

---

# TABLE OF CONTENTS

---

## **CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED**

Cumulative Table.....765

## **NOTICES OF INTENDED REGULATORY ACTION**

### TITLE 3. ALCOHOLIC BEVERAGES

Alcoholic Beverage Control Board.....770

### TITLE 8. EDUCATION

State Council of Higher Education for Virginia.....771

### TITLE 9. ENVIRONMENT

State Air Pollution Control Board .....771

### TITLE 12. HEALTH

State Board of Health .....772

Department of Medical Assistance Services .....772

### TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Board of Counseling .....772

Board of Optometry .....773

## **PROPOSED REGULATIONS**

### TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

#### **BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY**

Regulations Governing the Practice of Audiology and Speech-  
Language Pathology (adding 18 VAC 30-20-290). .....774

#### **BOARD OF DENTISTRY**

Regulations Governing the Practice of Dentistry and Dental  
Hygiene (adding 18 VAC 60-20-17).....776

#### **BOARD OF NURSING HOME ADMINISTRATORS**

Regulations Governing the Practice of Nursing Home  
Administrators (adding 18 VAC 95-20-471). .....778

#### **BOARD OF OPTOMETRY**

Regulations Governing the Practice of Optometry (adding  
18 VAC 105-20-41).....780

## **BOARD OF PHARMACY**

Regulations Governing the Practice of Pharmacy (adding  
18 VAC 110-20-15). .....782

## **BOARD OF PHYSICAL THERAPY**

Regulations Governing the Practice of Physical Therapy  
(adding 18 VAC 112-20-26). .....784

## **BOARD OF PSYCHOLOGY**

Regulations Governing Delegation to an Agency Subordinate  
(adding 18 VAC 125-15-10, 18 VAC 125-15-20, and 18 VAC  
125-15-30). .....786

## **BOARD OF VETERINARY MEDICINE**

Regulations Governing the Practice of Veterinary Medicine  
(adding 18 VAC 150-20-15). .....788

## **FINAL REGULATIONS**

### TITLE 9. ENVIRONMENT

#### **STATE AIR POLLUTION CONTROL BOARD**

General Provisions (Rev. B04) (amending 9 VAC 5-20-204).  
.....790

Regulations for the Control and Abatement of Air Pollution  
(Rev. I04). .....791

New and Modified Stationary Sources (amending 9 VAC  
5-50-400). .....791

Hazardous Air Pollutant Sources (amending 9 VAC 5-  
60-60, 9 VAC 5-60-90, 9 VAC 5-60-100; repealing  
9 VAC 5-60-91). .....791

### TITLE 12. HEALTH

#### **DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

Methods and Standards for Establishing Payment Rates--  
Other Types of Care (amending 12 VAC 30-80-30 and  
12 VAC 30-80-190). .....797

## **FAST-TRACK REGULATIONS**

### TITLE 3. ALCOHOLIC BEVERAGES

#### **ALCOHOLIC BEVERAGE CONTROL BOARD**

Retail Operations (amending 3 VAC 5-50-60).....801

### TITLE 8. EDUCATION

#### **STATE BOARD OF EDUCATION**

Diploma - High School Completion (repealing 8 VAC 20-200-  
10).....804

---

# Table of Contents

---

Regulations Governing Financial Retention Schedule  
(repealing 8 VAC 20-260-10 through 8 VAC 20-260-60)... [805](#)

Rules Governing Public School Building Construction (Literary  
Fund) (repealing 8 VAC 20-380-10 through 8 VAC 20-380-40).  
..... [806](#)

Rules Governing Division Superintendent Salary and  
Expenses (repealing 8 VAC 20-400-10 through 8 VAC 20-  
400-50). ..... [807](#)

Regulations Governing Contractual Agreements with  
Professional Personnel (repealing 8 VAC 20-430-10 through  
8 VAC 20-430-50). ..... [808](#)

Rules Governing Pupil Rights and Hearings (repealing 8 VAC  
20-480-10). ..... [809](#)

## GENERAL NOTICES/ERRATA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Special Order - Sanville Utilities  
Corporation..... [811](#)

Total Maximum Daily Loads for Abrams Creek and Opequon  
Creek..... [811](#)

Total Maximum Daily Loads (TMDLs) for Nottoway River  
Watershed ..... [811](#)

### VIRGINIA CODE COMMISSION

Notice to State Agencies ..... [812](#)

Forms for Filing Material for Publication in the Virginia  
Register of Regulations ..... [812](#)

## CALENDAR OF EVENTS

### EXECUTIVE

Open Meetings and Public Hearings ..... [813](#)

### INDEPENDENT

Open Meetings and Public Hearings ..... [830](#)

### LEGISLATIVE

Open Meetings and Public Hearings ..... [831](#)

### CHRONOLOGICAL LIST

Open Meetings ..... [831](#)

Public Hearings ..... [832](#)

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

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2004 VAC Supplement includes final regulations published through *Virginia Register* Volume 20, Issue 24, dated August 9, 2004). 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 1. Administration</b>			
1 VAC 75-40-10 through 1 VAC 75-40-60	Added	20:25 VA.R. 3082	9/22/04
<b>Title 2. Agriculture</b>			
2 VAC 20-30	Erratum	20:25 VA.R. 3111	--
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-30	Erratum	21:1 VA.R. 44	--
3 VAC 5-30	Erratum	21:3 VA.R. 345	--
3 VAC 5-40	Erratum	21:1 VA.R. 44	--
3 VAC 5-40	Erratum	21:3 VA.R. 345	--
3 VAC 5-70	Erratum	21:1 VA.R. 44	--
3 VAC 5-70	Erratum	21:3 VA.R. 345	--
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 3-20	Repealed	21:3 VA.R. 317	*
4 VAC 15-20-100	Amended	21:3 VA.R. 318	10/1/04
4 VAC 15-40-280	Amended	21:1 VA.R. 24	10/20/04
4 VAC 15-260-10	Amended	20:25 VA.R. 3082	7/28/04
4 VAC 15-320-100	Amended	21:1 VA.R. 24	9/20/04
4 VAC 20-270-30	Amended	20:26 VA.R. 3191	8/6/04
4 VAC 20-320-10	Amended	20:26 VA.R. 3191	8/6/04
4 VAC 20-320-70	Amended	20:26 VA.R. 3192	8/6/04
4 VAC 20-320-80	Amended	20:26 VA.R. 3192	8/6/04
4 VAC 20-564-10 through 4 VAC 20-564-50 emer	Added	20:25 VA.R. 3096	8/16/04-9/3/04
4 VAC 20-720-20	Amended	21:4 VA.R. 408	10/1/04
4 VAC 20-720-40 through 4 VAC 20-720-100	Amended	21:4 VA.R. 409-411	10/1/04
4 VAC 20-910-45 emer	Amended	21:5 VA.R. 499	11/1/04-11/30/04
4 VAC 20-950-47	Amended	21:5 VA.R. 497	10/29/04
4 VAC 20-950-48 emer	Amended	21:3 VA.R. 334	9/29/04-10/30/04
4 VAC 20-950-48	Amended	21:5 VA.R. 497	10/29/04
4 VAC 20-950-48.1	Added	21:5 VA.R. 497	10/29/04
4 VAC 20-1045-10	Added	21:4 VA.R. 412	10/1/04
4 VAC 20-1045-20	Added	21:4 VA.R. 412	10/1/04
4 VAC 20-1045-30	Added	21:4 VA.R. 412	10/1/04
4 VAC 25-31 (Forms)	Amended	21:1 VA.R. 28	--
4 VAC 25-130 (Forms)	Amended	21:2 VA.R. 225	--
4 VAC 50-60-10 through 4 VAC 50-60-1240	Added	21:3 VA.R. 317	*
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-190-10	Amended	21:2 VA.R. 127	11/3/04
6 VAC 20-190-50	Amended	21:2 VA.R. 127	11/3/04
6 VAC 20-190-150	Amended	21:2 VA.R. 127	11/3/04
6 VAC 20-190-160	Amended	21:2 VA.R. 128	11/3/04
6 VAC 20-240-10 through 6 VAC 20-240-140 emer	Added	20:25 VA.R. 3097-3102	8/23/04-8/22/05

\* January 1, 2005, or 30 days after U.S. EPA approval, whichever is the latter.

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 8. Education</b>			
8 VAC 20-140-10	Repealed	21:3 VA.R. 332	1/1/05
8 VAC 20-210-10	Amended	21:4 VA.R. 413	1/1/05
8 VAC 20-470-10	Repealed	21:4 VA.R. 423	3/1/05
8 VAC 40-30 emer	Repealed	21:6 VA.R. 684	11/8/04-11/7/05
8 VAC 40-31-10 through 8 VAC 40-31-320 emer	Added	21:6 VA.R. 684-698	11/8/04-11/7/05
<b>Title 9. Environment</b>			
9 VAC 5-20-204	Erratum	20:26 VA.R. 3210-3211	--
9 VAC 5-20-205	Erratum	20:26 VA.R. 3210-3211	--
9 VAC 5-80-2000	Amended	21:4 VA.R. 413	12/1/04
9 VAC 5-80-2010	Amended	21:4 VA.R. 414	12/1/04
9 VAC 5-80-2250	Amended	21:4 VA.R. 419	12/1/04
9 VAC 25-31-10	Amended	21:2 VA.R. 128	11/3/04
9 VAC 25-31-30	Amended	21:2 VA.R. 139	11/3/04
9 VAC 25-31-100	Amended	21:2 VA.R. 140	11/3/04
9 VAC 25-31-130	Amended	21:2 VA.R. 158	11/3/04
9 VAC 25-31-170	Amended	21:2 VA.R. 160	11/3/04
9 VAC 25-31-200	Amended	21:2 VA.R. 162	11/3/04
9 VAC 25-71-10	Amended	21:2 VA.R. 165	11/3/04
9 VAC 25-71-60	Amended	21:2 VA.R. 166	11/3/04
9 VAC 25-101-30	Amended	21:2 VA.R. 166	11/3/04
9 VAC 25-101-35	Added	21:2 VA.R. 167	11/3/04
9 VAC 25-101-40	Amended	21:2 VA.R. 167	11/3/04
9 VAC 25-101-45	Added	21:2 VA.R. 170	11/3/04
9 VAC 25-101-50	Amended	21:2 VA.R. 170	11/3/04
9 VAC 25-101-60	Amended	21:2 VA.R. 172	11/3/04
9 VAC 25-101-70	Amended	21:2 VA.R. 172	11/3/04
9 VAC 25-151-140	Amended	21:2 VA.R. 173	11/3/04
9 VAC 25-151-150	Amended	21:2 VA.R. 175	11/3/04
9 VAC 25-151-160	Amended	21:2 VA.R. 179	11/3/04
9 VAC 25-151-180	Amended	21:2 VA.R. 179	11/3/04
9 VAC 25-151-230	Amended	21:2 VA.R. 181	11/3/04
9 VAC 25-151-280	Amended	21:2 VA.R. 182	11/3/04
9 VAC 25-191-10 through 9 VAC 25-191-50	Added	21:2 VA.R. 183-198	11/3/04
9 VAC 25-192-10	Amended	21:2 VA.R. 199	11/3/04
9 VAC 25-192-20	Amended	21:2 VA.R. 200	11/3/04
9 VAC 25-192-30	Repealed	21:2 VA.R. 200	11/3/04
9 VAC 25-192-40	Repealed	21:2 VA.R. 200	11/3/04
9 VAC 25-192-50	Amended	21:2 VA.R. 200	11/3/04
9 VAC 25-192-60	Amended	21:2 VA.R. 201	11/3/04
9 VAC 25-192-70	Amended	21:2 VA.R. 202	11/3/04
9 VAC 25-400-10	Repealed	20:25 VA.R. 3083	9/22/04
9 VAC 25-401-10 through 9 VAC 25-401-50	Added	20:25 VA.R. 3083	9/22/04
9 VAC 25-630-10	Amended	21:2 VA.R. 211	11/3/04
9 VAC 25-630-20	Amended	21:2 VA.R. 212	11/3/04
9 VAC 25-630-30	Amended	21:2 VA.R. 212	11/3/04
9 VAC 25-630-50	Amended	21:2 VA.R. 212	11/3/04
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-100-10	Repealed	21:6 VA.R. 630	6/30/05
10 VAC 5-100-20	Repealed	21:6 VA.R. 630	6/30/05
10 VAC 5-100-30	Repealed	21:6 VA.R. 630	6/30/05
10 VAC 5-110-10	Added	21:6 VA.R. 631	11/15/04
10 VAC 5-110-20	Added	21:6 VA.R. 631	11/15/04
<b>Title 11. Gaming</b>			
11 VAC 10-20-200	Amended	20:25 VA.R. 3083	9/23/04

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
11 VAC 10-20-240 emer	Amended	20:25 VA.R. 3102	7/28/04-7/27/05
11 VAC 10-45	Erratum	20:25 VA.R. 3112	--
<b>Title 12. Health</b>			
12 VAC 5-90-10 emer	Amended	21:6 VA.R. 699	11/5/04-11/4/05
12 VAC 5-90-40 emer	Amended	21:6 VA.R. 702	11/5/04-11/4/05
12 VAC 5-90-90 emer	Amended	21:6 VA.R. 703	11/5/04-11/4/05
12 VAC 5-90-100 emer	Amended	21:6 VA.R. 705	11/5/04-11/4/05
12 VAC 5-90-105 emer	Added	21:6 VA.R. 705	11/5/04-11/4/05
12 VAC 5-90-110 emer	Amended	21:6 VA.R. 706	11/5/04-11/4/05
12 VAC 5-90-120 emer	Added	21:6 VA.R. 708	11/5/04-11/4/05
12 VAC 5-220-10	Amended	20:26 VA.R. 3193	9/27/04
12 VAC 5-220-160	Amended	20:26 VA.R. 3196	9/27/04
12 VAC 5-220-230	Amended	20:26 VA.R. 3197	9/27/04
12 VAC 5-220-385	Amended	20:26 VA.R. 3198	9/27/04
12 VAC 5-371-110	Amended	20:26 VA.R. 3200	9/27/04
12 VAC 5-410-440	Amended	21:6 VA.R. 665	2/14/05
12 VAC 5-410-441 through 12 VAC 5-410-447	Added	21:6 VA.R. 666-681	2/14/05
12 VAC 30-10-650	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-50-210	Amended	21:6 VA.R. 632	1/3/05
12 VAC 30-70-331	Amended	21:6 VA.R. 683	7/1/05
12 VAC 30-80-40	Amended	21:6 VA.R. 632	1/3/05
12 VAC 30-80-40 emer	Amended	21:6 VA.R. 709	12/1/04-11/30/05
12 VAC 30-80-190 emer	Amended	20:26 VA.R. 3203	9/1/04-8/31/05
12 VAC 30-80-190 emer	Amended	20:26 VA.R. 3204	9/1/04-8/31/05
12 VAC 30-90-29	Amended	21:2 VA.R. 223	11/3/04
12 VAC 30-120-211 emer	Amended	21:6 VA.R. 711	12/1/04-11/30/05
12 VAC 30-120-213 emer	Amended	21:6 VA.R. 714	12/1/04-11/30/05
12 VAC 30-120-215 emer	Amended	21:6 VA.R. 715	12/1/04-11/30/05
12 VAC 30-120-219 emer	Amended	21:6 VA.R. 718	12/1/04-11/30/05
12 VAC 30-120-223 emer	Amended	21:6 VA.R. 719	12/1/04-11/30/05
12 VAC 30-120-225 emer	Amended	21:6 VA.R. 720	12/1/04-11/30/05
12 VAC 30-120-227 emer	Amended	21:6 VA.R. 724	12/1/04-11/30/05
12 VAC 30-120-229 emer	Amended	21:6 VA.R. 725	12/1/04-11/30/05
12 VAC 30-120-233 emer	Amended	21:6 VA.R. 726	12/1/04-11/30/05
12 VAC 30-120-237 emer	Amended	21:6 VA.R. 728	12/1/04-11/30/05
12 VAC 30-120-241 emer	Amended	21:6 VA.R. 729	12/1/04-11/30/05
12 VAC 30-120-243 emer	Amended	21:6 VA.R. 730	12/1/04-11/30/05
12 VAC 30-120-245 emer	Amended	21:6 VA.R. 732	12/1/04-11/30/05
12 VAC 30-120-247 emer	Amended	21:6 VA.R. 733	12/1/04-11/30/05
12 VAC 30-120-249 emer	Amended	21:6 VA.R. 734	12/1/04-11/30/05
12 VAC 30-130-290	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-310	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-320	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-330	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-335	Added	21:6 VA.R. 631	1/3/05
12 VAC 30-130-400	Amended	21:6 VA.R. 631	1/3/05
12 VAC 30-130-1000	Added	21:6 VA.R. 633	1/3/05
<b>Title 13. Housing</b>			
13 VAC 5-62-260	Amended	20:25 VA.R. 3084	9/8/04
<b>Title 14. Insurance</b>			
14 VAC 5-90-10 through 14 VAC 5-90-50	Amended	20:25 VA.R. 3090-3091	8/4/04
14 VAC 5-90-55	Added	20:25 VA.R. 3091	8/4/04
14 VAC 5-90-60 through 14 VAC 5-90-180	Amended	20:25 VA.R. 3092	8/4/04
14 VAC 5-90 (Forms)	Amended	20:25 VA.R. 3092	8/4/04

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 16. Labor and Employment</b>			
16 VAC 25-40-10	Amended	20:26 VA.R. 3201	10/15/04
16 VAC 25-40-20	Amended	20:26 VA.R. 3201	10/15/04
16 VAC 25-40-50	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910	Erratum	21:1 VA.R. 44	--
16 VAC 25-90-1910.103	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.217	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.219	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1910.268	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-90-1926.307	Amended	20:26 VA.R. 3202	10/15/04
16 VAC 25-155-10	Added	21:6 VA.R. 634	1/1/05
16 VAC 25-175-1926	Erratum	21:1 VA.R. 44	--
16 VAC 25-175-1926.950(c)(1)	Repealed	21:6 VA.R. 634	1/1/05
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-30	Repealed	21:3 VA.R. 318	11/3/04
18 VAC 10-20-60	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-90	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-170	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-280	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-400	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-520	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-565	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-580	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-625	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-630	Amended	21:3 VA.R. 318	12/1/04
18 VAC 10-20-665	Amended	21:3 VA.R. 318	12/1/04
18 VAC 45-10-10 through 18 VAC 45-10-40	Amended	20:25 VA.R. 3093-3094	11/8/04
18 VAC 45-10-60 through 18 VAC 45-10-90	Amended	20:25 VA.R. 3094-3095	11/8/04
18 VAC 62-20	Erratum	21:1 VA.R. 44	--
18 VAC 62-20-40 emer	Added	20:25 VA.R. 3104	7/23/04-2/1/05
18 VAC 62-20-90 emer	Added	20:25 VA.R. 3104	7/23/04-2/1/05
18 VAC 85-15-10	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-15-20	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-15-30	Added	21:1 VA.R. 26	9/1/04-8/31/05
18 VAC 85-80-61 emer	Added	20:25 VA.R. 3105	7/27/04-7/26/05
18 VAC 90-15-10	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 90-15-20	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 90-15-30	Added	21:1 VA.R. 27	9/1/04-8/31/05
18 VAC 95-20-471 emer	Added	20:25 VA.R. 3105	7/28/04-7/27/05
18 VAC 105-20-5 emer	Added	21:6 VA.R. 735	12/8/04-12/7/05
18 VAC 105-20-10 emer	Amended	21:6 VA.R. 736	12/8/04-12/7/05
18 VAC 105-20-15 emer	Amended	21:6 VA.R. 736	12/8/04-12/7/05
18 VAC 105-20-16 emer	Added	21:6 VA.R. 736	12/8/04-12/7/05
18 VAC 105-20-20 emer	Amended	21:6 VA.R. 736	12/8/04-12/7/05
18 VAC 105-20-70 emer	Amended	21:6 VA.R. 737	12/8/04-12/7/05
18 VAC 105-30 emer	Repealed	21:6 VA.R. 735	12/8/04-12/7/05
18 VAC 125-15-10 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 125-15-20 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 125-15-30 emer	Added	20:25 VA.R. 3106	7/28/04-7/27/05
18 VAC 145-20-151	Amended	21:3 VA.R. 319	12/1/04
18 VAC 160-20-102	Amended	21:3 VA.R. 319	12/1/04
<b>Title 19. Public Safety</b>			
19 VAC 30-70-1	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-2	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-6	Amended	21:4 VA.R. 420	9/22/04

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
19 VAC 30-70-7	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-8	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-9	Added	21:4 VA.R. 420	9/22/04
19 VAC 30-70-10	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-30 through 19 VAC 30-70-110	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-130 through 19 VAC 30-70-170	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-190 through 19 VAC 30-70-230	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-250 through 19 VAC 30-70-300	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-340	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-350	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-360	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-400	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-430 through 19 VAC 30-70-560	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-580	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-600	Amended	21:4 VA.R. 420	9/22/04
19 VAC 30-70-650	Amended	21:4 VA.R. 420	9/22/04
<b>Title 22. Social Services</b>			
22 VAC 40-141-10 through 22 VAC 40-141-40	Amended	21:6 VA.R. 635	2/1/05
22 VAC 40-141-60 through 22 VAC 40-141-130	Amended	21:6 VA.R. 635	2/1/05
22 VAC 40-141-87	Added	21:6 VA.R. 634	2/1/05
22 VAC 40-141-150	Amended	21:6 VA.R. 636	2/1/05
22 VAC 40-141-170 through 22 VAC 40-141-210	Amended	21:6 VA.R. 636-638	2/1/05
22 VAC 40-705-30	Amended	21:4 VA.R. 421	12/1/04
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 20-70	Repealed	20:25 VA.R. 3092	9/22/04
24 VAC 30-90	Repealed	21:6 VA.R. 643	1/1/05
24 VAC 30-91-10 through 24 VAC 30-91-160	Added	21:6 VA.R. 643-663	1/1/05
24 VAC 30-120-170	Amended	21:3 VA.R. 330	11/17/04

---

# NOTICES OF INTENDED REGULATORY ACTION

---

## Symbol Key

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

---

## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-10, Procedural Rules for the Conduct of Hearings Before the Board and its Hearing Officers and the Adoption or Amendment of Regulations**. The purpose of the proposed action is to remove obsolete references to positions or divisions of the agency that no longer exist, incorporate the discovery rules of the Virginia Supreme Court by reference, and update public participation guidelines.

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

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until January 13, 2005.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

VA.R. Doc. No. R05-79; Filed November 23, 2004, 10:49 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-20, Advertising**. The purpose of the proposed action is to loosen some of the current restrictions on the types of advertising materials that may be used by sellers of alcoholic beverages.

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

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until January 13, 2005.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

VA.R. Doc. No. R05-80; Filed November 23, 2004, 10:49 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board

intends to consider amending regulations entitled **3 VAC 5-30, Tied-House**. The purpose of the proposed action is to lessen some restrictions on promotional activities and items that may be provided by industry members to retailers.

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

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until January 13, 2005.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

VA.R. Doc. No. R05-81; Filed November 23, 2004, 10:49 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-40, Requirements for Product Approval**. The purpose of the proposed action is to amend regulations governing the approval of new alcoholic beverages to be sold in the Commonwealth, clarify and simplify the process, and eliminate obsolete provisions.

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

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until January 13, 2005.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

VA.R. Doc. No. R05-82; Filed November 23, 2004, 10:49 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-50, Retail Operations**. The purpose of the proposed action is to provide a process for licensees to apply for approval for the employment of individuals with criminal records, allow farm wineries to allow 18 year old persons to serve wine at counters and sell wine from containers of ice at wine festivals, simplify food sale requirements, simplify nonmember use restrictions for clubs, clarify rules prohibiting lewd conduct on licensed premises, and allow advertising of drink specials.

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



---

# Notices of Intended Regulatory Action

---

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until January 13, 2005.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

VA.R. Doc. No. R05-83; Filed November 23, 2004, 10:49 a.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-60, Manufacturers and Wholesalers Operations**. The purpose of the proposed action is to eliminate restrictions on peddling of wine, increase the amount of the indemnifying bond required of wholesale wine licensees, allow mixed beverage solicitors to participate in tasting events, and revise rules for giving away novelty and specialty items bearing spirits advertising.

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

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until January 13, 2005.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

VA.R. Doc. No. R05-84; Filed November 23, 2004, 10:49 a.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending regulations entitled **3 VAC 5-70, Other Provisions**. The purpose of the proposed action is to expand the ability of manufacturers and wholesalers of alcoholic beverages to participate in tasting events at licensed premises, remove an unnecessary price change reporting requirement for licensees serving as both importer and wholesaler of a product, increase the number of remote retail locations available to farm wineries in accordance with a recent statutory change, and add a procedure for sale by auction of designer or vintage spirits bottles.

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

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public comments may be submitted until January 13, 2005.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

VA.R. Doc. No. R05-85; Filed November 23, 2004, 10:50 a.m.



## TITLE 8. EDUCATION

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Council of Higher Education for Virginia intends to consider repealing regulations entitled **8 VAC 40-30, Regulations Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates** and promulgating regulations entitled **8 VAC 40-31, Regulations Governing the Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates**. The purpose of the proposed action is to promulgate regulations as required by Chapter 991 of the 2004 Acts of Assembly to govern the certification and operation of the Virginia private not-for-profit and private for-profit postsecondary schools operating in Virginia.

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

Statutory Authority: § 23-276.3 of the Code of Virginia.

Public comments may be submitted until January 12, 2005.

**Contact:** Rick Patterson, Assistant Director for Private and Out-of-State Postsecondary Education, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2609, FAX (804) 786-2027 or e-mail [rickpatterson@schev.edu](mailto:rickpatterson@schev.edu).

VA.R. Doc. No. R05-77; Filed November 23, 2004, 10:19 a.m.



## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled **9 VAC 5-20, General Provisions (Rev. D04)**. The purpose of the proposed action is to enlarge the scope of volatile organic compound and nitrogen oxides emissions control areas in order to include new ozone nonattainment areas.

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

Statutory Authority: § 10.1-1308 of the Code of Virginia and §§ 110 and 182 of the Clean Air Act (40 CFR Part 51).

---

# Notices of Intended Regulatory Action

---

Public comments may be submitted until 5 p.m. on January 12, 2005.

**Contact:** Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510 or e-mail [ggraham@deq.virginia.gov](mailto:ggraham@deq.virginia.gov).

VA.R. Doc. No. R05-66; Filed November 10, 2004, 10:56 a.m.

---

◆

## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to consider amending regulations entitled **12 VAC 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to carry out 2004 legislation by providing a program for certifying persons who apply biosolids to land.

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

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

Public comments may be submitted until 5 p.m. on January 13, 2005.

**Contact:** Cal Sawyer, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7463 or e-mail [cal.sawyer@vdh.virginia.gov](mailto:cal.sawyer@vdh.virginia.gov).

VA.R. Doc. No. R05-69; Filed November 22, 2004, 3:13 p.m.

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-80, Methods and Standards for Establishing Payment Rates--Other Types of Care**. The purpose of the proposed action is to promulgate a new methodology for the reimbursement of generic drugs.

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

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

Public comments may be submitted until December 29, 2004, to Javier Menendez, R.Ph., Manager, Pharmacy Services, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Brian M. McCormick, Regulatory Coordinators, 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 [vicki.simmons@dmas.virginia.gov](mailto:vicki.simmons@dmas.virginia.gov) or [brian.mccormick@dmas.virginia.gov](mailto:brian.mccormick@dmas.virginia.gov).

VA.R. Doc. No. R05-57; Filed November 3, 2004, 2:48 p.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-120, Waiver Services**. The purpose of the proposed action is to conform the agency's regulations to the federally approved CBC mental retardation waiver. This program provides supportive services in home and communities of persons with diagnoses of mental retardation and children younger than the age of six years who are at risk of developmental delay.

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

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

Public comments may be submitted until December 29, 2004, to Suzanne Klaas, Analyst, Division of Long Term Care and Quality Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons or Brian M. McCormick, Regulatory Coordinators, 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 [vicki.simmons@dmas.virginia.gov](mailto:vicki.simmons@dmas.virginia.gov) or [brian.mccormick@dmas.virginia.gov](mailto:brian.mccormick@dmas.virginia.gov).

VA.R. Doc. No. R05-55; Filed November 3, 2004, 2:50 p.m.

---

◆

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF COUNSELING

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Counseling intends to consider amending regulations entitled **18 VAC 115-20, Regulations Governing the Practice of Professional Counseling**. The purpose of the proposed action is to amend prerequisites for licensure by endorsement to allow for greater portability of licensure from state to state.

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

---

# Notices of Intended Regulatory Action

---

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

Public comments may be submitted until 5 p.m. on December 29, 2004.

**Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9133, FAX (804) 662-9943 or e-mail [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

VA.R. Doc. No. R05-59; Filed November 4, 2004, 11:04 a.m.

## BOARD OF OPTOMETRY

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to consider amending regulations entitled **18 VAC 105-20, Regulations for the Virginia Board of Optometry**, and repealing regulations entitled **18 VAC 105-30, Regulations on Certification of Optometrists to Use Therapeutic Pharmaceutical Agents**. The purpose of the proposed action is to incorporate the requirements for initial licensure with therapeutic education agents (TPA) certification, fees for applications and renewals, and the continuing education requirement for TPA-certified optometrists.

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

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

Public comments may be submitted until 5 p.m. on December 29, 2004.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board for Optometry, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7097 or e-mail [elizabeth.carter@dhp.virginia.gov](mailto:elizabeth.carter@dhp.virginia.gov).

VA.R. Doc. No. R05-60; Filed November 4, 2004, 11:04 a.m.



---

# PROPOSED REGULATIONS

---

For information concerning Proposed Regulations, see Information Page.

---

## Symbol Key

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

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulation: **18 VAC 30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (adding 18 VAC 30-20-290).**

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

Public Hearing Date: January 12, 2005 - 10:30 a.m.

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

Agency Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9111, FAX (804) 662-9523, or e-mail elizabeth.young@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Audiology and Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

Purpose: One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or other cases that do not involve harm to a patient or impairment to practice. Proposed regulations state the types of cases that may not be heard by a subordinate. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

Substance: A section is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated except as may be approved by a committee of the board, and the individuals who may be designated as agency subordinates.

Issues: The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education or insufficient patient records. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

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

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

Summary of the proposed regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Audiology and Speech-Language Pathology (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still

ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 454 licensed audiologists and 2,528 licensed speech-language pathologists, and the 118 licensed school speech-language pathologists in the Commonwealth, as well as their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 30-20, Regulations Governing the Practice of Audiology and Speech-Language Pathology, relating to delegation of informal fact-finding to an agency subordinate.

#### Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since August 25, 2004.*

#### CHAPTER 20.

#### REGULATIONS OF THE BOARD GOVERNING THE PRACTICE OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY.

#### **18 VAC 30-20-290. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

*A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

*B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include, but are not limited to, those that involve:*

- 1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;*
- 2. Mandatory suspension resulting from action by another jurisdiction or a felony conviction;*

---

# Proposed Regulations

---

3. *Impairment with an inability to practice with skill and safety;*

4. *Sexual misconduct;*

5. *Unauthorized practice.*

## C. *Criteria for an agency subordinate.*

1. *An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.*

2. *The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.*

3. *The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.*

VA.R. Doc. No. R04-198; Filed November 19, 2004, 1:18 p.m.

## BOARD OF DENTISTRY

**Title of Regulation: 18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (adding 18 VAC 60-20-17).**

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

**Public Hearing Date: January 21, 2005 - 9 a.m.**

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

**Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, or e-mail sandra.reen@dhp.virginia.gov.**

**Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.**

**Purpose: One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.**

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before

a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or business-related violations. Proposed regulations state the types of cases that may not be heard by a subordinate but leave the final decision of delegation to a committee of the board. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

**Substance: 18 VAC 60-20 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.**

**Issues: The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education or insufficient recordkeeping. Therefore, there may not be any real advantage or disadvantage to the public.**

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

**Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H**

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

Summary of the proposed regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Dentistry (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the Board of Dentistry and other health profession boards have not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the Board of Dentistry and other health profession boards will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed

criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed amendments potentially affect the 5,390 licensed dentists and 3,709 licensed dental hygienists in Virginia, as well as their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 60-20, Regulations Governing the Practice of Dentistry, relating to delegation of informal fact-finding to an agency subordinate.

### Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since August 25, 2004.*

### **18 VAC 60-20-17. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

*A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

*B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include the following:*

- 1. Intentional or negligent conduct that causes serious injury to a patient;*
- 2. Impairment with an inability to practice with skill and safety;*
- 3. Sexual misconduct;*
- 4. Indiscriminate prescribing or dispensing;*

---

# Proposed Regulations

---

5. Medication error in administration or dispensing; and

6. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R04-200; Filed November 19, 2004, 1:21 p.m.

## BOARD OF NURSING HOME ADMINISTRATORS

**Title of Regulation:** 18 VAC 95-20. Regulations Governing the Practice of Nursing Home Administrators (adding 18 VAC 95-20-471).

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

**Public Hearing Date:** January 19, 2005 - 9 a.m.

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

**Agency Contact:** Sandra Reen, Executive Director, Board of Nursing Home Administrators, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, or e-mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

**Basix:** Section 54.1-2400 of the Code of Virginia provides the Board of Nursing Home Administrators the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

**Purpose:** One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data,

argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or business-related violations. Proposed regulations state that the final decision for delegation rests with a committee of the board, except for those cases in which a nursing home administrator may have conducted his practice in such a manner as to endanger the health and welfare of his patients or the public. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

**Substance:** 18 VAC 95-20 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the criteria for cases that may not be delegated except by approval of a committee of the board for delegation, and the individuals who may be designated as agency subordinates.

**Issues:** The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

**Department of Planning and Budget's Economic Impact Analysis:** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process



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

Summary of the proposed regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Nursing Home Administrators (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed

criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 698 licensed nursing home administrators in the Commonwealth, as well as their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Nursing Home Administrators concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 95-20, Regulations Governing the Practice of Nursing Home Administrators, relating to delegation of informal fact-finding to an agency subordinate.

## Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that may not be delegated except upon approval of a committee of the board, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since July 28, 2004.*

## CHAPTER 20. REGULATIONS OF THE BOARD GOVERNING THE PRACTICE OF NURSING HOME ADMINISTRATORS.

### **18 VAC 95-20-471. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

*A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

*B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in subdivisions 1, 3 and 5 of 18 VAC 95-20-470, except as may otherwise be determined by a special conference committee of the board.*

---

# Proposed Regulations

---

## C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.
2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.
3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R04-259; Filed November 19, 2004, 1:20 p.m.

## BOARD OF OPTOMETRY

**Title of Regulation:** 18 VAC 105-20. Regulations Governing the Practice of Optometry (adding 18 VAC 105-20-41).

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

**Public Hearing Date:** January 21, 2005 - 9 a.m.

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

**Agency Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9910, FAX (804) 662-7098, or e-mail elizabeth.carter@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

**Purpose:** One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or

(iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or business-related violations. Proposed regulations state that the final decision for delegation rests with a committee of the board, except for those cases in which an optometrist may have conducted his practice in such a manner as to endanger the health and welfare of his patients or the public. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

**Substance:** 18 VAC 105-20 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the criteria for cases that may be approved by a committee of the board for delegation, and the individuals who may be designated as agency subordinates.

**Issues:** The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

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

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

Summary of the proposed regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Optometry (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the

potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 1,395 licensed optometrists in the Commonwealth, as well as their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 105-20, Regulations Governing the Practice of Optometry, relating to delegation of informal fact-finding to an agency subordinate.

#### Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that may be delegated upon approval of a committee of the board except those involving endangerment to the welfare of the public, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since August 25, 2004.*

#### **18 VAC 105-20-41. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

*A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

*B. Criteria for delegation. Cases may be delegated to an agency subordinate upon approval by a committee of the board, except those in which an optometrist may have conducted his practice in such a manner as to endanger the health and welfare of his patients or the public.*

#### *C. Criteria for an agency subordinate.*

*1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.*

---

# Proposed Regulations

---

2. *The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.*

3. *The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.*

VA.R. Doc. No. R04-230; Filed November 19, 2004, 1:21 p.m.

## BOARD OF PHARMACY

**Title of Regulation:** 18 VAC 110-20. Regulations Governing the Practice of Pharmacy (adding 18 VAC 110-20-15).

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

**Public Hearing Date:** January 20, 2005 - 8:45 a.m.

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

**Agency Contact:** Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, or e-mail elizabeth.russell@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

**Purpose:** One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate.

While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or inspection-related violations. Proposed regulations state the types of cases that may not be heard by a subordinate but leave the final decision of delegation to a committee of the board. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

**Substance:** 18 VAC 110-20 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated except as may be approved by a committee of the board, and the individuals who may be designated as agency subordinates.

**Issues:** The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients or cases of drug diversion. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

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

Summary of the proposed regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Pharmacy

(board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 7,675 actively licensed pharmacists,

1,517 permitted pharmacies, pharmacy technicians, and their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Pharmacy concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 110-20, Regulations Governing the Practice of Pharmacy, relating to delegation of informal fact-finding to an agency subordinate.

#### Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since July 15, 2004.*

#### **18 VAC 110-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

*A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

*B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include those that involve:*

- 1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;*
- 2. Drug diversion;*
- 3. Impairment with an inability to practice with skill and safety;*
- 4. Indiscriminate dispensing; and*
- 5. Medication error in administration or dispensing.*

#### *C. Criteria for an agency subordinate.*

*1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.*

*2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.*

---

# Proposed Regulations

---

3. *The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.*

VA.R. Doc. No. R04-252; Filed November 19, 2004, 1:15 p.m.

## BOARD OF PHYSICAL THERAPY

**Title of Regulation:** 18 VAC 112-20. **Regulations Governing the Practice of Physical Therapy (adding 18 VAC 112-20-26).**

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

**Public Hearing Date:** January 28, 2005 - 9 a.m.

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

**Agency Contact:** Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, or e-mail elizabeth.young@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Physical Therapy the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

**Purpose:** One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a

person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or other cases that do not involve harm to a patient or impairment to practice. Proposed regulations state the types of cases that may not be heard by a subordinate. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

**Substance:** 18 VAC 112-20 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.

**Issues:** The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education or insufficient patient records. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

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

Summary of the Proposed Regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Physical Therapy (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 4,390 licensed physical therapists and 1,610 licensed physical therapy assistants in the Commonwealth, as well as their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 112-20, Regulations Governing the Practice of Physical Therapy, relating to delegation of informal fact-finding to an agency subordinate.

### Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since August 25, 2004.*

### **18 VAC 112-20-26. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

*A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

*B. Criteria for delegation. Cases that may not be delegated to an agency subordinate include, but are not limited to, those that involve:*

- 1. Intentional or negligent conduct that causes or is likely to cause injury to a patient;*
- 2. Mandatory suspension resulting from action by another jurisdiction or a felony conviction;*
- 3. Impairment with an inability to practice with skill and safety;*
- 4. Sexual misconduct;*
- 5. Unauthorized practice.*

*C. Criteria for an agency subordinate.*

*1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.*

*2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.*

---

# Proposed Regulations

---

3. *The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.*

VA.R. Doc. No. R04-202; Filed November 19, 2004, 1:14 p.m.

## BOARD OF PSYCHOLOGY

**Title of Regulation:** 18 VAC 125-15. Regulations Governing Delegation to an Agency Subordinate (adding 18 VAC 125-15-10, 18 VAC 125-15-20, and 18 VAC 125-15-30).

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

**Public Hearing Date:** January 11, 2005 - 9:30 a.m.

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

**Agency Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, or e-mail [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

**Basis:** Section 54.1-2400 of the Code of Virginia provides the board the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

**Purpose:** One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a

person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance or other cases not involving patient care. Proposed regulations state the types of cases that may not be heard by a subordinate but leave the final decision of delegation to the probable cause committee. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

**Substance:** 18 VAC 125-15 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated except as may be approved by a committee of the board, and the individuals who may be designated as agency subordinates.

**Issues:** The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients. It is likely that the board will delegate cases that involve such violations as failure to obtain continuing education. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

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

Summary of the proposed regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Psychology (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.



Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 42 licensed applied psychologists, 2,138 licensed clinical psychologists, 109 licensed school psychologists, 121 licensed school psychologists-limited, and

327 certified sex offender treatment providers, in the Commonwealth, as well as their patients.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 125-15, Regulations Governing Delegation to an Agency Subordinate, relating to delegation of informal fact-finding to an agency subordinate.

Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since July 28, 2004.*

**18 VAC 125-15-10. Decision to delegate.**

*In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

**18 VAC 125-15-20. Criteria for delegation.**

*Cases that may not be delegated to an agency subordinate include violations of standards of practice as set forth in regulations governing each profession certified or licensed by the board, except as may otherwise be determined by the probable cause committee in consultation with the board chair.*

**18 VAC 125-15-30. Criteria for an agency subordinate.**

*A. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.*

*B. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.*

*C. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.*

---

# Proposed Regulations

---

VA.R. Doc. No. R04-261; Filed November 19, 2004, 1:19 p.m.

## BOARD OF VETERINARY MEDICINE

**Title of Regulation:** 18 VAC 150-20. Regulations Governing the Practice of Veterinary Medicine (adding 18 VAC 150-20-15).

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

**Public Hearing Date:** February 3, 2005 - 9 a.m.

Public comments may be submitted until February 11, 2005.  
(See Calendar of Events section for additional information)

**Agency Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, or e-mail elizabeth.carter@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia provides the Board of Veterinary Medicine the authority to promulgate regulations to administer the regulatory system and to delegate informal fact-finding to an agency subordinate.

**Purpose:** One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The law enacted by the 2004 General Assembly and adoption of these proposed rules give another tool to health regulatory boards seeking to bring closure to cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member trained and qualified to conduct a fact-finding proceeding.

In § 2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case. Delegation to an agency subordinate will be available to address cases that may arise from audits for continuing education compliance. The ability of a board to delegate certain cases through a proceeding conducted by a

subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

**Substance:** 18 VAC 150-20 is added in order to establish in regulation the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the type of cases that can be delegated, and the individuals who may be designated as agency subordinates.

**Issues:** The only advantage to the public may be a speedier resolution of disciplinary cases, but the cases that would likely be heard by a subordinate of the board would probably not involve standard of care for patients. The board has determined that it will only delegate cases that involve failure to obtain continuing education. Therefore, there may not be any real advantage or disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly. On the other hand, recommendations of the subordinate will have to be ratified by the board, so resolution of the case may be somewhat delayed until the next scheduled meeting at which a quorum of the board can be present.

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

Summary of the proposed regulation. Pursuant to House Bill 577 of the 2004 General Assembly, the Board of Veterinary Medicine (board) proposes to delineate the criteria for delegation of informal fact-finding proceedings to an agency subordinate.

Estimated economic impact. Section 54.1-2400 of the Code of Virginia (Code) describes the general powers and duties of health regulatory boards. Among the powers and duties listed is to appoint a special conference committee upon receipt of information that a practitioner of the board in question may be subject to disciplinary action. "The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a

monetary penalty ..." House Bill 577 of the 2004 General Assembly added the following language to this section of the Code: "This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings ..., upon receipt of information that a practitioner may be subject to disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board."

In response, the board proposes regulations that specify criteria for delegation of informal fact-finding proceedings to an agency subordinate. Section 2.2-4001 of the Code defines "subordinate" to mean "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." According to the Department of Health Professions (department), the board has not been delegating to an agency subordinate the authority to conduct informal fact-finding proceedings upon receipt of information that a practitioner may be subject to disciplinary action. The department believes that the introduced clarifying language in the Code and the proposed criteria for delegation of informal fact-finding proceedings to an agency subordinate in the regulations will make it more likely that the board will delegate to an agency subordinate the authority to conduct informal fact-finding proceedings. The department also believes that it is more likely that such agency subordinates will consist of current or past board members than department staff.

It is generally easier for smaller groups (including just one individual) to schedule the time necessary to conduct fact-finding proceedings than for larger groups, i.e., the entire board. Thus, to the extent that the adoption of the proposed criteria in the regulations paired with the clarifying language in the Code make it more likely that the board will delegate to an agency subordinate the task to conduct informal fact-finding proceedings, closure may be brought to some disciplinary cases in a more timely manner. Since the board must still ratify recommendations of the subordinate, the subject of the potential disciplinary action will still be under the judgment of the entire board, rather than just a subset. Therefore, since the proposal produces no significant cost and the potential for disciplinary cases to be concluded in a timelier manner is created, the proposed amendment to the regulations will likely produce a net benefit.

Businesses and entities affected. The proposed criteria potentially affect the 3,235 licensed veterinarians and 992 licensed veterinary technicians in the Commonwealth, as well as their patients and their patients' owners.

Localities particularly affected. The proposed regulations affect all Virginia localities.

Projected impact on employment. The proposed amendments will not significantly affect employment levels.

Effects on the use and value of private property. The proposed amendments will not have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Veterinary

Medicine concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 150-20, Regulations Governing the Practice of Veterinary Medicine, relating to delegation of informal fact-finding to an agency subordinate.

Summary:

*The proposed regulation establishes the criteria for delegation of informal fact-finding proceedings to an agency subordinate, including the decision to delegate at the time of a probable cause determination, the type of cases that may be delegated, and the individuals who may be designated as agency subordinates.*

*The proposed regulation will replace emergency regulations that have been in effect since August 25, 2004.*

**18 VAC 150-20-15. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

*A. Decision to delegate. In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.*

*B. Criteria for delegation. Cases that may be delegated to an agency subordinate are those that only involve failure to satisfy continuing education requirements.*

*C. Criteria for an agency subordinate. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding shall include current board members deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.*

VA.R. Doc. No. R04-208; Filed November 19, 2004, 1:17 p.m.



---

# FINAL REGULATIONS

---

For information concerning Final Regulations, see Information Page.

---

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a change from the proposed text of the regulation.

---

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

**REGISTRAR'S NOTICE:** The following regulatory actions are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 9 VAC 5-20. General Provisions (Rev. B04) (amending 9 VAC 5-20-204).

**Statutory Authority:** § 10.1-1308 of the Code of Virginia and §§ 110 and 182 of the Clean Air Act (40 CFR Part 51).

**Effective Date:** January 12, 2005.

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

**Summary:**

9 VAC 5-20-204 lists areas of the Commonwealth that do not meet the National Ambient Air Quality Standards (nonattainment areas), including areas that are nonattainment for the eight-hour ozone standard. Ozone nonattainment areas are further classified by the relative severity of their ozone nonattainment problem, from low (marginal) to very high (extreme). The Clean Air Act specifies requirements by which nonattainment areas must attain the standard, with marginal areas having the fewest requirements and, cumulatively, extreme areas having the most. These requirements, which are dependent in part on the classification of a nonattainment area, include the need for transportation conformity analysis, and specific requirements for new source review permitting. Based on a decision by the U.S. Environmental Protection Agency (EPA), the Richmond Ozone Nonattainment Area has been reclassified from moderate to marginal.

**9 VAC 5-20-204. Nonattainment areas.**

A. Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each ozone nonattainment area, in parentheses, is the classification assigned pursuant to § 181(a) of the federal Clean Air Act (42 USC § 7511(a)) and 40 CFR 51.903(a).

1. Ozone (1-hour).

Northern Virginia Ozone Nonattainment Area (severe).

Arlington County  
Fairfax County  
Loudoun County  
Prince William County  
Stafford County

Alexandria City  
Fairfax City  
Falls Church City  
Manassas City  
Manassas Park City

2. Ozone (8-hour).

Fredericksburg Ozone Nonattainment Area (moderate).

Spotsylvania County  
Stafford County

Fredericksburg City

Northern Virginia Ozone Nonattainment Area (moderate).

Arlington County  
Fairfax County  
Loudoun County  
Prince William County

Alexandria City  
Fairfax City  
Falls Church City  
Manassas City  
Manassas Park City

Hampton Roads Ozone Nonattainment Area (marginal).

Gloucester County  
Isle of Wight County  
James City County  
York County  
Chesapeake City  
Hampton City  
Newport News City

Poquoson City  
Portsmouth City  
Norfolk City  
Suffolk City  
Virginia Beach City  
Williamsburg City

Richmond Ozone Nonattainment Area (~~moderate~~ marginal).

Charles City County  
Chesterfield County  
Hanover County  
Henrico County  
Prince George County

Colonial Heights City  
Hopewell City  
Petersburg City  
Richmond City

Shenandoah National Park Ozone Nonattainment Area (basic).

Madison County (portions located in Shenandoah National Park)

Page County (portions located in Shenandoah National Park)

3. All other pollutants. None.

B. Subdivision A 1 of this section shall not be effective after June 15, 2005.

VA.R. Doc. No. R05-67; Filed November 10, 2004, 10:56 a.m.

\*\*\*\*\*

Titles of Regulations: **Regulations for the Control and Abatement of Air Pollution (Rev. 104).**

**9 VAC 5-50. New and Modified Stationary Sources (amending 9 VAC 5-50-400).**

**9 VAC 5-60. Hazardous Air Pollutant Sources (amending 9 VAC 5-60-60, 9 VAC 5-60-90, 9 VAC 5-60-100; repealing 9 VAC 5-60-91).**

Statutory Authority: § 10.1-1308 of the Code of Virginia and § 112 of the Clean Air Act (40 CFR Parts 61 and 63).

Effective Date: January 12, 2005.

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

Summary:

*The amendments incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2004. The following is a list of the new standards in the federal regulations incorporated into the regulations by reference:*

1. 40 CFR Part 60 - Standards of performance for new stationary sources - No new NSPS are incorporated; however, the date of the Code of Federal Regulations book incorporated by reference is updated to the latest version.

2. 40 CFR Part 61 - National emissions standards for hazardous air pollutants - No new NESHAP are incorporated; however, the date of the Code of Federal Regulations book incorporated by reference is being updated to the latest version.

3. 40 CFR Part 63 - National emissions standards for hazardous air pollutants for source categories (new standards are incorporated).

*In addition, 9 VAC 5-60-91 is repealed in order to locate the provisions of 40 CFR 63.16 (National Performance Track) with the other general provisions of Subpart A.*

**9 VAC 5-50-400. General.**

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9 VAC 5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9 VAC 5-50-420. The complete text of the subparts in 9 VAC 5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9 VAC 5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (2003 2004) in effect July 1, 2003 2004. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means § 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

**9 VAC 5-60-60. General.**

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9 VAC 5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9 VAC 5-60-80. The complete text of the subparts in 9 VAC 5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9 VAC 5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (2003 2004) in effect July 1, 2003 2004. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means § 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

**9 VAC 5-60-90. General.**

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9 VAC 5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9 VAC 5-60-110. The complete text of the subparts in 9 VAC 5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9 VAC 5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (2003 2004) in effect July 1, 2003 2004. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means § 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

**9 VAC 5-60-91. National Performance Track Program. (Repealed.)**

~~The Environmental Protection Agency (EPA) National Performance Track Program as promulgated in 40 CFR 63.2, 63.10, and 63.16 is, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9 VAC 5-60-110. The specific version of the provisions adopted by reference shall be that promulgated on April 22, 2004 (69 FR 21737).~~

**9 VAC 5-60-100. Designated emission standards.**

Subpart A--General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16 (applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, *performance track provisions*)

Subpart B--Not applicable.

---

# Final Regulations

---

Subpart C--~~Not applicable~~ *List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.*

40 CFR 63.60 and 40 CFR 63.62

*(deletion of caprolactam from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants)*

Subpart D--Not applicable.

Subpart E--Not applicable.

Subpart F--Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G--Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H--Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I--Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J--Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

(production of PVC and copolymers)

Subpart K--Reserved.

Subpart L--Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M--Perchloroethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchloroethylene)

Subpart N--Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O--Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P--Reserved.

Subpart Q--Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R--Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S--Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T--Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U--Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V--Reserved.

Subpart W--Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527  
(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X--Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 63.550  
(at all secondary lead smelters: blast, reveratory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y--Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567  
(marine tank vessel unloading operations at petroleum refineries)

Subpart Z--Reserved.

Subpart AA--Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.610  
(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB--Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.631  
(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC--Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.654  
(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD--Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697  
(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE--Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708  
(manufacturers of magnetic tape)

Subpart FF--Reserved.

Subpart GG--Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.752  
(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH--Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779  
(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II--Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788  
(shipbuilding and ship repair operations)

Subpart JJ--Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819  
(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK--Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831  
(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL--Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859  
(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM--Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868  
(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN--Reserved.

Subpart OO--Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907  
(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP--Containers.

40 CFR 63.920 through 40 CFR 63.928  
(for off-site waste and recovery operations, containers)

Subpart QQ--Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948  
(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR--Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966  
(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS--Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999  
(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT--Equipment Leaks--Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018  
(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU--Equipment Leaks--Control Level 2.

---

# Final Regulations

---

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV--Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW--Storage Vessels (Tanks)--Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX--~~Reserved~~ *Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.*

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY--Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ--Reserved.

Subpart AAA--Reserved.

Subpart BBB--Reserved.

Subpart CCC--Steel Pickling--Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD--Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE--Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1213

(hazardous waste combustors)

Subpart FFF--Reserved.

Subpart GGG--Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH--Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III--Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ--Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK--Reserved.

Subpart LLL--Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM--Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN--Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO--Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP--Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ--Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR--Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS--Reserved.

Subpart TTT--Primary Lead Smelting.



40 CFR 63.1541 through 40 CFR 63.1550  
(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU--Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579  
(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV--Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595  
(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW--Reserved.

Subpart XXX--Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679  
(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY--Reserved.

Subpart ZZZ--Reserved.

Subpart AAAA--~~Reserved~~ *Municipal Solid Waste Landfills.*

*40 CFR 63.1930 through 40 CFR 63.1990  
(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)*

Subpart BBBB--Reserved.

Subpart CCCC--Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192  
(fermentation vessels)

Subpart DDDD--Reserved.

Subpart EEEE--~~Reserved~~ *Organic Liquids Distribution (Nongasoline).*

*40 CFR 63.2330 through 40 CFR 63.2406  
(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)*

Subpart FFFF--~~Reserved~~ *Miscellaneous Organic Chemical Manufacturing.*

*40 CFR 63.2430 through 40 CFR 63.2550  
(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that are used to produce a product or isolated intermediate)*

Subpart GGGG--Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH--Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079  
(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII--~~Reserved~~ *Surface Coating of Automobiles and Light-Duty Trucks.*

*40 CFR 63.3080 through 40 CFR 63.3176.  
(application of topcoat to new automobile or new light-duty truck bodies or body parts)*

Subpart JJJJ--Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420  
(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK--~~Reserved~~ *Surface Coating of Metal Cans.*

*40 CFR 63.3480 through 40 CFR 63.3561  
(application of coatings to a substrate using spray guns or dip tanks, including one- and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)*

Subpart LLLL--Reserved.

Subpart MMMM--~~Reserved~~ *Surface Coating of Miscellaneous Metal Parts and Products.*

*40 CFR 63.3880 through 40 CFR 63.3981  
(application of coatings to industrial, household, and consumer products)*

Subpart NNNN--Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181  
(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO-- Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371  
(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP--~~Reserved~~ *Surface Coating of Plastic Parts and Products.*

*40 CFR 63.4480 through 40 CFR 63.4581  
(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)*

Subpart QQQQ--Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

---

# Final Regulations

---

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR--Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981  
(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS--Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209  
(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT--Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460  
(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU--Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610  
(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV--Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779  
(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW--Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935  
(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX--Rubber Tire Manufacturing.

40 CFR 63.5980 through 63.6015  
(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYY--~~Reserved~~ Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175  
(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ--~~Reserved~~ Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.  
(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

Subpart AAAAA--~~Reserved~~ Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBB--Semiconductor Manufacturing.

40 CFR 63.7180 through 63.7195  
(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCC--Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352  
(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDD--Reserved.

Subpart EEEEE--~~Reserved~~ Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765  
(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF--Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852  
(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGG--~~Reserved~~ Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957  
(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHH--~~Reserved~~ Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105  
(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIII--~~Reserved~~ Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266  
(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJ--Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515  
(manufacture of brick, clay pipe, roof tile, extruded floor and wall tile, and other extruded, dimensional clay products)

Subpart KKKK--Clay Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

(manufacture of pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware)

Subpart LLLLL--Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698  
(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM--Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830  
(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN--Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075  
(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO--Reserved.

Subpart PTTTT--Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375  
(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ--Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579  
(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR--~~Reserved~~ Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652  
(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS--Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824  
(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)

Subpart TTTTT--~~Reserved~~ Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942  
(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUU--Reserved.

Subpart VVVVV--Reserved.

Subpart WWWWV--Reserved.

Subpart XXXXX--Reserved.

Subpart YYYYY--Reserved.

Subpart ZZZZZ--Reserved.

Appendix A--Test Methods.

Appendix B--Sources Defined for Early Reduction Provisions.

Appendix C--Determination of the Fraction Biodegraded ( $F_{bio}$ ) in a Biological Treatment Unit.

Appendix D--Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R05-68; Filed November 10, 2005, 10:56 a.m.

---

**TITLE 12. HEALTH**

**DEPARTMENT OF MEDICAL ASSISTANCE SERVICES**

**REGISTRAR'S NOTICE:** The Department of Medical Assistance Services is claiming an exclusion 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 Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12 VAC 30-80. Methods and Standards for Establishing Payment Rates--Other Types of Care (amending 12 VAC 30-80-30 and 12 VAC 30-80-190).

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

**Effective Date:** January 12, 2005.

**Agency Contact:** William Butler, Manager, Division of Long-Term Care and Quality Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8886, FAX (804) 786-1680 or e-mail [william.butler@dmas.virginia.gov](mailto:william.butler@dmas.virginia.gov).

**Summary:**

*The amendments set the rate for durable medical equipment at the Durable Medical Equipment Regional Carrier reimbursement level for those items that have a national Healthcare Common Procedure Coding System (HCPCS) code. Those durable medical equipment items that do not have a HCPCS code will continue to be reimbursed at the current level.*

**12 VAC 30-80-30. Fee-for-service providers.**

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12 VAC 30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services (12 VAC 30-80-160 has obstetric/pediatric fees). Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public), except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services

---

# Final Regulations

---

when performed in a physician's office. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12 VAC 30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors, licensed clinical nurse specialists-psychiatric or licensed marriage and family therapists shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

*a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.*

~~a-~~ *b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.*

~~b-~~ *c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.*

~~e-~~ *d. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance*

agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12 VAC 30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services, including services paid to local school districts.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12 VAC 30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments to state government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in this state plan, DMAS provides supplemental payments for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Supplemental payments will be made to Children's Specialty Services, a state government-owned and operated clinic.

b. The amount of the supplemental payment made to Children's Specialty Services is determined by calculating for all state government-owned or operated clinics the annual difference between the aggregate upper payment limit specified in 42 CFR 447.321 and determined according to the method described in subdivision 16 d and the amount otherwise actually paid for the services by the Medicaid program.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit, Medicaid payments to state government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12 VAC 30-80-190 B 2) in regard to the state agency fee schedule for Resource Based Relative Value Scale (RBRVS). Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

17. Supplemental payments for services provided by Type I physicians.

18. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to

---

# Final Regulations

---

outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. A qualifying clinic is a clinic with estimated Medicaid payments in 2003 (including primary payments and copayments) of more than \$100,000 other than under this section and that serve areas covered by managed care prior to January 1, 1998.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 18 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 18 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision 18 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 18 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12 VAC 30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

## **12 VAC 30-80-190. State agency fee schedule for RBRVS.**

4. A. Reimbursement of fee-for-service providers. Effective for dates of service on or after July 1, 1995, the Department of Medical Assistance Services (DMAS) shall reimburse fee-for-service providers, with the exception of home health services (see 12 VAC 30-80-180) and durable medical equipment services (see 12 VAC 30-80-30), using a fee schedule that is based on a Resource Based Relative Value Scale (RBRVS).

2. B. Fee schedule.

A- 1. For those services or procedures which are included in the RBRVS published by the Health Care Financing Administration (HCFA) as amended from time to time, DMAS' fee schedule shall employ the Relative Value Units (RVUs) developed by HCFA as periodically updated.

B- 2. DMAS shall calculate the RBRVS-based fees using conversion factors (CFs) published from time to time by HCFA. DMAS shall adjust HCFA's CFs by an additional factor so that no change in expenditure will result solely from the implementation of the RBRVS-based fee schedule. DMAS may revise the additional factor when HCFA updates its RVUs or CFs so that no change in expenditure will result solely from such updates. Except for this adjustment, DMAS' CFs shall be the same as those published from time to time by HCFA. The calculation of the additional factor shall be based on the assumption that no change in services provided will occur as a result of these changes to the fee schedule. The determination of the "additional factor" required above shall be accomplished by means of the following calculation:

4- a. The estimated amount of DMAS expenditures if DMAS were to use Medicare's RVUs and CFs without modification, is equal to the sum, across all procedure codes, of the RVU value published by the HCFA, multiplied by the applicable conversion factor published by the HCFA, multiplied by the number of occurrences of the procedure code in DMAS patient claims in the most recent period of time (at least six months).

2- b. The estimated amount of DMAS expenditures, if DMAS were not to calculate new fees based on the new HCFA RVUs and CFs, is equal to the sum, across all procedure codes, of the existing DMAS fee multiplied by the number of occurrences of the procedures code in DMAS patient claims in the period of time used in subdivision 1 of this subsection.

3- c. The "additional factor" is equal to the ratio of the expenditure estimate (based on DMAS fees in ~~subdivision 2~~ of this subsection) to the expenditure estimate based on unmodified HCFA values in ~~subdivision 4 subsection A~~ of this ~~subsection~~ section.

C- 3. For those services or procedures for which there are no established RVUs, DMAS shall approximate a reasonable relative value payment level by looking to similar existing relative value fees. If DMAS is unable to establish a relative value payment level for any service or procedure, the fee shall not be based on a RBRVS, but shall instead be based on the previous fee-for-service methodology.

D- 4. Fees shall not vary by geographic locality.

E- 5. The RBRVS-based fees shall be phased in over three years. During the first 12 months of implementation, fees shall be based 1/3 on RBRVS-based fees and 2/3 on previously existing fees. During the second 12 months of implementation, fees shall be based 2/3 on RBRVS-based fees and 1/3 on previously existing fees. Thereafter, fees shall be based entirely on RBRVS-based fees.

VA.R. Doc. No. R05-70; Filed November 22, 2004, 4:35 p.m.

---

# FAST-TRACK REGULATIONS

---

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

---

## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

**Title of Regulation:** 3 VAC 5-50. Retail Operations (amending 3 VAC 5-50-60).

**Statutory Authority:** §§ 4.1-103, 4.1-111 and 4.1-221 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until February 11, 2005.

(See Calendar of Events section for additional information)

**Effective Date:** February 26, 2005.

**Agency Contact:** W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411 or e-mail wccolen@abc.state.va.us.

**Basis:** Sections 4.1-103 and 4.1-111 of the Code of Virginia authorize the Alcoholic Beverage Control Board to promulgate reasonable regulations that it deems necessary to carry out the provisions of the Alcoholic Beverage Control Act, provided such regulations are not inconsistent with the Act or the general laws of the Commonwealth. Section 4.1-221 of the Code of Virginia provides that the entire contents of a closed container of distilled spirits shall not be served to an individual for on-premises consumption except as may be provided by board regulation.

**Purpose:** Chapter 913 of the 2004 Acts of Assembly amended § 4.1-325 A 15 of the Code of Virginia. Prior to the amendment, mixed beverage licensees of the board were prohibited from delivering to a consumer an original bottle of an alcoholic beverage purchased under such license. The amendment provided an exception to the provision for soju, a Korean distilled spirit product that is traditionally served by delivering a bottle to a group of consumers, who then proceed to pour each other individual drinks. The purpose of this action is to carry out the intent of the General Assembly to allow such service, while complying with the provisions of § 4.1-221 C of the Code of Virginia, which states that the entire contents of a closed container of distilled spirits shall not be served to an individual for on-premises consumption except as may be provided by board regulation. Limitations to such service contained in the amendment are essential to protect the health, safety, or welfare of citizens by limiting the potential for public intoxication.

**Rationale for Using Fast Track Process:** The Alcoholic Beverage Control Board has chosen to use the fast-track process in promulgating this amendment to its regulations to carry out the intent of Chapter 913 of the 2004 Acts of Assembly without unnecessary delay. This legislation received a degree of notoriety within the Korean restaurant community,

and it is anticipated that many will expect to be able to serve bottles of soju upon its effective date of July 1, 2004. It is expected to be noncontroversial.

**Substance:** The amendment to 3 VAC 5-50-60 will add an exception to the general prohibition against serving the entire contents of a container of distilled spirits to a consumer for on-premises consumption. Service of bottles of soju will be permitted, with limitations on bottle size and a minimum number of consumers per bottle served.

**Issues:** The primary advantage to the public associated with this action is the ability of restaurants to serve soju in the traditional manner. There are no disadvantages to the public or the Commonwealth associated with the proposed regulatory action. A 375 milliliter bottle of soju contains approximately the same amount of alcohol as a standard 750 milliliter bottle of wine, service of which is already allowed by current 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. Chapter 913 of the 2004 Acts of Assembly amended § 4.1-325 of the Code of Virginia to exempt soju (a Korean distilled hard spirit) from a requirement in the code preventing mixed beverage licensees from delivering to customers an original bottle of an alcoholic beverage purchased under the mixed beverage license. Thus, § 4.1-325 of the Code of Virginia now allows mixed beverage licensees to deliver a whole bottle of Soju to customers. However, § 4.1-221 prevents mixed beverage licensees from serving the entire contents of a closed container of distilled spirits to an individual for on-premise consumption, except as provided for in the Alcoholic Beverage Control regulations. The purpose of the proposed action is to carry out the intent of the General Assembly by amending the existing regulation to allow mixed beverage licensees to serve customers the entire contents of a closed container of soju.

The proposed regulation allows mixed beverage restaurants to serve the entire contents of a container of soju in its original container as one drink for on-premise consumption, as long as (i) the container does not hold more than 375 milliliters and (ii) each container of soju is served for consumption by at least two people.

---

## Fast-Track Regulations

---

Estimated economic impact. Soju is a traditional Korean liquor distilled from rice, barley, various other types of grains, and sweet potatoes with a proof of between 40 and 90 (or an alcohol content of between 20% and 45%). According to the Virginia Department of Alcoholic Beverage Control (ABC), a 375-milliliter bottle of soju typically has a proof of 50 or an alcohol content of approximately 25%. Soju has traditionally been served at the table in a bottle, with individuals pouring out drinks for each other and toasting one another.

Prior to the enactment of Chapter 913 of the 2004 Acts of Assembly, a mixed beverage licensee was prohibited (according to § 4.1-325 of the Code of Virginia) from delivering an original bottle of an alcoholic beverage purchased under the mixed beverage license to consumers. In addition, § 4.1-221 of the Code of Virginia prohibited mixed beverage licensees from serving the entire contents of a closed container of distilled spirits to consumers for on-premise consumption. While Chapter 913 of the 2004 Acts of Assembly exempted soju from the requirements of § 4.1-325 of the Code of Virginia, it was not exempted from the requirements of § 4.1-221. Thus, mixed beverage restaurants are still not allowed to serve consumers an entire bottle of soju for on-premise consumption.

The purpose of the proposed regulation is to carry out the intent of the General Assembly by amending the existing regulation and allowing mixed beverage licensees to serve bottles of soju for on-premise consumption. The proposed regulation exempts soju from the general prohibition on serving the entire contents of a container of distilled spirits to a customer for on-premise consumption, with restrictions on the size of the container and the number of consumers per container. The bottle cannot contain more than 375 milliliters of soju<sup>1</sup> and has to be consumed by at least two people. Prior to the 2004 legislative session, individuals wishing to consume soju could either purchase it by the bottle from an ABC store for off-premise consumption or by the glass for on-premise consumption.

The proposed regulation is likely to produce economic benefits and impose economic costs. The economic benefits arise from allowing soju to be consumed in a traditional manner. Rather than requiring it to be consumed by the glass, the proposed regulation will allow soju to be consumed by the bottle and in keeping with traditional Korean customs. The proposed regulation limits the maximum size of a bottle of soju to 375 milliliters and requires it to be consumed by at least two people. Existing regulations limit to two drinks the number of mixed beverages a customer may possess at any one time. According to ABC, these requirements together will allow groups of two or more to order one bottle of soju per customer at any one time (i.e., each bottle of soju counts as one drink for two people and each person is allowed to order a maximum of two mixed drinks at one time). Thus, by allowing bottles of soju to be served to groups of two or more and increasing the flexibility in how soju is served and consumed, the proposed regulation is likely to produce economic benefits. The size of these benefits depends on the extent to which

restricting soju to consumption by the glass has inhibited its enjoyment and consumption.

The economic costs of the proposed change arise from any potential increase in alcohol consumption due to the proposed change. Increased consumption of alcohol has been found to impose social and economic costs through rising health costs, falling productivity, and an increase in social problems such as domestic abuse. According to ABC, the proposed change is likely to lead to an increase in consumption of soju. The code amendment and the proposed change only affect the sale of soju by mixed beverage licensees for on-premise consumption. Thus, to the extent that on-premise soju consumption has been inhibited by having to purchase it by the glass (rather than allowing it to be purchased by the bottle and served in the traditional manner), the proposed change is likely to lead to an increase in its consumption. However, any increase has to be balanced against a possible decrease in the amount of soju bought for off-premise consumption<sup>2</sup> and a potential decline in consumption of other types of alcohol<sup>3</sup>. Moreover, regardless of the magnitude of the increase in soju consumption, it is not likely to produce a significant impact on overall alcohol consumption in the state. Soju is a small fraction of the total amount of distilled spirits sold in Virginia. Based on data provided by ABC, soju sales accounted for 0.3% of total distilled spirits sales and 0.3% of total gallons of distilled spirits sold in Virginia during FY 2004. Even if consumption were to double, soju would still form only a small fraction of total distilled spirits consumed in the state, and an even smaller fraction of total alcohol consumed in the state. Thus, the impact of the proposed change on the level of alcohol consumption in the state is not likely to be significant.

Overall, the proposed regulation is not likely to produce a significant net economic impact. Both, the costs and benefits associated with the proposed change are likely to be small. It is not possible at this time to determine the exact magnitude of the net economic impact. Without considerable additional time and resources, accurate estimates of the likely change in soju consumption and, hence, in overall alcohol consumption in the state and the potential benefits associated with allowing soju to be served in keeping with Korean tradition are not possible.

Analysis of the proposed restrictions on soju service: Chapter 913 of the 2004 Acts of Assembly was intended to allow mixed beverage licensees to deliver and serve customers an entire bottle of soju in its original container in order to facilitate its consumption in keeping with Korean tradition. The amendment did not establish a maximum size for a bottle of soju nor did it require a minimum number of consumers per bottle. These restrictions were deemed necessary by the Alcoholic Beverage Control Board and, according to ABC, are intended to promote temperance in alcohol consumption.

However, as discussed above, allowing for the service of soju by the bottle is unlikely to have a significant impact on overall alcohol consumption in the state, making the need for these

---

<sup>1</sup> According to ABC, soju is mainly sold in 375-milliliter containers. A 750-milliliter bottle of soju is available by special order, but ABC has sold very few of them.

<sup>2</sup> Prior to the change, the only way consumers could drink soju in the traditional manner was by buying it at an ABC store and consuming it off-premise.

<sup>3</sup> Now that they are able to consume soju in a traditional manner on-premise, consumers may choose to switch their on-premise alcohol consumption to soju and away from other types of alcohol.



restrictions moot. In addition, the proposed restrictions are inconsistent with existing regulations on alcoholic drinks such as wine that contain a similar amount of alcohol. According to ABC, a 750-milliliter bottle of wine (the size of a typical bottle of wine served at restaurants) has approximately the same alcohol content as a 375-milliliter bottle of soju. However, existing regulations relating to wine establish maximum decanter size at 1.5 liters and place no restrictions on the number of consumers per bottle served. Finally, the effectiveness of these restrictions in promoting temperance is unclear. Individuals (not part of a group of two or more) can still order unlimited amounts of soju by the glass as long as they do not have more than two drinks at any one time and do not appear intoxicated. Groups of two or more can still order unlimited amounts of soju by the bottle as long as they do not have more than one bottle per person at any one time and do not appear to be intoxicated.

It should be noted that these restrictions are unlikely to be binding. An individual will still be able to consume soju, just by the glass and not by the bottle. Moreover, an individual or a group of individuals will be able to consume as much soju as they want, just not more than a bottle of soju or two glasses of soju at a time per person and as long as they appear not to be intoxicated.

However, making soju service requirements consistent with the requirements for other alcoholic beverages with similar alcohol content or doing away with these restrictions entirely would provide some small efficiency gains. These alternatives would slightly increase the flexibility in how soju is served without having a significant negative impact on public health and safety due to increased alcohol consumption.

Businesses and entities affected. The proposed regulation affects all businesses and entities holding a mixed beverage license. These entities will now be able to serve soju by the bottle for on-premise consumption, as long as the bottle is not larger than 375 milliliters and there are at least two consumers per bottle. Prior to Chapter 913 of the 2004 Acts of Assembly on-premise consumption of Soju was only allowed by the glass (not by the bottle).

According to ABC, there are approximately 4,000 mixed beverage licensees currently operating in Virginia. However, not all 4,000 licensees serve soju. According to the agency, the number of such licensees number in the hundreds. A 375-milliliter bottle of soju can cost anywhere from under \$6 to over \$10, with the agency estimating an average price of \$6 per bottle.

Localities particularly affected. The proposed regulation applies to all localities in the Commonwealth.

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

Effects on the use and value of private property. The proposed regulation could have a net positive economic impact on the use and value of private property. Restaurants holding a mixed beverage license will now be able to serve soju by the bottle to their customers. The option of consuming soju in keeping with Korean traditions at a restaurant could encourage more people to patronize these restaurants. This,

in turn, is likely to increase revenues and raise the asset value of mixed beverage licensees serving soju.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Alcoholic Beverage Control Board concurs in the conclusion contained in the Economic Impact Analysis (EIA) produced by the Department of Planning and Budget (DPB) that the proposed regulation is not likely to produce a significant net economic impact.

The board does not concur in the analysis contained in the section of the EIA entitled, "Analysis of the Proposed Restrictions on Soju Service." In this section, the DPB analysis suggests that because allowing service of soju by the bottle is unlikely to have a significant impact on overall alcohol consumption in the state, the need for restrictions is rendered moot. The need for these regulations is not based upon "overall alcohol consumption in the state," but rather with issues surrounding individual consumption. Soju is a distilled spirit, with an alcohol content by volume about twice that of wine, and four times that of beer. Very few, if any, individuals could consume an entire 375 ml bottle of soju without becoming intoxicated. While soju is a commodity that represents a very small percentage of the alcohol consumed in the Commonwealth, each person who over-consumes it is a danger to the public health and safety.

The analysis goes on to suggest that the regulation would not be totally effective in preventing over consumption of soju, and therefore should not be implemented. There is no law or regulation that can prevent everyone from consuming too much alcohol, but the Alcoholic Beverage Control Board does not therefore abandon its responsibility to encourage temperance. Limiting the size of the container and party consuming soju by the bottle will at least slow down the consumer, and it will require the restaurant personnel to at least occasionally reassess the sobriety of the customer. While this won't prevent someone from drinking too much soju in every case, it will help. For these reasons, the Alcoholic Beverage Control Board has determined that the restrictions in the proposed regulation are appropriate.

### Summary:

*The amendments allow for and set the conditions for the service of soju, a Korean distilled spirit, by the bottle for on-premises consumption.*

### **3 VAC 5-50-60. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers.**

A. No mixed beverage restaurant or carrier licensee shall:

1. Prepare, other than in frozen drink dispensers of types approved by the board, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.
2. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C and D and E.
3. Sell any mixed beverage to which alcohol has been added.

---

# Fast-Track Regulations

---

VA.R. Doc. No. R05-78; Filed November 23, 2004, 10:48 a.m.

B. No mixed beverage restaurant licensee shall:

1. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license ~~which~~ *that* does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.
2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine licensee.
3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.
4. Allow any patron to possess more than two drinks of mixed beverages at any one time.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-210 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the board, as well as other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.
2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

---

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

Title of Regulation: **8 VAC 20-200. Diploma - High School Completion (repealing 8 VAC 20-200-10).**

Statutory Authority: §§ 22.1-16 and 22.1-253:4 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 14, 2005.

(See Calendar of Events section for additional information)

Effective Date: March 1, 2005.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524 or e-mail mroberts@mail.vak12ed.edu.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

Purpose: The requirements for a diploma are prescribed by the Standards of Quality (§ 22.1-253.13:4 of the Code of Virginia) and by the Board of Education in the Regulations for Establishing Standards for Accrediting Public Schools in Virginia (8 VAC 20-131-50). Additionally, the Regulations Governing Adult High School Programs (8 VAC 20-30-20), prescribe the requirements for an adult high school diploma and the emergency Regulations Governing the General Achievement Diploma (8 VAC 20-680-10), prescribe the requirements for that diploma. Therefore, this regulation should be repealed because it is no longer necessary.

Rationale for Using Fast-Track Process: The fast track process is applicable because the repeal of this regulation is noncontroversial.

Substance: There are no substantive changes. The regulation is being repealed.

Issues: The advantage to the Board of Education is the elimination of a regulation that is unnecessary in light of other, more recent board regulations. The advantage to the public is the elimination of a regulation that is unnecessary. There are no disadvantages to the public or the Commonwealth.

The repeal of this regulation has no impact on the public's health, safety or welfare.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H

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

Summary of the proposed regulation. The Board of Education proposes to repeal these regulations.

Estimated economic impact. The complete regulations are as follows. "The awarding of a high school diploma shall be based upon statute, regulations of the Board of Education, and those requirements which may be prescribed by the local school board. Other forms of recognition shall be awarded at the discretion of the local school board." The requirements for a diploma are prescribed by the Standards of Quality, § 22.1-253.13:4 of the Code of Virginia and by the Board of Education in the Regulations for Establishing Standards for Accrediting Public Schools in Virginia, 8 VAC 20-131-50. Additionally, the Regulations Governing Adult High School Programs, 8 VAC 20-30-20, prescribe the requirements for an adult high school diploma and the emergency Regulations Governing the General Achievement Diploma, 8 VAC 20-680-10, prescribe the requirements for that diploma. Repealing the first sentence of these regulations will have no impact concerning those requirements. Similarly, local school boards will continue to have discretion to award non-diploma forms of recognition after the repeal of the second sentence. Thus, the repeal of these regulations will have no impact.

Businesses and entities affected. Repealing these regulations will not affect any businesses or other entities. There are 131 school divisions in the Commonwealth.

Localities particularly affected. No localities are particularly affected.

Projected impact on employment. The repeal of these regulations will not affect employment.

Effects on the use and value of private property. The repeal of these regulations will not affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on September 10, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

*This regulation prescribes salaries for school division superintendents for 1980-81 and 1981-82. The regulation is being repealed because it is obsolete.*

VA.R. Doc. No. R05-74; Filed November 23, 2004, 10:07 a.m.

\* \* \* \* \*

Title of Regulation: **8 VAC 20-260. Regulations Governing Financial Retention Schedule (repealing 8 VAC 20-260-10 through 8 VAC 20-260-60).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 14, 2005.

(See Calendar of Events section for additional information)

Effective Date: March 1, 2005.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, Post Office Box 2120, 101 N. 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or e-mail mroberts@mail.vak12ed.edu.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia.

Purpose: This regulation is repealed because it is in conflict with the Code of Virginia. Section 42.1-82 of the Code of Virginia vests the Library of Virginia with the authority to set the retention and disposition schedules for public records. The Library of Virginia has developed a retention schedule specific to the maintenance of records in Virginia's public schools. Therefore, the Board of Education no longer has the authority to set this schedule.

The repeal of this regulation has no impact on the public's health, safety or welfare.

Rationale for Using Fast-Track Process: The fast track process is applicable because the repeal of this regulation is noncontroversial.

Substance: There are no substantive changes. The regulation is being repealed.

Issues: The advantage to the Board of Education is the elimination of a regulation that conflicts with the schedule created by the Library of Virginia. The advantage to the public is the elimination of the confusion created by the conflict in having two schedules, one set by the Board of Education and one set by the Library of Virginia. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 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.

---

# Fast-Track Regulations

---

Summary of the proposed regulation. The Board of Education (board) proposes to repeal these regulations.

Estimated economic impact. Section 42.1-82 of the Code of Virginia vests the Library of Virginia with the authority to set the retention and disposition schedules for public records. On September 14, 2001, the Library of Virginia's Records Retention and Disposition Schedule, General Schedule No. 2, Fiscal Records (GS 2), became effective. Since GS 2 supersedes the board's Regulations Governing Financial Retention Schedule (regulations), the repeal of these regulations does not have any effect beyond reducing potential confusion for the public. Additionally, the retention requirements of GS 2 and the regulations do not substantively differ.<sup>1</sup> Thus, the introduction of GS 2 did not substantively affect school divisions.

Businesses and entities affected. Repealing these regulations will not significantly affect any businesses or entities. There are 131 school divisions in the Commonwealth.

Localities particularly affected. No Virginia localities are significantly affected by the repeal of these regulations.

Projected impact on employment. The repeal of these regulations will not affect employment.

Effects on the use and value of private property. The repeal of these regulations will not significantly affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on September 14, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

*This regulation sets the schedule for the retention and disposition of financial records in local school divisions. Under its statutory authority the Library of Virginia has developed a retention and disposition schedule governing fiscal records. The schedule developed by the Library of Virginia replaces this regulation, therefore, the regulation is being repealed.*

V.A.R. Doc. No. R05-72; Filed November 23, 2004, 10:05 a.m.

\*\*\*\*\*

Title of Regulation: **8 VAC 20-380. Rules Governing Public School Building Construction (Literary Fund) (repealing 8 VAC 20-380-10 through 8 VAC 20-380-40).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 14, 2005.

(See Calendar of Events section for additional information)

---

<sup>1</sup> The language concerning financial records differs between GS 2 and the regulations. The Department of Education provided assurance "that there are no essential differences in what GS 2 requires from what the Board required under its regulation."

Effective Date: March 1, 2005.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524 or e-mail mroberts@mail.vak12ed.edu.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

Purpose: The requirements for literary loans are now prescribed by the Board of Education in the Regulations Governing Literary Loan Applications in Virginia, 8 VAC 20-100. Therefore, this regulation should be repealed because the requirements for loans from the literary fund have been promulgated by the Board of Education in another regulation and the provisions in this regulation are no longer correct.

Rationale for Using Fast-Track Process: The fast track process is applicable because the repeal of this regulation is noncontroversial.

Substance: There are no substantive changes. The regulation is being repealed.

Issues: The advantage to the Board of Education is the elimination of a regulation that is incorrect in light of another, more recent board regulation. The advantage to the public is the elimination of two conflicting regulations. There are no disadvantages to the public or the Commonwealth.

The repeal of this regulation has no impact on the public's health, safety or welfare.

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

Summary of the proposed regulation. The Board of Education proposes to repeal these regulations.

Estimated economic impact. The rules within these regulations are also addressed in Regulations Governing Literary Loan Applications in Virginia, 8 VAC 20-100. Some of the rules within the two regulations are in conflict. For example, these regulations state that the interest rate for loans available from the literary fund for school construction is three percent. The Regulations Governing Literary Loan Applications in Virginia list different interest rates for school

divisions, depending on each school division's composite index.<sup>1</sup> The board and the Department of Education have been applying the Regulations Governing Literary Loan Applications in Virginia, and have considered these regulations obsolete in practice. Thus, the repeal of these regulations will have no impact beyond reducing potential confusion.

Businesses and entities affected. Since these regulations have been obsolete and superceded by the Regulations Governing Literary Loan Applications in Virginia, 8 VAC 20-100, repealing these regulations will not affect any businesses or entities beyond reducing potential confusion among the staff of the 131 school divisions in the Commonwealth.

Localities particularly affected. Repealing these regulations does not particularly affect specific localities.

Projected impact on employment. Repealing these regulations does not affect employment.

Effects on the use and value of private property. Repealing these regulations does not affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on September 8, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

*This regulation establishes the maximum loan amount available from the literary fund for school construction, the rate of interest, duration of loans, and requirements for the payment of the loan when the title to the property is transferred. As Literary Loan requirements are prescribed by another board regulation (8 VAC 20-100), this regulation is being repealed.*

VA.R. Doc. No. R05-73; Filed November 23, 2004, 10:08 a.m.

\*\*\*\*\*

**Title of Regulation: 8 VAC 20-400. Rules Governing Division Superintendent Salary and Expenses (repealing 8 VAC 20-400-10 through 8 VAC 20-400-50).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 14, 2005.

(See Calendar of Events section for additional information)

Effective Date: March 1, 2005.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524 or e-mail mroberts@mail.vak12ed.edu.

---

<sup>1</sup> The composite index is a figure used to determine each school division's share of State Basic Aid.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

Purpose: The Standards of Quality at § 22.1-253.13:2 E of the Code of Virginia provide that pursuant to the appropriation act, support services shall be funded from basic school aid on the basis of prevailing statewide costs. The term "support services" includes those services provided by the superintendent. Therefore, this regulation should be repealed because the requirements are out of date and incorrect.

Rationale for Using Fast-Track Process: The fast track process is applicable because the repeal of this regulation is noncontroversial.

Substance: There are no substantive changes. The regulation is being repealed.

Issues: The advantage to the Board of Education and the public is the elimination of a regulation that is out of date and incorrect. There are no disadvantages to the public or the Commonwealth.

The repeal of this regulation has no impact on the public's health, safety or welfare.

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

Summary of the proposed regulation. The Board of Education (board) proposes to repeal these regulations.

Estimated economic impact. The Standards of Quality, § 22.1-253.13:2 E of the Code of Virginia, provide that pursuant to the appropriation act, support services shall be funded from basic school aid on the basis of prevailing statewide costs. The term "support services" includes those services provided by the superintendent.

These regulations pertained to superintendents' salary and expenses during the 1980-1981 and 1981-1982 academic years. The regulations are obsolete. Thus, their repeal will have no impact.

Businesses and entities affected. The repeal of these regulations will not affect any business or other entity. There are 131 school divisions in the Commonwealth.

Localities particularly affected. The repeal of these regulations will not affect any locality.

---

# Fast-Track Regulations

---

Projected impact on employment. The repeal of these regulations will not affect employment.

Effects on the use and value of private property. The repeal of these regulations will not affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on September 10, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

*The regulation prescribes salaries for school division superintendents for 1980-81 and 1981-82. The regulation is being repealed because it is obsolete.*

VA.R. Doc. No. R05-74; Filed November 23, 2004, 10:07 a.m.

\*\*\*\*\*

Title of Regulation: **8 VAC 20-430. Regulations Governing Contractual Agreements with Professional Personnel (repealing 8 VAC 20-430-10 through 8 VAC 20-430-50).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 14, 2005.

(See Calendar of Events section for additional information)

Effective Date: March 1, 2005.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524 or e-mail mroberts@mail.vak12ed.edu.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

Purpose: The provisions in this regulation are now prescribed by the Board of Education in the Regulations Governing the Employment of Professional Personnel, 8 VAC 20-440. Therefore, this regulation should be repealed because the requirements have been promulgated by the Board of Education in another regulation making this regulation unnecessary.

The repeal of this regulation has no impact on the public's health, safety or welfare.

Rationale for Using Fast Track Process: The fast track process is applicable because the repeal of this regulation is noncontroversial.

Substance: There are no substantive changes. The regulation is being repealed.

Issues: The advantage to the Board of Education is the elimination of a regulation that has been superseded by

another, more recent board regulation. The advantage to the public is the elimination of any confusion created by two regulations. There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Regulation. The Board of Education (board) proposes to repeal these regulations.

Estimated economic impact. The rules within these regulations are also addressed in Regulations Governing the Employment of Professional Personnel, 8 VAC 20-440. With one exception there are no conflicts between the regulations. These regulations state, "In calculating probationary terms of service for teachers, principals, and supervisors, employment for 180 or more teaching days during one school year shall constitute a single year of service." In contrast, Regulations Governing the Employment of Professional Personnel state that "For the purpose of calculating the three years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year of service by the teacher." The board and the Department of Education have been applying Regulations Governing the Employment of Professional Personnel, and have considered these regulations obsolete in practice. Since the minimum of 160 contractual teaching days for counting toward a year of probationary service in Regulations Governing the Employment of Professional Personnel is less stringent than the minimum of 180 days in these regulations, it is unlikely that a party would challenge the 160-day minimum requirement due to it conflicting with the 180-day minimum requirement. Thus, the repeal of these regulations will have no impact beyond reducing potential confusion.

Businesses and entities affected. Since these regulations have been obsolete and the largely congruent Regulations Governing the Employment of Professional Personnel have been applied in their stead, repealing these regulations will not affect any businesses or entities beyond reducing potential confusion among the staff of the 131 school divisions in the Commonwealth.

Localities particularly affected. Repealing these regulations does not particularly affect specific localities.

Projected impact on employment. Repealing these regulations does not affect employment.

Effects on the use and value of private property. Repealing these regulations does not affect the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on September 10, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

*This regulation prescribes the requirements for eligibility for a continuing contract, the effect of teaching outside the state public school system and the contractual period permitted for professional personnel. The regulation is being repealed because the requirements have been promulgated by the board in another regulation (8 VAC 20-440).*

VA.R. Doc. No. R05-75; Filed November 23, 2004, 10:07 a.m.

\*\*\*\*\*

Title of Regulation: **8 VAC 20-480. Rules Governing Pupil Rights and Hearings (repealing 8 VAC 20-480-10).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 14, 2005.

(See Calendar of Events section for additional information)

Effective Date: March 1, 2005.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524 or e-mail mroberts@mail.vak12ed.edu.

Basis: Section 22.1-16 of the Code of Virginia vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1.

Purpose: This regulation should be repealed because the requirements are unnecessary. The Regulations Governing Management of the Student's Scholastic Record in the Public Schools of Virginia, 8 VAC 20-150, require local school divisions to adhere to provisions of the Family Education Rights and Privacy Act (FERPA). FERPA regulations, at 34 CFR 99.21 and 99.22, require that school divisions provide a hearing when the parent or eligible student wants to challenge information in the student's educational record. FERPA also includes the process that must be followed. Since school divisions are required to adhere to the board's regulation and to FERPA, this regulation is redundant and unnecessary.

Rationale for Using Fast-Track Process: The fast track process is applicable because the repeal of this regulation is noncontroversial.

Substance: There are no substantive changes. The regulation is being repealed.

Issues: The advantage to the Board of Education is the elimination of a regulation that is redundant and no longer necessary. The advantage to the public is the elimination of an unnecessary regulation. There are no disadvantages to the public or the Commonwealth.

The repeal of this regulation has no impact on the public's health, safety or welfare.

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

Summary of the proposed regulation. The Board of Education proposes to repeal these regulations.

Estimated economic impact. These regulations concern the process school divisions must use when a parent, guardian, or eligible student wishes to challenge information in the student's education record. Process requirements are also covered in the federal Family Education Rights and Privacy Act (FERPA) regulations (34 CFR 99.21 and 99.22). The Commonwealth's regulations Management of the Student's Scholastic Record in the Public Schools of Virginia, 8 VAC 20-150, specify that "Local education agencies shall manage the scholastic records of all students in compliance with applicable law, including the Family Educational Rights and Privacy Act ..."

FERPA states that educational agencies shall hold hearings requested by parent, guardian, or student "within a reasonable time after it has received the request for the hearing from the parent or eligible student." These regulations state that "The hearing shall be within 45 days of receipt of the request." Meanwhile, the Department of Education's guidance document entitled "Management of the Student's Scholastic Record in Public Schools of Virginia" specifies that the hearing should be held within 15 calendar days. Regulations have the power of law, while guidance documents do not. Thus, school administrators can comfortably interpret the conflicting documents to mean that they have up to 45 days to hold a hearing.

If these regulations are repealed, then the relevant existing documents will be FERPA, which states that hearings must be held within a reasonable time, and the guidance documents, which state that the hearing should be held within 15 calendar days. Under this situation school administrators are essentially informed by the Commonwealth that within a reasonable time means within 15 calendar days. It is likely

---

## Fast-Track Regulations

---

then that some schools will hold hearings on the accuracy and appropriateness of information in student records sooner if these regulations are repealed.

To the extent that students and their parents may be successful in changing information in the student record, holding the hearing sooner can potentially produce a significant benefit. For example, inaccurate information on the student's transcript can adversely affect the probability of acceptance into college. By holding hearings sooner, the probability that corrected transcripts can be sent to colleges by their deadlines is increased.

Businesses and entities affected. The proposed repeal of these regulations affects the 131 school divisions in the Commonwealth, as well as their staff, students and parents.

Localities particularly affected. The proposed repeal of these regulations affects all Virginia localities.

Projected impact on employment. The proposed repeal of these regulations will not likely have a large impact on employment.

Effects on the use and value of private property. The proposed repeal of these regulations will not likely have a large impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Economic Impact Analysis done by DPB on September 10, 2004. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act.

Summary:

*This regulation prescribes the process school divisions must use when a parent or eligible student wishes to challenge information in the student's education record. The federal Family Education Rights and Privacy Act (34 CFR Part 99) sets forth these requirements making this regulation redundant and unnecessary.*

VA.R. Doc. No. R05-76; Filed November 23, 2004, 10:08 a.m.



---

# GENERAL NOTICES/ERRATA

---

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Consent Special Order - Sanville Utilities Corporation

The State Water Control Board (SWCB) proposes to issue a Consent Special Order Amendment (CSOA) to Sanville Utilities Corporation, Henry County Public Service Authority, Receiver, regarding compliance with the VPDES Permit Regulation, 9 VAC 25-31, at the Fairway Acres Sewage Treatment Plant and the Westwood Lagoon. 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 Robert Steele, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, N.W., Roanoke, VA 24019.

The final CSOA is available at [www.deq.state.va.us/enforcement/notices.html](http://www.deq.state.va.us/enforcement/notices.html) and at the above office during regular business hours. You may also request copies from Mr. Steele at the address above or by calling him at (540) 562-6777.

### Total Maximum Daily Loads for Abrams Creek and Opequon Creek

Notice is hereby given that the State Water Control Board seeks comment on proposed modifications to the bacteria and benthic Total Maximum Daily Loads (TMDLs) developed for Abrams Creek and Opequon Creek in Frederick County.

Total maximum daily loads of E. coli and sediment were developed to address bacterial and benthic impairments in Abrams and Opequon Creeks. These TMDLs were approved by the Environmental Protection Agency on February 18, 2004, and can be found at the following website:

[http://gisweb.deq.virginia.gov/tmdlapp/tmdl\\_report\\_search.cfm](http://gisweb.deq.virginia.gov/tmdlapp/tmdl_report_search.cfm).

The Virginia Department of Environmental Quality (DEQ) seeks written comments from interested persons on the modification of these TMDLs. As part of the current reissuance of the VPDES permit, the Parkins Mill Sewage Treatment Plant requested an expansion of the design flow from 2.0 mgd to a maximum flow tier of 5 mgd for June-November and 7.6 mgd for December-May. DEQ proposes to modify the wasteload allocation and TMDL to accommodate this expansion at a permitted E. coli concentration of 126 cfu/100ml and total suspended solids (TSS) concentration of 10 mg/L. In addition, DEQ proposes to correct several errors and omissions in wasteload allocations for facilities permitted under various general permits. For instance, corrections to the number of single-family home general permits and additions of omitted industrial and construction stormwater general permits are proposed. To review the proposed revisions to the wasteload allocation tables and TMDL equation tables, please contact Robert Brent using the contact information below.

For the bacteria TMDL, the proposed increase will not cause a water quality violation because Virginia's water quality standards for bacteria require that treated effluent discharged

into a receiving stream meet the bacteria criteria for the stream. The TMDL included modeling results to confirm that at 10 times the wasteload allocation, the water quality standard would not be violated if permitted dischargers are required to discharge at an E. coli concentration of 126 cfu/100ml.

For the sediment TMDLs, the above revisions would result in insignificant increases in the total allocated sediment loads. In Abrams Creek, the revisions would result in a 0.1% increase in the TMDL. In Lower Opequon Creek, the revisions would result in a 0.3% increase in the TMDL.

The public comment period for these modifications will end on January 13, 2005. Questions or information requests should be addressed to Robert Brent. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, or e-mail [rbrent@deq.virginia.gov](mailto:rbrent@deq.virginia.gov).

### Total Maximum Daily Loads (TMDLs) for Nottoway River Watershed

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek interested persons to participate in a water quality study that is beginning in the Nottoway River watershed. The purpose of the study will be to identify sources of bacteria in the watershed and to determine the reductions in bacteria loadings needed to allow various streams in the watershed to meet water quality goals. The study will result in Total Maximum Daily Loads (TMDLs) to address multiple bacteria impairments on the Nottoway River and its tributaries.

The affected streams were identified in Virginia's 1998 303(d) TMDL Priority List and Report and Virginia's 2002 303(d) Report on Impaired Waters as impaired due to violations of Virginia's water quality standards for fecal coliform bacteria. The streams are therefore not supporting the Primary Contact Recreation (swimmable) Designated Use. The impairments include: 17.76 miles of the Nottoway River, 9.85 miles of the Little Nottoway River, 10.35 miles of Big Hounds Creek and 7.17 miles of Beaverpond Creek. These impairments are located in Prince Edward, Nottoway, Lunenburg, and Dinwiddie counties.

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 each pollutant causing a water quality problem, or impairment, in streams contained in Virginia's 303(d) Report on Impaired Waters.

A third advisory committee meeting for the Nottoway River watershed TMDL has been scheduled for Wednesday, December 15 at 1 p.m. in the Blackstone Police Station training room located at 101 West Elm Street in Blackstone. The purpose of the meeting is to discuss computer modeling and the E. coli point and nonpoint source allocations based on the bacteria source assessments. Anyone interested in attending this meeting should contact the regional TMDL coordinator, Kelly Wills (contact information provided below).

---

## General Notices/Errata

---

Information from this meeting will be made available on the DEQ TMDL web site at <http://www.deq.virginia.gov/tmdl/>.

A fact sheet on the water quality study and development of the Nottoway River watershed TMDLs is available upon request or can be viewed at the DEQ TMDL website at <http://www.deq.virginia.gov/tmdl/>. Questions or information requests should be addressed to Kelly Wills, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-5120 ext. 6042, FAX (434) 582-5125, or e-mail [kjwills@deq.virginia.gov](mailto:kjwills@deq.virginia.gov).

### **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  
RESPONSE TO PETITION FOR RULEMAKING-RR13  
FAST-TRACK RULEMAKING ACTION-RR14

---

# CALENDAR OF EVENTS

---

## Symbol Key

- † Indicates entries since last publication of the *Virginia Register*  
♿ Location accessible to persons with disabilities  
☎ Teletype (TTY)/Voice Designation

### NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at [www.vipnet.org](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

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia Marine Products Board

**January 25, 2005 - 6 p.m.** -- Open Meeting  
Dolphin Cove Restaurant, Route 17, 4329 George Washington Memorial Highway, Gloucester, Virginia.♿

The board will hear the reading and approval minutes of previous board meeting and. In addition, the board expects to hear reports on finance, trade shows, festivals, industry tours, and calendar sales. Cooperative programs with the Virginia Department of Agriculture and Consumer Services and croaker exports will be discussed. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the person identified in this notice at least five days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

**Contact:** 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, e-mail [Shirley.Estes@vdacs.virginia.gov](mailto:Shirley.Estes@vdacs.virginia.gov).

#### Virginia Seed Potato Board

† **December 15, 2004 - 7:30 p.m.** -- Open Meeting  
Eastern Shore Agricultural Research and Extension Center, Research Drive, Painter, Virginia.♿

A meeting to review regulations (2 VAC 5-300, Rules and Regulations for the Enforcement of the Virginia Seed Potato Inspection Law), discuss program year 2004, and plan for the 2005 seed season. Other business that may come before the board will be discussed.

**Contact:** J. W. Nottingham, Program Director, Department of Agriculture and Consumer Services, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867, FAX (757) 787-5973, e-mail [Butch.Nottingham@vdacs.virginia.gov](mailto:Butch.Nottingham@vdacs.virginia.gov).

#### Virginia Sheep Industry Board

† **January 7, 2005 - 11 a.m.** -- Open Meeting  
Alphin-Stewart Livestock Arena, Virginia Tech, Blacksburg, Virginia.♿

A meeting to approve the minutes of the March 4, 2004, meeting. An updated financial report will be presented. The board will hear reports from the USDA Wildlife Services, Virginia Food Festival, Virginia FFA Foundation, Virginia Highlands Festival, Virginia State Fair, and the Virginia Junior Sheep Breeders Association. New officers will be elected. 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 Michael Carpenter at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Michael Carpenter, Program Manager, Department of Agriculture and Consumer Services, 116 Reservoir St., Harrisonburg, VA, telephone (540) 434-0779, FAX (540) 434-5607.

#### STATE AIR POLLUTION CONTROL BOARD

**December 15, 2004 - 7 p.m.** -- Public Hearing  
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.♿

A public hearing on a proposed revision to the Commonwealth of Virginia State Implementation Plan. The hearing will be held to accept testimony concerning the proposed revision. The proposed revision consists of a number of determinations as to reasonably available control technology (RACT) for the control of emissions of nitrogen oxides (NO<sub>x</sub>) to the atmosphere from the facilities cited below located in the Roanoke portion (Botetourt County, Roanoke County, Roanoke City and Salem City) of the


---

## Calendar of Events

---


Western Virginia Emissions Control Area. The RACT determinations are being made pursuant to 9 VAC 5-40-310 of state regulations. State operating permits are being issued as administrative mechanisms to enforce the RACT determinations. The permits are being issued pursuant to Article 5 (9 VAC 5-80-800 et seq.) of 9 VAC 5 Chapter 80 of state regulations and are federally enforceable upon issuance. The affected facilities are located at the following businesses: the Norfolk Southern Railway Company - East End Shops, the Roanoke Electric Steel Corporation, and the Roanoke Cement Company.


**Contact:** Lillian Alexander, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6783, FAX (540) 562-6729, e-mail ljalexander@deq.virginia.gov.

† **December 20, 2004 - 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 State Implementation Plan (SIP). The proposed revision consists of an amendment to the existing regulation. On September 22, 2004 (69 FR 56697), EPA reclassified the Richmond area from "moderate" to "marginal." On November 3, 2004, the State Air Pollution Control Board adopted a revision to 9 VAC 5-20-205 of Chapter 20 of the Regulations for the Control and Abatement of Air Pollution effecting the EPA change. The department is seeking comment on the issue of whether the regulation amendments should be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the SIP.

**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.virginia.gov.


† **December 20, 2004 - 10 a.m.** -- Public Hearing  
Winchester Regional Airport, 491 Airport Road, Conference Room, Winchester, Virginia. 

† **December 20, 2004 - 7 p.m.** -- Public Hearing  
Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Obenshain Room, Roanoke, Virginia. 

A public hearing on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The hearing will be held to accept testimony concerning the proposed revision. The proposed revision consists of an Early Action Plan (EAP) for the Winchester area. The EAP implements a program established by EPA for areas potentially designated as nonattainment under the eight-hour ozone standard. This program enables such areas to avoid the nonattainment designation by reducing emissions to a level that will enable the area to attain the ozone standard sooner than otherwise required (by 2007 rather than 2010) in exchange for avoiding a nonattainment designation. These areas enter into Early Action Compacts, which are voluntary agreements by the localities, states, and the EPA to develop EAPs to reduce ozone and improve local air quality more quickly than could be achieved


through traditional nonattainment area designation and planning. EAPs must include the same components that make up SIPs. This includes emissions inventories, control strategies, schedules and commitments, and a demonstration of attainment based on photochemical modeling.

**Contact:** Thomas R. Ballou, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4406, FAX (804) 698-4510, e-mail trballou@deq.virginia.gov.

**January 5, 2005 - 1 p.m.** -- Open Meeting  
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. 


A public meeting on the notice of intended regulatory action to amend the regulations for the control and abatement of air pollution concerning VOC and NO<sub>x</sub> emissions control areas (revision D04). The notice of intended regulatory action will appear in the Virginia Register of Regulations on November 29, 2004. The public comment period will close on January 12, 2005.

**Contact:** Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, e-mail gegraham@deq.virginia.gov.

† **January 11, 2005 - 6 p.m.** -- Open Meeting  
Franklin Paul D. Camp Workforce Development Center, Franklin, Virginia. 

International Paper will be hosting a public information meeting on a variance to the regulations for the control and abatement of air pollution establishing a site-wide emissions cap.

**Contact:** Laurel D. Corl, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2178, FAX (757) 518-2009, e-mail ldcorl@deq.virginia.gov.

† **March 2, 2005 - 9:30 a.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 

A regular meeting of the board.

**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 cmb Berndt@deq.virginia.gov.

### ALCOHOLIC BEVERAGE CONTROL BOARD

**December 20, 2004 - 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 and to discuss other matters not yet determined.

**Contact:** W. Curtis Coleburn, III, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage

Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY ☎, e-mail [wccolen@abc.state.va.us](mailto:wccolen@abc.state.va.us).

\*\*\*\*\*

† **February 11, 2005** - 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 Alcoholic Beverage Control Board intends to amend regulations entitled **3 VAC 5-50, Retail Operations**. The purpose of the proposed action is to prescribe the conditions under which restaurants holding mixed beverage licenses may serve bottles of soju in the original container for on-premises consumption.

Statutory Authority: §§ 4.1-103, 4.1-111 and 4.1-221 of the Code of Virginia.

**Contact:** W. Curtis Coleburn, III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, (804) 213-4687/TTY ☎, 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**

**December 14, 2004 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ♿

An informal fact-finding conference.

**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.virginia.gov](mailto:APELSCIDLA@dpor.virginia.gov).

## **VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS**

**February 16, 2005 - 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, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY ☎, e-mail [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

## **BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY**

† **January 12, 2005 - 10:30 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

† **February 11, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to amend regulations entitled **18 VAC 30-20, Regulations of the Board of Audiology and Speech-Language Pathology**. The purpose of the proposed action is to establish criteria for delegation of certain informal fact-finding proceedings to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, 6603 West Broad Street, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

## **VIRGINIA AVIATION BOARD**

**December 14, 2004 - 1 p.m.** -- Open Meeting  
Wyndham Hotel, 4700 South Laburnum Avenue, Richmond, Virginia. ♿

A meeting to discuss land use capability issues.

**Contact:** Carolyn Toth, Administrative Assistant, Department of Aviation, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3637, FAX (804) 236-3635, toll-free (800) 292-1034, e-mail [carolyn.toth@doav.virginia.gov](mailto:carolyn.toth@doav.virginia.gov).

**December 14, 2004 - 3 p.m.** -- Open Meeting  
**December 15, 2004 - 9 a.m.** -- Open Meeting  
Wyndham Hotel, 4700 South Laburnum Avenue, 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, Department of Aviation, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3637, FAX (804) 236-3635, toll-free (800) 292-1034, e-mail [carolyn.toth@doav.virginia.gov](mailto:carolyn.toth@doav.virginia.gov).

---


## Calendar of Events

---

### BOARD FOR BARBERS AND COSMETOLOGY


† **January 24, 2005 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Conference Room 4W,  
Richmond, Virginia. 

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person 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.

**Contact:** William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY , e-mail [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov).

### DEPARTMENT OF BUSINESS ASSISTANCE


#### Small Business Advisory Board

**December 13, 2004 - 10 a.m.** -- Open Meeting  
707 East Main Street, 3rd Floor Board Room, Richmond,  
Virginia. 


A regular meeting.

**Contact:** Barbara E. Anderson, Assistant to the Director, EBS, Department of Business Assistance, 707 E. Main St., Suite 300, Richmond, VA 23219, telephone (804) 371-8230, FAX (804) 371-2142, toll-free (866) 248-8814, e-mail [barbara.anderson@dba.virginia.gov](mailto:barbara.anderson@dba.virginia.gov).

### CEMETERY BOARD

† **February 24, 2005 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Room 453, Richmond,  
Virginia. 

An informal fact-finding conference.

**Contact:** Karen W. O'Neal, Regulatory Programs Coordinator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail [oneal@dpor.virginia.gov](mailto:oneal@dpor.virginia.gov).

### CHESAPEAKE BAY LOCAL ASSISTANCE BOARD


**December 13, 2004 - 10 a.m.** -- Open Meeting  
The Heritage Center, Pocahontas State Park, Chesterfield,  
Virginia.

A regular business meeting.

**Contact:** David C. Dowling, Policy and Planning Manager, Department of Conservation and Recreation, 203 Governor

St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, e-mail [david.dowling@dcr.virginia.gov](mailto:david.dowling@dcr.virginia.gov).


### STATE CHILD FATALITY REVIEW TEAM

**January 11, 2005 - 10 a.m.** -- Open Meeting  
† **March 11, 2005 - 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:** Angela Myrick, Coordinator, Department of Health, 400 E. Jackson St., Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail [Angela.Myrick@vdh.virginia.gov](mailto:Angela.Myrick@vdh.virginia.gov).

### STATE BOARD FOR COMMUNITY COLLEGES


**January 19, 2005 - 1:30 p.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building,  
101 North 14th Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Meetings of the Academic, Student Affairs and Workforce Committee, the Audit Committee, and the Budget and Finance Committee at 1:30 p.m. The Facilities Committee and the Personnel Committee will meet at 3 p.m.


**Contact:** D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

**January 20, 2005 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Godwin-Hamel Board Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the full board. Public comment may be received at the beginning of the meeting upon notification at least five working days prior to the meeting.

**Contact:** D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 15th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 

### COMPENSATION BOARD

**December 15, 2004 - 11 a.m.** -- Open Meeting  
202 North 9th Street, 10th Floor, Richmond, Virginia. 

A monthly board meeting.

**Contact:** Cindy Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 786-0786, FAX (804) 371-0235, e-mail [cindy.waddell@scb.virginia.gov](mailto:cindy.waddell@scb.virginia.gov).

## DEPARTMENT OF CONSERVATION AND RECREATION

### Virginia Soil and Water Conservation Board

† **December 16, 2004 - 1 p.m.** -- Open Meeting  
Natural Resources Conservation Service, 1606 Santa Rosa Road, Richmond, Virginia.

A meeting for discussion by a study committee regarding SWCD Ag Pro.

**Contact:** David C. Dowling, Policy and Planning Manager, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141 or e-mail david.dowling@dcr.virginia.gov.

### BOARD FOR CONTRACTORS

**December 14, 2004 - 9 a.m.** -- Open Meeting  
**January 18, 2005 - 9 a.m.** -- Open Meeting  
† **March 1, 2005 - 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. The department fully complies with the Americans with Disabilities Act.

**Contact:** Eric L. Olson, Executive 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.virginia.gov.

**December 16, 2004 - 9 a.m.** -- Open Meeting  
† **January 6, 2005 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

Informal fact-finding conferences.

**Contact:** Eric L. Olson, Executive 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.virginia.gov.

**February 23, 2005 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting of the Tradesman and Education Committee to conduct committee business. The department fully complies with the Americans with Disabilities Act.

**Contact:** Eric L. Olson, Executive 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.virginia.gov.

## CRIMINAL JUSTICE SERVICES BOARD

### Private Security Services Advisory Board

**December 15, 2004 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, Board Room 3, Richmond, Virginia.

A general business meeting.

**Contact:** Leon D. Baker, Jr., Division Director, Criminal Justice Services Board, 8th Street Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, e-mail lbaker@dcs.state.va.us.

### BOARD OF DENTISTRY

**December 17, 2004 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A Special Conference Committee will meet to hold informal conferences. There will not be a public comment period.

**Contact:** Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail Cheri.Emma-Leigh@dhp.virginia.gov.

\*\*\*\*\*

**January 21, 2005 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Dentistry intends to amend regulations entitled **18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene**. The purpose of the proposed action is to update certain requirements and terminology; clarify the board's requirements, especially related to dental education; eliminate a jurisprudence examination; and add requirements for additional training for applicants who have had multiple examination failures. Amendments also modify educational, monitoring and equipment requirements for administration of various forms of analgesia, sedation and anesthesia as minimally necessary to ensure public safety.

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

Public comments may be submitted until January 28, 2005, to Sandra Reen, Executive Director, Board of Dentistry, 6603 West Broad Street, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

† **January 21, 2005 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

---

# Calendar of Events

---

A meeting to discuss board business. There will be a public comment period during the first 15 minutes of the meeting.

**Contact:** Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

## DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

**December 16, 2004 - 11 a.m.** -- Open Meeting  
Department of General Services, Eighth Street Office Building, 805 East Broad Street, 3rd Floor, Richmond, Virginia. ♿  
(Interpreter for the deaf provided upon request)

A monthly meeting to review requests submitted by localities to use design-build or construction-management-type contracts. Contact the Division of Engineering and Building to confirm the meeting.

**Contact:** Rhonda M. Bishton, Administrative Assistant, Department of General Services, 805 E. Broad Street, Room 101, Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/☎, or e-mail [rbishton@dgs.state.va.us](mailto:rbishton@dgs.state.va.us).

## BOARD OF EDUCATION

**December 17, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-140, Regulations Governing Retention Schedule for Uniform Pupil Accounting Records**. The purpose of the proposed action is to repeal the regulation because it is in conflict with the Code of Virginia. Section 42.1-82 of the Code of Virginia vests the Library of Virginia with the authority to set the retention and disposition schedules for public records. The Library of Virginia has developed a retention schedule specific to the maintenance of records in Virginia's public schools. Therefore, the Board of Education no longer has the authority to set this schedule.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

**January 12, 2005 - 9 a.m.** -- Open Meeting  
**February 23, 2005 - 9 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia. ♿

A regular business meeting of the board. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting

arrangements and will note any last-minute changes in time or location. Persons who wish to speak or who require the services of an interpreter for the deaf should contact the agency at least 72 hours in advance.

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

\*\*\*\*\*

**January 18, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-470, Nurses, Physicians, and Therapist Standards**. The purpose of the proposed action is to repeal the regulation because the requirements are unnecessary. Section 22.1-274 of the Code of Virginia states that local school boards may employ school nurses, physicians, physical therapists, occupational therapists and speech therapists under the same provisions as provided by the board regulation. Since the Code of Virginia already permits schools divisions to employ these personnel and board regulations are not required, this regulation is unnecessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

\*\*\*\*\*

† **February 13, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-200, Diploma - High School Completion**. The purpose of the proposed action is to repeal this regulation. The requirements for a diploma are prescribed by the Standards of Quality in § 22.1-253.13:4 of the Code of Virginia and by the Board of Education in the Regulations for Establishing Standards for Accrediting Public Schools in Virginia, 8 VAC 20-131-50. Additionally, the Regulations Governing Adult High School Programs, 8 VAC 20-30-20, prescribe the requirements for an adult high school diploma and the Emergency Regulations Governing the General Achievement Diploma, 8 VAC 20-680-10, prescribe the requirements for that diploma. Therefore, this regulation should be repealed because it is no longer necessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

\*\*\*\*\*

† **February 14, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-260, Regulations Governing Financial Retention Schedule**. The purpose of the proposed action is to repeal the regulation because it is in conflict with the Code of Virginia. Section 42.1-82 of the Code of Virginia vests the Library of Virginia with the authority to set the retention and disposition schedules for public records. The Library of Virginia has developed a retention schedule specific to the maintenance of records in Virginia's public schools. Therefore, the Board of Education no longer has the authority to set this schedule.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

\*\*\*\*\*

† **February 14, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-380, Regulations Governing Public School Building Construction (Literary Fund)**. The requirements for literary loans are now prescribed by the Board of Education in the Regulations Governing Literary Loan Applications in Virginia (8 VAC 20-100). Therefore, this regulation should be repealed because the requirements for loans from the literary fund have been promulgated by the Board of Education in another regulation and the provisions in this regulation are no longer correct.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

\*\*\*\*\*

† **February 14, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-400, Rules Governing Division Superintendent Salary and Expenses**. Section 22.1-253.13:2 E of the Code of Virginia provides that,

pursuant to the appropriation act, support services shall be funded from basic school aid on the basis of prevailing statewide costs. The term "support services" includes those services provided by the superintendent. Therefore, this regulation should be repealed because the requirements are out of date and incorrect.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

\*\*\*\*\*

† **February 14, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-430, Regulations Governing Contractual Agreements with Professional Personnel**. The provisions in this regulation are now prescribed by the Board of Education in the Regulations Governing the Employment of Professional Personnel (8 VAC 20-440-10). Therefore, this regulation should be repealed because the requirements have been promulgated by the Board of Education in another regulation making this regulation unnecessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

\*\*\*\*\*

† **February 14, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Education intends to repeal regulations entitled **8 VAC 20-480, Regulations Governing Pupil Rights and Hearings**. This regulation should be repealed because the requirements are unnecessary. The Regulations Governing Management of the Student's Scholastic Record (8 VAC 20-150), require local school divisions to adhere to provisions of the Family Education Rights and Privacy Act (FERPA). FERPA regulations at 34 CFR 99.21 and 99.22, require that school divisions provide a hearing when the parent or eligible student wants to challenge information in the student's educational record. FERPA also includes the process that must be followed. Since school divisions are required to adhere to the board's regulation and to FERPA, this regulation is redundant and unnecessary.

Statutory Authority: § 22.1-16 of the Code of Virginia.

---

# Calendar of Events

---

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

## DEPARTMENT OF EDUCATION

**January 20, 2005 - 8:45 a.m.** -- Open Meeting

**January 21, 2005 - 8:45 a.m.** -- Open Meeting  
Richmond Holiday Inn, Koger Center, 10800 Midlothian Turnpike, Richmond, Virginia.

A meeting of the State Special Education Advisory Committee.

**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, or e-mail [mroberts@mail.vak12ed.edu](mailto:mroberts@mail.vak12ed.edu).

## Advisory Board on Teacher Education and Licensure

**January 24, 2005 - 8:45 a.m.** -- Open Meeting

Location to be announced.

A regular meeting. The public is urged to confirm arrangements prior to each meeting by viewing the Department of Education's public meeting calendar at <http://www.pen.k12.va.us/VDOE/meetings.html>. This site will contain the latest information on the meeting arrangements and will note any last-minute changes in time or location. Please note that persons requesting the services of an interpreter for the deaf are asked to do so at least 72 hours in advance so that the appropriate arrangements may be made.

**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](mailto:mroberts@mail.vak12ed.edu).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**† December 15, 2004 - 1 p.m.** -- Open Meeting

Blackstone Police Station, 101 West Elm Street, Training Room, Blackstone, Virginia.

The third meeting of the advisory committee assisting with the development of a TMDL for bacteria for multiple impairments on the Nottoway River and its tributaries.


**Contact:** Kelly Willis, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, FAX (434) 582-5125, e-mail [kjwillis@deq.virginia.gov](mailto:kjwillis@deq.virginia.gov).

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**† December 14, 2004 - 9 a.m.** -- Open Meeting


Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to hear possible violations of the laws and regulations governing the practice of funeral service.


**Contact:** Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail [elizabeth.young@dhp.virginia.gov](mailto:elizabeth.young@dhp.virginia.gov).

## BOARD FOR GEOLOGY

**January 5, 2005 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A regular meeting.

**Contact:** David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail [geology@dpor.virginia.gov](mailto:geology@dpor.virginia.gov).

## GOVERNOR'S EMERGENCY MEDICAL SERVICES ADVISORY BOARD

**February 3, 2005 - 3 p.m.** -- Open Meeting

The Place at Innsbrook, Glen Allen, Virginia.

A regular meeting to review suggested changes to specific EMS regulations.

**Contact:** Michael D. Berg, Manager, Regulation and Policy, Department of Health, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail [michael.berg@vdh.virginia.gov](mailto:michael.berg@vdh.virginia.gov).

## STATE BOARD OF HEALTH

**January 28, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to amend regulations entitled **12 VAC 5-410, Rules and Regulations for the Licensure of Hospitals**. The purpose of the proposed action is to extend the storage time of breastmilk from 24 to 48 hours and to reformat section 440 of the regulations.

Statutory Authority: § 32.1-127 of the Code of Virginia.

**Contact:** Carrie Eddy, Senior Policy Analyst, Department of Health, Center for Quality Health Care Services, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 367-2149 or e-mail [carrie.eddy@vdh.virginia.gov](mailto:carrie.eddy@vdh.virginia.gov).

## DEPARTMENT OF HEALTH

### Sewage Handling and Disposal Appeal Review Board

**January 19, 2005 - 10 a.m.** -- Open Meeting  
**February 23, 2005 - 10 a.m.** -- Open Meeting  
County of Henrico, 8600 Dixon Powers Drive, Human Services Board Room, 2nd Floor, Richmond, Virginia ☎

A meeting to hear appeals of health department denials of septic tank permits and/or Indemnification Fund Claim requests.

**Contact:** Susan Sherertz, Secretary to the Board, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7464, FAX (804) 864-7475, e-mail [susan.sherertz@vdh.virginia.gov](mailto:susan.sherertz@vdh.virginia.gov).

## DEPARTMENT OF HEALTH PROFESSIONS

**December 15, 2004 - 11 a.m.** -- Open Meeting  
NOTE: CHANGE IN MEETING LOCATION  
Clarion Hotel Roanoke Airport, 3315 Ordway Drive, Roanoke, Virginia. ☎

A working meeting of the Advisory Committee Prescription Monitoring Program for the purpose of reviewing data collected for the Program Evaluation Workplan. Public comments will be received during this meeting.

**Contact:** Ralph Orr, Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9129, FAX (804) 662-9240.

## BOARD FOR HEARING AID SPECIALISTS

**January 19, 2005 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia. ☎

An informal fact-finding conference.

**Contact:** William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail [hearingaidspec@dpor.virginia.gov](mailto:hearingaidspec@dpor.virginia.gov).

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **January 11, 2005 - 7:30 a.m.** -- Open Meeting  
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

Agenda materials will be available on the website approximately one week prior to the meeting at [www.schev.edu](http://www.schev.edu). A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's

name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

**Contact:** Lee Ann Rung, State Council of Higher Education for Virginia, 101 N 14th St., Richmond, VA, telephone (804) 225-2602, FAX (804) 371-7911, e-mail [LeeAnnRung@schev.edu](mailto:LeeAnnRung@schev.edu).

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† **January 18, 2005 - 10 a.m.** -- Open Meeting  
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia. ☎

A general business meeting.

**Contact:** Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, (804) 371-7089/TTY ☎, e-mail [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

### State Building Code Technical Review Board

† **January 21, 2005 - 10 a.m.** -- Open Meeting  
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to hear appeals concerning the application of state building and fire regulations and issues interpretations concerning the content of those regulations to recommend future changes.

**Contact:** Vernon Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA, 23219-1321, telephone (804) 371-7150.

## DEPARTMENT OF LABOR AND INDUSTRY

### Safety and Health Codes Board

**December 14, 2004 - 10 a.m.** -- Open Meeting  
State Corporation Commission, Tyler Building, 1300 East Main Street, Courtroom B, 2nd Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting.

**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](mailto:rlc@doli.state.va.us).

---

# Calendar of Events

---

## STATE LIBRARY BOARD

**January 27, 2005 - 8:15 a.m.** -- Open Meeting  
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿

Meetings of the board to discuss matters pertaining to the Library of Virginia and the board. Committees of the board will meet as follows:

8:15 a.m. - Public Library Development Committee, Orientation Room  
Publications and Educational Services Committee, Conference Room B  
Records Management Committee, Conference Room C

9:30 a.m. - Archival and Information Services Committee, Orientation Room  
Collection Management Services Committee, Conference Room B  
Legislative and Finance Committee, Conference Room C

10:30 a.m. - Library Board, Conference Room, 2M

**Contact:** Jean H. Taylor, Executive Secretary to the Librarian, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-2000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ♿, e-mail jtaylor@lva.lib.va.us.

## MARINE RESOURCES COMMISSION

**December 21, 2004 - 9:30 a.m.** -- Open Meeting  
Virginia Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting.

**Contact:** Jane McCroskey, Commission Secretary, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2215, FAX (757) 247-8101, toll-free (800) 541-4646, (757) 247-2292/TTY ♿, e-mail jane.mccroskey@mrc.virginia.gov

## BOARD OF MEDICAL ASSISTANCE SERVICES

**December 14, 2004 - 10 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. ♿

A routine quarterly meeting required in the BMAS by-laws.

**Contact:** Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY ♿, e-mail nancy.malczewski@dmas.virginia.gov.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† **December 15, 2004 - 1 p.m.** -- Open Meeting  
**January 5, 2005 - 1 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Board Room, Suite 1300, Richmond, Virginia. ♿

A meeting of the Medicaid Transportation Advisory Committee to discuss issues and problems in Medicaid transportation with the advisory committee and community.

**Contact:** Robert Knox, Transportation Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8854, FAX (804) 786-5799, (800) 343-0634/TTY ♿, e-mail robert.knox@dmas.virginia.gov.

† **January 7, 2005 - 11 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Board Room, Richmond, Virginia. ♿

A meeting of the Dental Advisory Committee to discuss streamlining the administrative processes and procedures that are impediments to dental provider participation in Medicaid.

**Contact:** Stephen Riggs, DDS, Dental Consultant, Department of Medical Assistance Services, 600 E. Broad St., Richmond, VA 23219, telephone (804) 786-6635, FAX (804) 786-0414, (800) 343-0634/TTY ♿, e-mail va.smiles@dmas.virginia.gov.

\*\*\*\*\*

**January 28, 2005** - 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 30-141, Family Access to Medical Insurance Security Plan**. The purpose of the proposed action is to implement a program of retrospective and prospective utilization review of pharmacy services for noninstitutionalized fee-for-service and PCCM FAMIS enrollees who are prescribed more than nine unique prescriptions within a 180-day period.

Statutory Authority: § 32.1-351 of the Code of Virginia; Item 324 H of Chapter 1042 of the 2003 Acts of Assembly.

**Contact:** Linda Nablo, Director, Child Health Insurance Programs, FAMIS Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4212, FAX (804) 786-1680 or e-mail Linda.Nablo@dmas.virginia.gov.

## BOARD OF MEDICINE

† **December 15, 2004 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

An informal conference committee will convene informal conferences to inquire into allegations that certain practitioners(s) may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. Further, the committee may review cases with staff for case disposition including consideration of consent orders for settlement. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

**Contact:** Peggy Sadler/Renee Dixon, Staff, Department of Health Professions, 6603 W. Broad St., Richmond, VA, telephone (804) 662-7332, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail [peggy.sadler@dhp.virginia.gov](mailto:peggy.sadler@dhp.virginia.gov).

† **January 21, 2005 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, Board Room 2, 5th Floor, Richmond, Virginia.📍

A meeting of the Executive Committee to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items 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.virginia.gov](mailto:william.harp@dhp.virginia.gov).

\*\*\*\*\*

**January 21, 2005 - 8:15 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

**January 28, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled:

**18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic;**

**18 VAC 85-40. Regulations Governing the Practice of Respiratory Care Practitioners;**

**18 VAC 85-50. Regulations Governing the Practice of Physician Assistants;**

**18 VAC 85-80. Regulations for Licensure of Occupational Therapists;**

**18 VAC 85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists Limited;**

**18 VAC 85-110. Regulations Governing the Practice of Licensed Acupuncturists;**

**18 VAC 85-120. Regulations Governing the Certification of Athletic Trainers.**

The purpose of the proposed action is to establish or amend standards for professional conduct, to include, but not be limited to, retention and release of patient records; patient confidentiality; practitioner-patient communication and termination of that relationship; sexual contact; and practitioner responsibilities.

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

Public comments may be submitted until January 28, 2005, to William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, VA 23230.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114, (804) 662-7197/TTY ☎, e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

† **February 11, 2005 - 8 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, Board Room 2, 5th Floor, Richmond, Virginia.📍

A meeting to consider regulatory matters as may be presented on the agenda. Public comment on agenda items 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.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Acupuncture

† **February 2, 2005 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of acupuncture. 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.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Athletic Training

† **February 3, 2005 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of athletic training. 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.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board of Occupational Therapy

† **February 1, 2005 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of occupational therapy. 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

---

# Calendar of Events

---

(804) 662-9943, (804) 662-7197/TTY ☎, e-mail  
william.harp@dhp.virginia.gov.

## Advisory Board on Physician Assistants

† **February 3, 2005 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of  
physician assistants. 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.virginia.gov.

## Advisory Board on Radiologic Technology

† **December 20, 2004 - 10 a.m.** -- Open Meeting  
† **February 2, 2005 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of  
radiologic technologists and radiologic technologists-limited.  
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.virginia.gov.

## Advisory Board on Respiratory Care

† **February 1, 2005 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 3, Richmond, Virginia.

A meeting to consider issues related to the regulation of  
respiratory care. 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.virginia.gov.

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

† **December 15, 2004 - 9 a.m.** -- Open Meeting  
Holiday Inn Central, 3207 North Boulevard, Richmond,  
Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting.

**Contact:** Marlene A. Butler, State Board Secretary, State  
Mental Health, Mental Retardation and Substance Abuse  
Services Board, Jefferson Bldg., 1220 Bank St., 13th Floor,

Richmond, VA 23219, telephone (804) 786-7945, e-mail  
mbutler@dmhmrsas.state.va.us.

† **January 5, 2005 - 1 p.m.** -- Open Meeting  
Henrico Area Mental Health and Retardation Services, 10299  
Woodman Rd., Glen Allen, Virginia. ♿ (Interpreter for the deaf  
provided upon request)

A meeting of the H3R Advisory Committee for Human  
Rights Regulations to consider the periodic review and  
recommendations for the Human Rights Regulations in  
accordance with Executive Order 21.

**Contact:** Margaret S. Walsh, Director, Office of Human  
Rights, State Mental Health, Mental Retardation and  
Substance Abuse Services Board, Jefferson Bldg., 1220 Bank  
St., 13th Floor, Richmond, VA 23219, telephone (804) 786-  
3988, FAX (804) 371-2308, e-mail  
margaret.walsh@co.dmhmrsas.virginia.gov.

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

† **December 20, 2004 - 10 a.m.** -- Public Hearing  
Jefferson Building, 1220 Bank Street, 8th Floor, Richmond,  
Virginia. ♿ (Interpreter for the deaf provided upon request)


A public hearing to receive comments on the Synar Annual  
Report for Virginia Substance Abuse Prevention and  
Treatment Block Grant Application for Federal Fiscal Year  
2005. Copies of the report are available for review at the  
Office of Substance Abuse, Jefferson Building, Room 818,  
Richmond, Virginia, and each community services board  
office. Comments may be made at the hearing or in writing  
by no later than December 20, 2004, to the Office of the  
Commissioner, Department of Mental Health, Mental  
Retardation and Substance Abuse Services, P.O. Box  
1797, Richmond, VA 23218. Any person wishing to make a  
presentation at the hearing should contact Sterling Deal,  
Ph.D. Copies of oral presentations should be filed at the  
time of the hearing.

**Contact:** Sterling Deal, Ph.D., Department of Mental Health,  
Mental Retardation and Substance Abuse Services, P.O. Box  
1797, Richmond, VA 23218, telephone (804) 371-2148, FAX  
(804) 786-4320, (804) 371-8977/TTY ☎, e-mail  
sdeal@dmhmrsas.state.va.us.

† **January 5, 2005 - 1 p.m.** -- Open Meeting  
Henrico Area Mental Health and Retardation Services, 10299  
Woodman Rd., Glen Allen, Virginia. ♿ (Interpreter for the deaf  
provided upon request)

A meeting to consider the periodic review and  
recommendations for the Human Rights Regulations in  
accordance with Executive Order 21.


**Contact:** Margaret S. Walsh, Director, Office of Human  
Rights, State Mental Health, Mental Retardation and  
Substance Abuse Services Board, Jefferson Bldg., 1220 Bank  
St., 13th Floor, Richmond, VA 23219, telephone (804) 786-  
3988, FAX (804) 371-2308, e-mail  
margaret.walsh@co.dmhmrsas.virginia.gov.

**January 6, 2005 - 9:30 a.m.** -- Open Meeting  
Henrico County Training Center, 7701 Parham Road,  
Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A monthly meeting of the State and Local Advisory Team pursuant to §§ 2.2-5201 through 2.2-5203 of the Code of Virginia. A public comment period is scheduled.

**Contact:** Pamela Fitzgerald-Cooper, Director of Child and Adolescent Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-2183, FAX (804) 786-1587.

## VIRGINIA COMMISSION ON MILITARY BASES

† **January 7, 2005 - 10 a.m.** -- Open Meeting  
The College of William and Mary, Alumni House,  
Williamsburg, Virginia. 

A quarterly meeting.

**Contact:** Valerie Hubbard, Communications Manager, Virginia Commission on Military Bases, P.O. Box 798, Richmond, VA 23218, telephone (804) 225-3743, FAX (804) 786-1121, e-mail [vhubbard@YesVirginia.org](mailto:vhubbard@YesVirginia.org).

## STATE MILK COMMISSION


**December 15, 2004 - 10:30 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resource Drive, Room 2063, Charlottesville, Virginia.

A regular meeting to consider industry distributor licensing, base transfers and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify Edward C. Wilson at least five working days prior to the meeting date so that suitable arrangements can be made.

**Contact:** Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, Washington Bldg., 1100 Bank St., Suite 1019, Richmond, VA 23218, telephone (804) 786-2013, FAX (804) 786-3779, e-mail [ewilson@smc.state.va.us](mailto:ewilson@smc.state.va.us).


## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Virginia Gas and Oil Board


† **December 14, 2004 - 9 a.m.** -- Open Meeting  
Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, Virginia  (Interpreter for the deaf provided upon request)

A general meeting of the board. In addition to general board business, the following will also be discussed: disbursements, location exceptions, poolings and miscellaneous petitions. Special accommodations for the disabled will be made available at the hearing on request. Anyone needing special accommodations for the December hearing should contact the Department of Mines, Minerals


and Energy, Division of Gas and Oil at 276-676-5423 or call the Virginia Relay Center 1-800-828/TTY-at the Southwest Virginia Higher Education Center, Abingdon, Virginia at least seven business days prior to the meeting.

**Contact:** Bob Wilson, Division Director, Department of Mines, Minerals and Energy, 230 Charwood Dr., Abingdon, VA 24219, telephone (276) 676-5423, (800) 828-1120/TTY , e-mail [bob.wilson@dmme.virginia.gov](mailto:bob.wilson@dmme.virginia.gov).


## VIRGINIA MUSEUM OF FINE ARTS

**January 4, 2005 - 8 a.m.** -- Open Meeting  
**February 1, 2005 - 8 a.m.** -- Open Meeting  
† **March 1, 2005 - 8 a.m.** -- Open Meeting  
Virginia Museum of Fine Arts, Main Lobby Conference Room,  
200 North Boulevard, Richmond, Virginia. 


A meeting for staff to update the Executive Committee. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220-4007, 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).


## BOARD OF NURSING

† **January 24, 2005 - 9 a.m.** -- Open Meeting  
† **January 25, 2005 - 9 a.m.** -- Open Meeting  
† **January 26, 2005 - 9 a.m.** -- Open Meeting  
† **January 27, 2005 - 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 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 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY , e-mail [nursebd@dhp.virginia.gov](mailto:nursebd@dhp.virginia.gov).

## BOARD OF NURSING HOME ADMINISTRATORS

† **January 19, 2005 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 1, Richmond, Virginia. 

† **February 11, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to amend regulations entitled **18 VAC 95-20, Regulations Governing the Practice of Nursing Home Administrators**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.

---

# Calendar of Events

---


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

Public comments may be submitted until February 11, 2005, to Sandra K. Reen, Executive Director, Board of Nursing Home Administrators, 6603 West Broad Street, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

† **January 19, 2005 - 9:15 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor Richmond, Virginia. 

A meeting to discuss business matters. There will be a public comment period during the first 15 minutes of the meeting.

**Contact:** Sandra Reen, Executive Director, Board of Nursing Home Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7457, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

## JOINT BOARDS OF NURSING AND MEDICINE


**December 15, 2004 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting of the Joint Boards of Nursing and Medicine.

**Contact:** Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director, Board of Nursing, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, e-mail [nursebd@dhp.virginia.gov](mailto:nursebd@dhp.virginia.gov).

## OLD DOMINION UNIVERSITY


NOTE: CHANGE IN MEETING DATE

† **February 14, 2005 - 3 p.m.** -- Open Meeting  
Webb University Center, Old Dominion University, Norfolk, Virginia. 

A regular meeting of the Board of Visitors' Executive Committee to discuss business of the board and the institution as determined by the Rector and the President.

**Contact:** Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail [dmeeks@odu.edu](mailto:dmeeks@odu.edu).


## OLMSTEAD ADVISORY COMMITTEE

**December 21, 2004 - 1 p.m.** -- Open Meeting  
Virginia Housing and Development Authority, 601 South Belvidere Street, Richmond, Virginia. 

A meeting of the Olmstead Community Integration Implementation Team.

**Contact:** Viktoria Glenn, Administrative Assistant, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23288, telephone (804) 662-7069, FAX (804) 662-7662, e-mail [glennvh@dhs.state.va.us](mailto:glennvh@dhs.state.va.us).

## BOARD OF OPTOMETRY

† **January 21, 2005 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. 

† **February 11, 2005** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled **18 VAC 105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, to Elizabeth A. Carter Ph.D., Executive Director, Board of Optometry, 6603 West Broad Street, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

## BOARD OF PHARMACY

† **January 20, 2005 - 8:45 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. 

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, to Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 West Broad Street, Richmond, VA 23230-1712.


**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).




## BOARD OF PHYSICAL THERAPY

† **December 13, 2004 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, 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) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

\*\*\*\*\*

† **January 28, 2005 - 9 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 4, Richmond, Virginia. 

† **February 11, 2005** - Public comments may be submitted until this date.


Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Physical Therapy intends to amend regulations entitled **18 VAC 112-20, Regulations Governing the Practice of Physical Therapy**. The purpose of the proposed regulation is to establish criteria for delegation of certain types of cases by an agency subordinate.

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


Public comments may be submitted until February 11, 2005, to Elizabeth Young, Executive Director, Board of Physical Therapy, 6603 West Broad Street, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

## POLYGRAPH EXAMINERS ADVISORY BOARD

† **March 3, 2005 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulations,  
3600 West Broad Street, Richmond, Virginia. 

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 interpreter services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** Kevin Hoefft, Regulatory Boards Administrator, 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 kevin.hoefft@dpor.virginia.gov.

## DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION


**December 17, 2004** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to amend regulations entitled **18 VAC 120-40, Virginia Professional Boxing and Wrestling Events Regulations**. The purpose of the proposed action is to adjust fees to comply with the Callahan Act (§ 54.1-113 of the Code of Virginia).

Statutory Authority: § 54.1-831 of the Code of Virginia.

**Contact:** Karen W. O'Neal, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail karen.oneal@dpor.virginia.gov.

## BOARD OF PSYCHOLOGY

† **January 11, 2005 - 9:30 a.m.** -- Public Hearing  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 1, Richmond, Virginia. 


† **February 11, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled **18 VAC 125-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed regulation is to establish criteria for delegation of certain types of cases by an agency subordinate.


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

Public comments may be submitted until February 11, 2005, to Evelyn B. Brown, Executive Director, Board of Psychology, 6603 West Broad Street, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

**January 11, 2005 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Richmond, Virginia. 

A business meeting to include reports from standing committees and any other disciplinary or regulatory matters as may be presented on the agenda. Public comment will be received at the beginning of the meeting.


**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9913, FAX (804) 662-9943, (804) 662-7197/TTY , e-mail evelyn.brown@dhp.virginia.gov.

---


# Calendar of Events

---


## REAL ESTATE APPRAISER BOARD

† **January 11, 2005 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Room 453, Richmond,  
Virginia 


Informal fact-finding conferences.

**Contact:** Karen W. O'Neal, Regulatory Programs  
Coordinator, Real Estate Appraiser Board, 3600 W. Broad St.,  
Richmond, VA 23230, telephone (804) 367-8537, FAX (804)  
367-2475, (804) 367-9753/TTY , e-mail  
karen.oneal@dpor.virginia.gov.


## REAL ESTATE BOARD

**December 16, 2004 - 9 a.m.** -- Open Meeting  
† **January 6, 2005 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Room 453, Richmond,  
Virginia 

An informal fact-finding conference.

**Contact:** Karen W. O'Neal, Regulatory Programs  
Coordinator, Department of Professional and Occupational  
Regulation, 3600 W. Broad St., Richmond, VA 23230,  
telephone (804) 367-8537, FAX (804) 367-2475, (804) 367-  
9753/TTY , e-mail karen.oneal@dpor.virginia.gov.

## VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

**December 15, 2004 - 10:30 a.m.** -- Open Meeting  
Piedmont Virginia Community College, 501 College Drive,  
Board Room, Room 814, Charlottesville, Virginia 

A regular quarterly meeting.

**Contact:** Philip F. Abraham, Chairman, Virginia Recycling  
Markets Development Council, 411 E. Franklin St., Suite 602,  
Richmond, VA 23219, telephone (804) 644-6600, FAX (804)  
644-6628, e-mail pabraham@vectrecorp.com.


## DEPARTMENT OF REHABILITATIVE SERVICES

**December 14, 2004 - 3 p.m.** -- Public Hearing  
Mount Rogers Community Mental Health and Mental  
Retardation Board, 770 West Ridge Road, Wytheville,  
Virginia.


**January 10, 2005 - 3 p.m.** -- Public Hearing  
Department of Rehabilitative Services, 8004 Franklin Farms  
Drive, Richmond, Virginia  (Interpreter for the deaf provided  
upon request)

A meeting to provide the public the opportunity to discuss  
the annual DRS State Plan. The December 14 hearing will  
be in videoconference format and broadcasted from  
Richmond.


**Contact:** Elizabeth Smith, Policy and Planning Director,  
Department of Rehabilitative Services, 8004 Franklin Farms

Dr., P.O. Box K-300, Richmond, VA 23288-0300, telephone  
(804) 662-7071, FAX (804) 662-7696, toll-free (800) 552-  
5019, (800) 464-9950/TTY , e-mail  
smithee@dps.virginia.gov.


## Commonwealth Neurotrauma Initiative Trust Fund Advisory Board

**January 20, 2005 - 10 a.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms  
Drive, 1st Floor Conference Rooms, Richmond, Virginia   
(Interpreter for the deaf provided upon request)

A quarterly meeting.

**Contact:** Kristie Chamberlain, CNI Program Administrator,  
Department of Rehabilitative Services, 8004 Franklin Farms  
Dr., Richmond, VA 23229, telephone (804) 662-7154, FAX  
(804) 662-7663, toll-free (800) 552-5019, (804) 464-9950/TTY  
, e-mail kristie.chamberlain@dps.virginia.gov.


## VIRGINIA RESOURCES AUTHORITY

**December 14, 2004 - 9 a.m.** -- Open Meeting  
Eighth and Main Building, 707 East Main Street, 2nd Floor,  
Richmond, Virginia 

A regular meeting of the Board of Directors to (i) review  
and, if appropriate, approve the minutes from the most  
recent monthly meeting; (ii) review the authority's  
operations for the prior month; (iii) review applications for  
loans submitted to the authority for approval; (iv) consider  
loan commitments for approval and ratification under its  
various programs; (v) approve the issuance of any bonds;  
(vi) review the results of any bond sales; and (vii) consider  
such other matters and take such other actions as it may  
deem appropriate. Various committees of the Board of  
Directors may also meet immediately before or after the  
regular meeting and consider matters within their purview.  
The planned agenda of the meeting and any committee  
meetings will be available at the offices of the authority one  
week prior to the date of the meeting. Any person who  
needs any accommodation in order to participate in the  
meeting should contact the authority at least 10 days before  
the meeting so that suitable arrangements can be made.

**Contact:** Bonnie R. C. McRae, Executive Assistant, Virginia  
Resources Authority, 707 E. Main St., Richmond, VA 23219,  
telephone (804) 644-3100, FAX (804) 644-3109, e-mail  
bmcr@aera.state.va.us.

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

**December 15, 2004 - Noon** -- Open Meeting  
Department of Business Assistance, 707 East Main Street,  
3rd Floor Board Room, Richmond, Virginia 

A meeting to review applications for loans submitted to the  
authority for approval and general business of the board.  
The meeting time is subject to change depending upon the  
board's agenda.

**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, toll-free (866) 248-8814, e-mail [scott.parsons@dba.virginia.gov](mailto:scott.parsons@dba.virginia.gov).

## STATE BOARD OF SOCIAL SERVICES

**December 15, 2004 - 9 a.m.** -- Open Meeting  
Department of Social Services, 608 Jackson Street, Fredericksburg, Virginia.

A work session from 9 a.m. until noon, followed by a full board meeting at 1:30 p.m. Public comment will be received at 1:30 p.m.

**Contact:** Pat Rengnerth, Board Liaison, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY ☎, e-mail [patricia.rengnerth@dss.virginia.gov](mailto:patricia.rengnerth@dss.virginia.gov).

**December 16, 2004 - 9 a.m.** -- Open Meeting  
Department of Social Services, 608 Jackson Street, Fredericksburg, Virginia.

A board meeting.

**Contact:** Pat Rengnerth, Board Liaison, Department of Social Services, Office of Legislative and Regulatory Affairs, 7 N. 8th St., Room 5214, Richmond, VA 23219, telephone (804) 726-7905, FAX (804) 726-7906, (800) 828-1120/TTY ☎, e-mail [patricia.rengnerth@dss.virginia.gov](mailto:patricia.rengnerth@dss.virginia.gov).

\*\*\*\*\*

**January 28, 2005** - 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 40-325, Fraud Reduction/Elimination Effort**. The purpose of the proposed action is to amend the criteria for local departments of social services to receive full reimbursement for program costs, expand the responsibilities of local departments of social services' fraud units and enhance the definitions section of the regulation.

Statutory Authority: §§ 63.2-217 and 63.2-526 of the Code of Virginia.

**Contact:** S. Michelle Lauter, Manager, Division of Fraud Management, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7679, FAX (804) 726-7669 or e-mail [michelle.lauter@dss.virginia.gov](mailto:michelle.lauter@dss.virginia.gov).

## BOARD OF VETERAN SERVICES

**December 13, 2004 - 1 p.m.** -- Open Meeting  
American Legion Department of Virginia, 1708 Commonwealth Avenue, Richmond, Virginia. ♿

A regular board meeting. Public comment will be received.

**Contact:** Steven Combs, Assistant to Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0294, e-mail [steven.combs@dvs.virginia.gov](mailto:steven.combs@dvs.virginia.gov).

## DEPARTMENT OF VETERANS SERVICES

### Veteran Services Foundation Board

**December 15, 2004 - 11:30 a.m.** -- Open Meeting  
American Legion Department of Virginia, 1708 Commonwealth Avenue, Richmond, Virginia. ♿

A meeting of the Board of Trustees. Public comment will be received.

**Contact:** Steven Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main S., Richmond, VA 23219, telephone (804) 786-0294, e-mail [steven.combs@dvs.virginia.gov](mailto:steven.combs@dvs.virginia.gov).

## BOARD OF VETERINARY MEDICINE

† **February 3, 2005 - 9 a.m.** -- Public Hearing  
Hotel Roanoke, Roanoke, Virginia. ♿

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Veterinary Medicine intends to amend regulations entitled **18 VAC 150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact-finding in disciplinary cases to an agency subordinate.

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

Public comments may be submitted until February 11, 2005, to Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6603 West Broad Street, Richmond, VA 23230-1712.

**Contact:** Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230-1712, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

## VIRGINIA WASTE MANAGEMENT BOARD

**January 11, 2005 - 1:30 p.m.** -- Public Hearing  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

**January 28, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled **9 VAC 20-80, Solid Waste Management Regulations**. The purpose of the proposed action is to establish an expedited process for permitting waste piles.

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

---

# Calendar of Events

---

**Contact:** Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327 or e-mail [mjdieter@deq.virginia.gov](mailto:mjdieter@deq.virginia.gov).

## STATE WATER CONTROL BOARD


**January 31, 2005** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-260, Water Quality Standards**. The purpose of the proposed action is to include updated numerical and narrative criteria to protect designated uses from the impacts of nutrients and sedimentation. The rulemaking will also include new and revised use designations for the Chesapeake Bay and its tidal tributaries.


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

**Contact:** Eleanore M. Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111, FAX (804) 698-4522 or e-mail [emdau@deq.virginia.gov](mailto:emdau@deq.virginia.gov).

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS


† **March 9, 2005 - 8:30 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, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-6128, (804) 367-9753/TTY , e-mail [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov).

## INDEPENDENT


### STATE LOTTERY BOARD

**December 15, 2004 - 9:30 a.m.** -- Open Meeting  
Virginia Lottery, 900 East Main Street, 13th Floor, Richmond, Virginia. 


A regular business meeting. There will be an opportunity for public comment shortly after the meeting is convened.


**Contact:** Frank S. Ferguson, Director, Legislative and Regulatory Affairs, State Lottery Department, 900 E. Main St., Richmond, VA 23219, telephone (804) 692-7901, FAX (804) 692-7905, e-mail [fferguson@valottery.state.va.us](mailto:fferguson@valottery.state.va.us).

## VIRGINIA RETIREMENT SYSTEM


**December 15, 2004 - 3 p.m.** -- Open Meeting  
**February 16, 2005 - 11 a.m.** -- Open Meeting  
Bank of America, 1111 East Main Street, Virginia Retirement System Investment Department, Pavilion, 4th Floor, Richmond, Virginia. 


A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

**Contact:** Phyllis Henderson, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 697-6675, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail [lking@vrs.state.va.us](mailto:lking@vrs.state.va.us).


**December 16, 2004 - 9 a.m.** -- Open Meeting  
**February 17, 2005 - 9 a.m.** -- Open Meeting  
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. 


A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

**Contact:** LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main Street, Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , or e-mail [lking@vrs.state.va.us](mailto:lking@vrs.state.va.us).

**February 15, 2005 - Noon** -- Open Meeting  
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. 

A meeting of the Optional Retirement Plan Advisory Committee. No public comment will be received.


**Contact:** LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail [lking@vrs.state.va.us](mailto:lking@vrs.state.va.us).

**February 16, 2005 - 2:30 p.m.** -- Open Meeting  
Virginia Retirement System Headquarters Building, 1200 East Main Street, Richmond, Virginia. 

Meetings of the following committees:

- 2:30 p.m. - Benefits and Actuarial
- 4 p.m. - Audit and Compliance
- 4 p.m. - Administration and Personnel

No public comment will be received.

**Contact:** LaShaunda B. King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 649-8059, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY , e-mail [lking@vrs.state.va.us](mailto:lking@vrs.state.va.us).

**LEGISLATIVE**

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION**

† **December 13, 2004 - 10 a.m.** -- Open Meeting  
 General Assembly Building, 9th and Broad Streets, Senate Room A, Richmond, Virginia. ♿

Agenda items: Child Protective Services in Virginia; review of state spending; state SOQ spending; and Virginia Retirement System Biennial Status and Semi-Annual Investment Report.

**Contact:** Patricia Bishop, Principal Legislative Analyst, Joint Legislative Audit and Review Commission, General Assembly Building, Suite 1100, Richmond, VA 23219, telephone (804) 786-1258, FAX (804) 371-0101, e-mail tbishop@leg.state.va.us.

**VIRGINIA CODE COMMISSION**

**December 15, 2004 - 10 a.m.** -- Open Meeting  
 General Assembly Building, 9th and Broad Streets, 6th Floor, Speaker's Conference Room, Richmond, Virginia. ♿

A meeting to continue with the revisions of Titles 1, 3.1 and 37.1 and to conduct any other business that may come before the commission. A brief public comment period is scheduled at the end of the meeting.

**Contact:** Jane Chaffin, Registrar of Regulations, Virginia Code Commission, General Assembly Bldg., 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591, FAX (804) 692-0625, e-mail jchaffin@leg.state.va.us.

**CHRONOLOGICAL LIST**

**OPEN MEETINGS**

**December 13**  
 † Audit and Review Commission, Joint Legislative Business Assistance, Department of  
 - Small Business Advisory Board  
 Chesapeake Bay Local Assistance Board  
 † Physical Therapy, Board of  
 Veterans Services, Board of

**December 14**  
 Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for  
 Aviation Board, Virginia  
 Contractors, Board for  
 † Funeral Directors and Embalmers, Board of  
 Labor and Industry, Department of  
 - Safety and Health Codes Board  
 Medical Assistance Services, Board of  
 † Mines, Minerals and Energy, Department of  
 - Virginia Gas and Oil Board  
 Resources Authority, Virginia

**December 15**

† Agriculture and Consumer Services, Department of  
 - Virginia Seed Potato Board  
 Aviation Board, Virginia  
 Code Commission, Virginia  
 Compensation Board  
 Criminal Justice Services Board  
 - Private Security Services Advisory Board  
 † Environmental Quality, Department of  
 Health Professions, Department of  
 Lottery Board, State  
 † Medical Assistance Services, Department of  
 † Medicine, Board of  
 † Mental Health, Mental Retardation and Substance Abuse Services, State Board of  
 Milk Commission, State  
 Nursing and Medicine, Joint Boards of  
 Recycling Markets Development Council, Virginia  
 Retirement System, Virginia  
 Small Business Financing Authority, Virginia  
 Social Services, State Board of  
 Veterans Services, Department of  
 - Veteran Services Foundation Board

**December 16**

† Conservation and Recreation, Department of  
 - Soil and Water Conservation Board, Virginia  
 Contractors, Board for  
 Design-Build/Construction Management Review Board  
 Real Estate Board  
 Retirement System, Virginia  
 Social Services, State Board of

**December 17**

Dentistry, Board of

**December 20**

Alcoholic Beverage Control Board  
 † Medicine, Board of  
 - Advisory Board on Radiologic Technology

**December 21**

Marine Resources Commission  
 Olmstead Advisory Committee

**January 4, 2005**

Museum of Fine Arts, Virginia

**January 5**

Air Pollution Control Board, State  
 Geology, Board for  
 Medical Assistance Services, Department of  
 - Medicaid Transportation Advisory Committee  
 † Mental Health, Mental Retardation and Substance Abuse Services, State Board of

**January 6**

† Contractors, Board for  
 Mental Health, Mental Retardation and Substance Abuse Services, Department of  
 † Real Estate Board

**January 7**

† Agriculture and Consumer Services, Department of  
 - Virginia Sheep Industry Board  
 † Medical Assistance Services, Department of  
 † Military Bases, Virginia Commission on

**January 11**

† Air Pollution Control Board, State  
 Child Fatality Review Team, State

---

# Calendar of Events

---

† Higher Education for Virginia, State Council of  
Psychology, Board of  
† Real Estate Appraiser Board

**January 12**  
Education, Board of

**January 18**  
Contractors, Board for  
† Housing and Community Development, Board of

**January 19**  
Community Colleges, State Board for  
Health, Department of  
- Sewage Handling and Disposal Appeal Review Board  
Hearing Aid Specialists, Board for  
† Nursing Home Administrators, Board of

**January 20**  
Community Colleges, State Board for  
Education, Department of  
Rehabilitative Services, Department of  
- Commonwealth Neurotrauma Initiative Trust Fund  
Advisory Board

**January 21**  
† Dentistry, Board of  
Education, Department of  
† Housing and Community Development, Department of  
- State Building Code Technical Review Board  
† Medicine, Board of

**January 24**  
† Barbers and Cosmetology, Board for  
Education, Department of  
- Advisory Board on Teacher Education and Licensure  
† Nursing, Board of

**January 25**  
Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
† Nursing, Board of

**January 26**  
† Nursing, Board of

**January 27**  
Library Board, State  
† Nursing, Board of

**February 1**  
† Medicine, Board of  
- Advisory Board on Occupational Therapy  
- Advisory Board on Respiratory Care  
Museum of Fine Arts, Virginia

**February 2**  
† Medicine, Board of  
- Advisory Board on Acupuncture  
- Advisory Board on Radiologic Technology

**February 3**  
† Emergency Medical Services Advisory Board, Governor's  
† Medicine, Board of  
- Advisory Board on Athletic Training  
- Advisory Board on Physicians Assistants

**February 11**  
† Medicine, Board of

**February 14**  
† Old Dominion University

**February 15**  
Retirement System, Virginia

**February 16**  
Asbestos, Lead, and Home Inspectors, Virginia Board for  
Retirement System, Virginia

**February 17**  
Retirement System, Virginia

**February 23**  
Contractors, Board for  
Education, Board of  
Health, Department of  
- Sewage Handling and Disposal Appeal Review Board

**February 24**  
† Cemetery Board

**March 1**  
† Contractors, Board for  
† Museum of Fine Arts, Virginia

**March 2**  
† Air Pollution Control Board, State

**March 3**  
† Polygraph Examiners Advisory Board

**March 9**  
† Waterworks and Wastewater Works Operators, Board for

**March 11**  
† Child Fatality Review Team, State

**PUBLIC HEARINGS**

**December 14**  
Rehabilitative Services, Department of

**December 15**  
† Air Pollution Control Board, State

**December 20**  
† Air Pollution Control Board, State  
† Mental Health, Mental Retardation and Substance Abuse  
Services, Department of

**January 10**  
Rehabilitative Services, Department of

**January 11**  
† Psychology, Board of  
Waste Management Board, Virginia

**January 12**  
† Audiology and Speech-Language Pathology, Board of

**January 19**  
† Nursing Home Administrators, Board of

**January 20**  
† Pharmacy, Board of

**January 21**  
† Dentistry, Board of  
Medicine, Board of  
† Optometry, Board of

**January 28**  
† Physical Therapy, Board of

**February 3**  
† Veterinary Medicine, Board of