  
**June 10, 2003 - 9 a.m.** -- Open Meeting  
**June 24, 2003 - 9 a.m.** -- Open Meeting  
**June 25, 2003 - 9 a.m.** -- Open Meeting  
**June 26, 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](mailto:nursebd@dhp.state.va.us).

## BOARD OF NURSING HOME ADMINISTRATORS

**July 23, 2003 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 1, Richmond, Virginia. ♿

The board will meet to discuss regular board business. There will be a public comment period at the beginning of the meeting.

**Contact:** JeAnne Marshall, Administrative Assistant, Board of Nursing Home Administrators, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail [JeAnne.Marshall@dhp.state.va.us](mailto:JeAnne.Marshall@dhp.state.va.us).

## Special Conference Committee

**July 23, 2003 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 1, Richmond, Virginia. ♿

An informal hearing. No public comment will be received.

**Contact:** JeAnne M. Marshall, Administrative Assistant, Board of Nursing Home Administrators, 6603 W. Broad St.,

5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail JeAnne.Marshall@dhp.state.va.us.

## OLD DOMINION UNIVERSITY

**June 17, 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 June 16 and on June 17 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.

## VIRGINIA OUTDOORS FOUNDATION

† **June 24, 2003 - 9 a.m.** -- Open Meeting  
Monticello, Charlottesville, Virginia.

A regular meeting of the Board of Trustees to accept conservation easements and discuss business of the foundation.

**Contact:** Tamara Vance, Executive Director, Virginia Outdoors Foundation, 203 Governor St., Richmond, VA 23219, telephone (804) 225-2147.

## VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

† **June 10, 2003 - 1 p.m.** -- Open Meeting  
202 North 9th Street, 9th Floor, Richmond, Virginia. ♿

A quarterly meeting of the Executive Committee.

**Contact:** Sandra Smalls, Executive Administrative Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-9368, FAX (804) 786-1118, toll-free (800) 846-4464, e-mail smallsse@vbpd.state.va.us.

† **June 11, 2003 - 8:15 a.m.** -- Open Meeting  
Holiday Inn Koger South, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly meeting.

**Contact:** Sandra Smalls, Executive Administrative Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th St. Office Bldg., 9th Floor, Richmond, VA 23219, telephone (804) 786-9368, FAX (804) 786-1118, toll-free (800) 846-4464, e-mail smallsse@vbpd.state.va.us.

## BOARD OF PHARMACY

† **June 9, 2003 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A panel will discuss disciplinary matters. Public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

† **June 12, 2003 - 9 a.m.** -- Open Meeting  
† **June 26, 2003 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿

A Special Conference Committee will discuss disciplinary matters. Public comments will not be received.

**Contact:** Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

## BOARD OF PHYSICAL THERAPY

† **July 11, 2003 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A quarterly business meeting to include regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.

**Contact:** Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.state.va.us.

† **July 11, 2003 - 1 p.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ♿

A meeting to hear possible violations of the laws and regulations governing the practice of physical therapy.

**Contact:** Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.state.va.us.

## POLYGRAPH EXAMINERS ADVISORY BOARD

**June 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:** Eric Olson, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804)

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# Calendar of Events

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367-2474, (804) 367-9753/TTY ☎, e-mail  
olson@dpor.state.va.us.

## BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

**June 2, 2003 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

Contact Judith Spiller for details.

**Contact:** Judith A. Spiller, Executive Secretary, Department  
of Professional and Occupational Regulation, 3600 W. Broad  
St., Richmond, VA 23230, telephone (804) 367-8519, FAX  
(804) 367-9537, (804) 367-9753/TTY ☎, e-mail  
spiller@dpor.state.va.us.

## VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

**June 19, 2003 - 10 a.m.** -- Open Meeting  
1600 Forest Avenue, Suite 102, Richmond, Virginia. ♿

A regular quarterly meeting.

**Contact:** Terry Raney, Guardianship Coordinator, Virginia  
Public Guardian and Conservator Advisory Board, 1600  
Forest Ave., Suite 102, Richmond, VA 23229, telephone (804)  
662-7049, FAX (804) 662-9354, toll-free (800) 552-3402,  
(804) 662-9333/TTY ☎, e-mail traney@vdh.stat.va.us.

## REAL ESTATE BOARD

**June 16, 2003 - 1 p.m.** -- Open Meeting  
† **June 27, 2003 - 1 p.m.** -- Open Meeting  
**July 31, 2003 - 8:30 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.

## DEPARTMENT OF REHABILITATIVE SERVICES

**June 9, 2003 - 9 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms  
Drive, Richmond, Virginia. ♿ (Interpreter for the deaf provided  
upon request)

A meeting of the Commonwealth Neurotrauma Initiative  
Advisory Board to review proposals submitted under Option

A: Research on the Mechanisms and Treatment of  
Neurotrauma and award grant funding.

**Contact:** Sandra Prince, CNI Program Specialist, Brain  
Injury/Spinal Cord Injury Services, Department of  
Rehabilitative Services, 8004 Franklin Farms Drive,  
Richmond, VA 23229, telephone (804) 662-7021, FAX (804)  
662-7122, toll-free (800) 552-5019, (804) 662-9040/TTY ☎, e-  
mail princesw@dps.state.va.us.

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **June 24, 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

### Reproposed

**June 18, 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 adopt regulations entitled **22 VAC 40-675,  
Personnel Policies for Local Departments of Social  
Services**. The purpose of the proposed action is to meet  
code requirements and provide regulatory guidance for  
personnel operations in local departments of social services  
in Virginia.

Statutory Authority: §§ 63.2-217 and 63.2-219 of the Code of  
Virginia.

**Contact:** Lori A. Kam, Human Resources Manager II,  
Department of Social Services, Division of Human Resources  
Management, 730 E. Broad St., Richmond, VA 23219,  
telephone (804) 692-1520, FAX (804) 692-1560 or e-mail  
lak900@dss.state.va.us.

**June 18, 2003 - 9 a.m.** -- Open Meeting  
**June 19, 2003 - 9 a.m.** -- Open Meeting  
Hampton Inn-Col Alto, 401 East Nelson Street, Lexington,  
Virginia. ♿

A regular meeting of the board.

**Contact:** Pat Rengnerth, Board Liaison, State Board of Social  
Services, Division of Legislative Affairs, 730 E. Broad St.,  
Room 930, Richmond, VA 23219-1849, telephone (804) 692-  
1826, FAX (804) 692-1960, (800) 828-1120/TTY ☎, e-mail  
pvr2@email1.dss.state.va.us.

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**August 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 Social Services intends to amend regulations entitled **22 VAC 40-250, Agency Placement Adoptions -- AREVA**. The purpose of the proposed action is to amend the regulation to make it consistent with a related adoption regulation, 22 VAC 40-260, Subsidy. Amendments also extend the time for local agencies to register children in AREVA and delete references to obsolete terms.

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

**Contact:** Karen 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.

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**August 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 Social Services intends to amend regulations entitled **22 VAC 40-260, Agency Placement Adoptions -- Subsidy**. The purpose of the proposed action is to amend the regulation to more accurately reflect the current population of children waiting for adoptive placement, delete obsolete terms, and improve overall clarity. An appeals provision will be added to replace 22 VAC 40-270, which is being repealed.

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

**Contact:** Karen 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.

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**August 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 Social Services intends to amend regulations entitled **22 VAC 40-270, Agency Placement Adoptions -- Appeals**. The purpose of the proposed action is to repeal the regulation. Appeal provisions will be added to another regulation, 22 VAC 40-260, Agency Placement Adoptions - Subsidy.

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

**Contact:** Karen 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

**June 20, 2003 - 10 a.m.** -- Open Meeting  
Department of Social Services, 730 East Broad Street, Richmond, Virginia. 

A regular Family and Children's Trust Fund board meeting and a meeting of the Nominating Committee.

**Contact:** Nan McKenney, Executive Director, Department of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1823, FAX (804) 692-1869, e-mail fct900@dss.state.va.us.

**July 11, 2003 - 5 p.m.** -- Open Meeting  
Accomack, Virginia.

A quarterly meeting of the Virginia Commission on National and Community Services.


**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, e-mail fcyj900@email1.dss.state.va.us.

**July 12, 2003 - 9 a.m.** -- Open Meeting  
Accomack, Virginia.


A quarterly meeting and retreat of the Virginia Commission on National and Community Services.


**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, e-mail fcyj900@email1.dss.state.va.us.

## BOARD OF SOCIAL WORK


† **June 19, 2003 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, Fifth Floor, Conference Room 4, Richmond, Virginia. 

A meeting to hear possible violations of the laws and regulations governing the practice of social work.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.state.va.us.

† **July 25, 2003 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. 

Regulatory review and regular board business.

**Contact:** Evelyn B. Brown, Executive Director, Board of Social Work, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9914, FAX (804) 662-7250, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.state.va.us.


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# Calendar of Events

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## DEPARTMENT OF TECHNOLOGY PLANNING

### Wireless E-911 Services Board

† **June 11, 2003 - 10 a.m.** -- Open Meeting  
**July 9, 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 of the full board.

**Contact:** Steven Marzolf, Public Safety Communications  
Coordinator, Department of Technology Planning, 110 South  
7th Street, Richmond, VA 23219, telephone (804) 371-0015,  
e-mail smarzolf@ntp.state.va.us.

**July 9, 2003 - 9 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 meeting of the CMRS subcommittee in closed session.

**Contact:** Steven Marzolf, Public Safety Communications  
Coordinator, Department of Technology Planning, 110 South  
7th Street, Richmond, VA 23219, telephone (804) 371-0015,  
e-mail smarzolf@ntp.state.va.us.

## COUNCIL ON TECHNOLOGY SERVICES

**June 5, 2003 - 2 p.m.** -- Open Meeting  
**August 7, 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](http://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.

**June 11, 2003 - 9:30 a.m.** -- Open Meeting  
**July 9, 2003 - 9:30 a.m.** -- Open Meeting  
**August 13, 2003 - 9:30 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, 7th  
Floor, Executive Conference Room, Richmond, Virginia. 

A regular monthly meeting of the Change Management  
Workgroup. Agenda and details available at  
[www.cots.state.va.us](http://www.cots.state.va.us).

**Contact:** Jenny Hunter, COTS Executive Director, Council on  
Technology Services, 110 S. 7th St., Suite 135, Richmond, VA  
23219, telephone (804) 786-9579, FAX (804) 786-9584, e-  
mail jhunter@gov.state.va.us.


**June 19, 2003 - 3 p.m.** -- Open Meeting  
**July 17, 2003 - 3 p.m.** -- Open Meeting  
† **August 21, 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](http://www.cots.state.va.us).


**Contact:** Jenny Hunter, COTS Executive Director, Council on  
Technology Services, 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 TOURISM AUTHORITY


### Governor's Outdoor Resources Advisory Panel

† **July 11, 2003 - 11 a.m.** -- Open Meeting  
Hotel Roanoke, Roanoke, Virginia. 

Four committees will present their reports to panel  
members. Another agenda item concerns discussions with  
the writer who will prepare the report to the Governor.


**Contact:** Polly Bozorth, Administrative Assistant, Virginia  
Tourism Authority, 901 E. Byrd St., Richmond, VA 23219,  
telephone (804) 371-8144, FAX (804) 786-1919, (804) 371-  
0327/TTY , e-mail pbozorth@virginia.org.

## COMMONWEALTH TRANSPORTATION BOARD

**June 18, 2003 - 2 p.m.** -- Open Meeting  
† **July 16, 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.

**June 19, 2003 - 9 a.m.** -- Open Meeting  
† **July 17, 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, Agency Regulatory 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.

## VIRGINIA WASTE MANAGEMENT BOARD

**June 10, 2003 - 7:30 p.m.** -- Public Hearing  
Charles City Government and School Board Administrative Building, Auditorium, 10900 Courthouse Road, Charles City, Virginia. ☎

**June 11, 2003 - 7 p.m.** -- Public Hearing  
Rappahannock Community College, Warsaw Campus, Lecture Hall, 52 Campus Drive, Warsaw, Virginia. ☎

Public hearings to receive comments on the suspended sections of the transportation of solid and medical wastes on state waters regulation, 9 VAC 20-170-70 and 9 VAC 20-170-195. The comment period will begin with publication of the suspended sections in the Virginia Register of Regulations on May 19, 2003. The comment period will close on June 18, 2003.

**Contact:** John E. Ely, Virginia Waste Management Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4249, FAX (804) 698-4327, e-mail [eeely@deq.state.va.us](mailto:eeely@deq.state.va.us).

## STATE WATER CONTROL BOARD

**June 4, 2003 - 1 p.m.** -- Open Meeting

**July 9, 2003 - 1 p.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A meeting of the technical advisory committee assisting the department in the reissuance of the general VPDES permit for storm water discharges associated with industrial activities.

**Contact:** Burton R. Tuxford, State Water Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4086, FAX (804) 698-4032, e-mail [brtuxford@deq.state.va.us](mailto:brtuxford@deq.state.va.us).

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**June 6, 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 adopt regulations entitled: **9 VAC 25-760. James River (Richmond Regional West) Surface Water Management Area.** The purpose of the proposed action is to designate the James River near Richmond as a surface water management area. The area would encompass the James River upstream from the southeastern toe of the I-95 Bridge in the City of Richmond to the southwestern toe of the U.S. Route 522 Bridge in Goochland and Powhatan Counties. After designation, the requirements of the Surface Water Management Area Regulation (9 VAC 25-220) would apply.

Statutory Authority: § 62.1-246 of the Code of Virginia.

**Contact:** Terry Wagner, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4043, FAX (804) 698-4032, or e-mail: [tdwagner@deq.state.va.us](mailto:tdwagner@deq.state.va.us).

**June 19, 2003 - 9:30 a.m.** -- Open Meeting  
General Assembly Building, House Room C, 9th and Broad Streets, Richmond, Virginia. ☎

A regular meeting.

**Contact:** Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail [cmberndt@deq.state.va.us](mailto:cmberndt@deq.state.va.us).

**July 2, 2003 - 1 p.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A meeting of the technical advisory committee assisting the department in the reissuance of the general VPDES permit for storm water discharges associated with construction activities.

**Contact:** Burton R. Tuxford, State Water Control Board, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4086, FAX (804) 698-4032, e-mail [brtuxford@deq.state.va.us](mailto:brtuxford@deq.state.va.us).

**† July 11, 2003 - 5:30 p.m.** -- Open Meeting  
Suffolk City Council Chambers, Municipal Building, 441 Market Street, Suffolk, Virginia. ☎

One of two public meetings to receive comments on four notices of intent to amend the water quality standards by designating various waters as exceptional resource waters (Tier III). The notices of intent appear in this issue of the Virginia Register of Regulations. The public comment period will close on July 25, 2003.

**Contact:** Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, e-mail [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us).

**† July 15, 2003 - 6 p.m.** -- Open Meeting  
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia. ☎

One of two public meetings to receive comment on four notices of intent to amend the water quality standards by designating various waters as outstanding state resource waters. The notices of intent appear in this issue of the Virginia Register of Regulations. The public comment period will close on July 25, 2003.

**Contact:** Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, e-mail [jwgregory@deq.state.va.us](mailto:jwgregory@deq.state.va.us).

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

**June 19, 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.



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# Calendar of Events

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**Contact:** David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail [waterwasteoper@dpor.state.va.us](mailto:waterwasteoper@dpor.state.va.us).

## VIRGINIA WORKFORCE COUNCIL

**June 5, 2003 - 2:30 p.m.** -- Open Meeting  
Sheraton Pentagon South Hotel, 4641 Kenmore Avenue, Alexandria, Virginia. ♿ (Interpreter for the deaf provided upon request)

A quarterly business meeting. Agenda: Aging and Incumbent Worker Study; Revised Strategic Plan; Semi-annual WIA Performance Report; Demand Plan; WIA 10% budget.

**Contact:** Gail Robinson, Virginia Workforce Council Liaison, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23218-1358, telephone (804) 225-3070, FAX (804) 225-2190, (800) 828-1120/TTY ☎, e-mail [grobinson@vec.state.va.us](mailto:grobinson@vec.state.va.us).

## INDEPENDENT

### STATE LOTTERY BOARD

**June 18, 2003 - 9:30 a.m.** -- Open Meeting  
State Lottery Department, 900 East Main Street, Richmond, Virginia. ♿

A regular meeting of the board. A period for public comment is scheduled at the beginning of the meeting.

**Contact:** Barbara L. Robertson, Board, Legislative and Regulatory Coordinator, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7903, FAX (804) 692-7905, e-mail [brobertson@valottery.state.va.us](mailto:brobertson@valottery.state.va.us).

### VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

† **June 19, 2003 - 9 a.m.** -- Open Meeting  
Hampton Inn and Suites, 900 West Main Street, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

Public comment is welcome and will be received at approximately 9:10 a.m.

**Contact:** Kim Ware, Program Operations Coordinator, Virginia Office for Protection and Advocacy, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2061, FAX (804) 225-3221, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail [wareka@vopa.state.va.us](mailto:wareka@vopa.state.va.us).

### VIRGINIA RETIREMENT SYSTEM

**June 16, 2003 - 9 a.m.** -- Open Meeting  
Location to be determined.

The Board of Trustees will hold its annual retreat sometime during the week of June 16-20, 2003. This notice will be updated upon finalization of plans. 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](mailto:dkestner@vrs.state.va.us).

† **August 20, 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.

**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](mailto:dkestner@vrs.state.va.us).

† **August 20, 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 Committee

**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](mailto:dkestner@vrs.state.va.us).

† **August 21, 2003 - 3 p.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](mailto:dkestner@vrs.state.va.us).

## LEGISLATIVE

### VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL

**June 2, 2003 - 2 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

**Contact:** Lisa Wallmeyer, Assistant Director, Virginia Freedom of Information Advisory Council, 910 Capitol St.,

General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 225-3056, FAX (804) 371-0169, toll-free (866) 448-4100, e-mail foiaocouncil@leg.state.va.us.

## JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

**June 9, 2003 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

A staff briefing on health planning agencies, fiscal analysis, and DIT rate adjustment.

**Contact:** Philip A. Leone, Director, Joint Legislative Audit and Review Commission, General Assembly Bldg., 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### June 2

Conservation and Recreation, Department of  
- Leesylvania State Park Master Plan Advisory Committee  
- New River Trail State Park Master Plan Advisory Committee  
Freedom of Information Advisory Council, Virginia  
† Mental Health, Mental Retardation and Substance Abuse Services, Department of  
Professional and Occupational Regulation, Board for

#### June 3

Conservation and Recreation, Department of  
- Fairy Stone State Park Master Plan Advisory Committee  
Contractors, Board for  
† Economic Development Partnership, Virginia  
Environmental Quality, Department of  
Nursing, Board of  
- Special Conference Committee

#### June 4

Asbestos, Lead, and Home Inspectors, Virginia Board for  
† Funeral Directors and Embalmers, Board of  
Water Control Board, State

#### June 5

† Aging, Commonwealth Council on  
- Public Relations Committee  
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for  
Fire Services Board, Virginia  
Medicine, Board of  
Technology Services, Council on  
- Executive Committee  
Workforce Council, Virginia

#### June 6

Art and Architectural Review Board  
† Dentistry, Board of  
† Fire Services Board, Virginia  
- Administration and Policy Committee  
- Fire Education and Training Committee

- Fire Prevention and Control Committee  
† Game and Inland Fisheries, Board of

#### June 7

Blind and Vision Impaired, Department for the  
- Statewide Rehabilitation Council for the Blind  
† Fire Services Board, Virginia

#### June 9

Alcoholic Beverage Control Board  
Legislative Audit and Review Commission, Joint  
† Mental Health, Mental Retardation and Substance Abuse Services, Department of  
Museum of Natural History, Virginia  
- Executive Committee  
Nursing, Board of  
- Special Conference Committee  
† Pharmacy, Board of  
Rehabilitative Services, Department of  
- Commonwealth Neurotrauma Initiative Advisory Board

#### June 10

Contractors, Board for  
Nursing, Board of  
- Special Conference Committee  
† People with Disabilities, Virginia Board for  
- Executive Committee

#### June 11

† Conservation and Recreation, Board of  
Environmental Quality, Department of  
Interagency Coordinating Council, Virginia  
Jamestown-Yorktown Foundation  
- Steering Committee  
Medicine, Board of  
- Informal Conference Committee  
† People with Disabilities, Virginia Board for  
- Executive Committee  
† Technology Planning, Department of  
- Wireless E-911 Services Board  
Technology Services, Council on  
- Change Management Workgroup

#### June 12

† Agriculture and Consumer Services, Department of  
- Virginia Peanut Board  
† Criminal Justice Services Board  
Health, Department of  
- Biosolids Use Regulations Advisory Committee  
† Longwood University  
- Board of Visitors  
† Pharmacy, Board of  
- Special Conference Committee

#### June 13

Labor and Industry, Department of  
- Safety and Health Codes Board  
† Longwood University  
- Board of Visitors

#### June 16

Chesapeake Bay Local Assistance Board  
Library of Virginia, The  
- Archival and Informational Services Committee  
- Collection Management Services Committee  
- Executive Committee  
- Legislative and Finance Committee  
- Library Board  
- Publications and Educational Services Committee

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## Calendar of Events

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- Public Library Development Committee
- Records Management Committee
- Real Estate Board
- Retirement System, Virginia
  - Board of Trustees
- June 17**
  - † Agriculture and Consumer Services, Department of
    - Virginia Aquaculture Advisory Board
    - Virginia Marine Products Board
  - † Aviation Board, Virginia
  - Contractors, Board for
  - † Environmental Quality, Department of
  - † Mines, Minerals and Energy, Department of
    - Virginia Gas and Oil Board
  - Old Dominion University
    - Board of Visitors
- June 18**
  - † Aviation Board, Virginia
  - † Compensation Board
  - Lottery Board, State
  - Museum of Fine Arts, Virginia
    - Expansion Committee
  - Polygraph Examiners Advisory Board
  - Social Services, State Board of
  - Transportation Board, Commonwealth
- June 19**
  - Design-Build/Construction Management Review Board
  - Labor and Industry, Department of
    - Virginia Apprenticeship Council
  - † Manufactured Housing Board, Virginia
  - Museum of Fine Arts, Virginia
    - Executive/Finance Committee
  - † Protection and Advocacy, Virginia Office for
  - Public Guardian and Conservator Advisory Board, Virginia
  - Social Services, State Board of
  - † Social Work, Board of
  - Technology Services, Council on
    - Security Workgroup
  - Transportation Board, Commonwealth
  - Water Control Board, State
  - Waterworks and Wastewater Works Operators, Board for
- June 20**
  - Health Professions, Department of
    - Intervention Program Committee
  - Social Services, Department of
    - Family and Children's Trust Fund
- June 23**
  - Alcoholic Beverage Control Board
  - Conservation and Recreation, Department of
    - Leesylvania State Park Master Plan Advisory Committee
- June 24**
  - Contractors, Board for
  - Marine Resources Commission
  - Nursing, Board of
    - Special Conference Committee
  - † Outdoors Foundation, Virginia
    - Board of Trustees
  - † Small Business Financing Authority, Virginia
- June 25**
  - † Accountancy, Board of
  - At-Risk Youth and Families, Comprehensive Services for
  - † Contractors, Board for
- Tradesman and Education Committee
- Education, Board of
- Medicine, Board of
  - Informal Conference Committee
- Nursing, Board of
  - Special Conference Committee
- June 26**
  - † Gaming Commission, Charitable
  - Nursing, Board of
    - Special Conference Committee
  - † Pharmacy, Board of
    - Special Conference Committee
- June 27**
  - † Dentistry, Board of
    - Special Conference Committee
  - † Real Estate Board
- July 1**
  - Contractors, Board for
- July 2**
  - Water Control Board, State
- July 8**
  - Child Fatality Review Team, State
- July 9**
  - Contractors, Board for
  - Medicine, Board of
    - Informal Conference Committee
  - † Motor Vehicles, Department of
    - Medical Advisory Board
  - Technology Planning, Department of
    - Wireless E-911 Services Board
  - Technology Services, Council on
    - Change Management Workgroup
  - Water Control Board, State
- July 11**
  - Art and Architectural Review Board
  - † Physical Therapy, Board of
  - Social Services, Department of
  - † Tourism Authority, Virginia
    - Governor's Outdoor Resources Advisory Panel
  - † Water Control Board, State
- July 12**
  - Social Services, Department of
- July 14**
  - Alcoholic Beverage Control Board
  - Nursing, Board of
- July 15**
  - Contractors, Board for
  - † Water Control Board, State
- July 16**
  - † Juvenile Justice, State Board of
  - Medicine, Board of
    - Informal Conference Committee
  - Nursing, Board of
  - † Transportation Board, Commonwealth
- July 17**
  - Design-Build/Construction Management Review Board
  - Nursing, Board of
  - Technology Services, Council on
    - Security Workgroup
  - † Transportation Board, Commonwealth
- July 22**
  - Contractors, Board for

**July 23**

Education, Board of  
Nursing Home Administrators, Board of  
- Special Conference Committee

**July 24**

Agriculture and Consumer Services, Department of  
- Virginia Small Grains Board

**July 25**

Health, State Board of  
† Social Work, Board of

**July 28**

Alcoholic Beverage Control Board

**July 29**

Contractors, Board for  
Geology, Board for

**July 30**

At-Risk Youth and Families, Comprehensive Services for

**July 31**

Medicine, Board of  
- Informal Conference Committee  
Real Estate Board

**August 1**

Art and Architectural Review Board

**August 5**

Contractors, Board for

**August 6**

Contractors, Board for  
- Tradesman and Education Committee  
Jamestown-Yorktown Foundation  
- Steering Committee

**August 7**

Technology Services, Council on  
- Executive Committee

**August 8**

† Health, Department of  
- Emergency Medical Services Advisory Board

**August 11**

Alcoholic Beverage Control Board

**August 12**

Contractors, Board for

**August 13**

Environmental Quality, Department of  
- Litter Control and Recycling Fund Advisory Board  
Technology Services, Council on  
- Change Management Workgroup

**August 15**

Health Professions, Department of  
- Intervention Program Committee

**August 20**

† Contractors, Board for  
† Environmental Quality, Department of  
- Recycling Markets Development Council  
† Retirement System, Virginia  
- Investment Advisory Committee

**August 21**

† Design-Build/Construction Management Review Board  
† Health, Department of  
- Sewage Handling and Disposal Advisory Committee  
† Technology Services, Council on  
- Security Workgroup  
† Retirement System, Virginia  
- Board of Trustees

**August 25**

† Alcoholic Beverage Control Board

**August 26**

† Contractors, Board for

**August 27**

† At-Risk Youth and Families, Comprehensive Services for  
- State Executive Council

## PUBLIC HEARINGS

**June 5**

† Aging, Commonwealth Council on

**June 10**

Waste Management Board, Virginia

**June 11**

Waste Management Board, Virginia

**June 12**

Criminal Justice Services Board

**June 18**

Environmental Quality, Department of

**July 2**

† Air Pollution Control Board, State

**July 3**

† Air Pollution Control Board, State

**July 11**

† Physical Therapy, Board of

**July 17**

† Mental Health, Mental Retardation and Substance  
Services, State Board of