
TABLE OF CONTENTS

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

Cumulative Table..... 1271

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

State Board of Education..... 1277

TITLE 9. ENVIRONMENT

State Water Control Board 1277

TITLE 12. HEALTH

State Board of Health 1278

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

State Library Board..... 1278

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

Board of Nursing Home Administrators 1278

Department of Professional and Occupational Regulation 1279

TITLE 22. SOCIAL SERVICES

State Board of Social Services 1279

PROPOSED REGULATIONS

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Virginia Certification Standards (amending 13 VAC 5-21-10 through 13 VAC 5-21-70; adding 13 VAC 5-21-45). 1280

Virginia Amusement Device Regulations (amending 13 VAC 5-31-20, 13 VAC 5-31-40 and 13 VAC 5-31-50)..... 1284

Virginia Statewide Fire Prevention Code (amending 13 VAC 5-51-21, 13 VAC 5-51-31, 13 VAC 5-51-130 and 13 VAC 5-51-135; repealing 13 VAC 5-51-136 and 13 VAC 5-51-155) 1288

Virginia Uniform Statewide Building Code (USBC) (repealing 13 VAC 5-62-10 through 13 VAC 5-62-480). 1292

Virginia Uniform Statewide Building Code (USBC) (adding 13 VAC 5-63-10 through 13 VAC 5-63-540). 1292

Virginia Industrialized Building Safety Regulations (amending 13 VAC 5-91-10, 13 VAC 5-91-20, 13 VAC 5-91-40, 13 VAC 5-91-50, 13 VAC 5-91-70, 13 VAC 5-91-80, 13 VAC 5-91-90, 13 VAC 5-91-110 through 13 VAC 5-91-220, and 13 VAC 5-91-245 through 13 VAC 5-91-270). 1337

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Board of Accountancy Regulations (amending 18 VAC 5-21-10 through 18 VAC 5-21-40 and 18 VAC 5-21-170). 1349

FINAL REGULATIONS

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Consumer Products (Rev. G03).

General Provisions (amending 9 VAC 5-20-21)..... 1360

Existing Stationary Sources (adding 9 VAC 5-40-7240 through 9 VAC 5-40-7360)..... 1360

STATE WATER CONTROL BOARD

Water Quality Standards - Bottom Creek (amending 9 VAC 25-260-30). 1389

Water Quality Standards - Lake Drummond (amending 9 VAC 25-260-30). 1390

Water Quality Standards - Little Stony Creek (amending 9 VAC 25-260-30). 1390

Water Quality Standards - Ragged Island (amending 9 VAC 25-260-30). 1390

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Waivered Services: MEDALLION (amending 12 VAC 30-120-260, 12 VAC 30-120-280, 12 VAC 30-120-290, 12 VAC 30-120-310, 12 VAC 30-120-320 and 12 VAC 30-120-350). 1391

Waivered Services: MEDALLION II (amending 12 VAC 30-120-360, 12 VAC 30-120-370, 12 VAC 30-120-380, 12 VAC 30-120-400, 12 VAC 30-120-410 and 12 VAC 30-120-420). 1396

TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13 VAC 10-180-10, 13 VAC 10-180-50, 13 VAC 10-180-60, 13 VAC 10-180-90; adding 13 VAC 10-180-110). 1403

Table of Contents

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

- Federal Identical General Industry Standards (29 CFR Part 1910) (amending 16 VAC 25-90-1910.134)..... 1412
- Federal Identical Shipyard Employment Standards (29 CFR Part 1915) (amending 16 VAC 25-100-1915.5; adding 16 VAC 25-100-1915.501 through 16 VAC 25-100-1915.509). 1413

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

JOINT BOARDS OF NURSING AND MEDICINE

- Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-10, 18 VAC 90-30-60 through 18 VAC 90-30-90; adding 18 VAC 90-30-85). 1414

FORMS

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

- Regulations for the Development of Solid Waste Management Plans (9 VAC 20-130). 1417

GENERAL NOTICES/ERRATA

CHILD DAY-CARE COUNCIL

- Periodic Review of Regulations 1418

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

- Compulsory Minimum Training Standards for Entry Level Law-Enforcement Officers..... 1418

DEPARTMENT OF ENVIRONMENTAL QUALITY

- Total Maximum Daily Load (TMDL) for Accomack County 1418
- Total Maximum Daily Load (TMDL) for Callahan Creek ... 1419
- Total Maximum Daily Load (TMDL) for Cockrell Creek 1419
- Total Maximum Daily Load (TMDL) for Onancock Creek . 1419
- Total Maximum Daily Load (TMDL) Study for Straight Creek and tributaries; Stone Creek, Ely Creek, Puckett Creek, Lick Branch, Baileys Trace and Gin Creek in Lee County 1420

DEPARTMENT OF HEALTH

- Drinking Water Construction Funding..... 1420

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

- Notice of Intent to Increase the Disproportionate Share Hospital (DSH) Reimbursement Limit for FY 2005 1422
- Notice of Intent to Increase the Nursing Facility Per Diem Reimbursement Rate 1422
- Notice of Intent to Increase Payments to Nursing Facilities for Residents Requiring Specialized Treatment Beds..... 1422

BOARD OF PHARMACY

- Notice of Periodic Review of Regulations 1423

DEPARTMENT OF SOCIAL SERVICES

- Periodic Review of Regulations 1423

STATE WATER CONTROL BOARD

- Proposed Consent Special Order - Blackstock, Inc. 1423
- Proposed Consent Special Order - Town of Crewe 1423
- Proposed Consent Special Order - Dinwiddie County Water Authority..... 1424
- Proposed Consent Special Order - Henrico County 1424
- Proposed Consent Special Order - Lesueur-Richmond Slate Corporation 1424
- Proposed Consent Special Order - City of Richmond 1424
- Proposed Consent Special Order - Town of Mt. Jackson 1424
- Proposed Consent Special Order - Town of Vinton 1425
- Proposed Consent Special Orders - Wellington, L.L.C., Tyson Farms, Inc., Southampton County, The City of Norfolk and Hampton Roads Sanitation District 1425

ERRATA

STATE WATER CONTROL BOARD

- Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations (9 VAC 25-191). 1425
- Water Quality Management Planning Regulation (9 VAC 25-720)..... 1425

VIRGINIA CODE COMMISSION

- Notice to State Agencies..... 1425
- Forms for Filing Material for Publication in the Virginia Register of Regulations..... 1425

CALENDAR OF EVENTS

EXECUTIVE

Open Meetings and Public Hearings 1426

INDEPENDENT

Open Meetings and Public Hearings 1450

LEGISLATIVE

Notice to Subscribers 1451

CHRONOLOGICAL LIST

Open Meetings 1451

Public Hearings 1453

Table of Contents

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
Title 1. Administration			
1 VAC 75-40-10 through 1 VAC 75-40-60	Added	20:25 VA.R. 3082	9/22/04
Title 2. Agriculture			
2 VAC 5-500	Repealed	21:8 VA.R. 861	1/26/05
2 VAC 5-501-10 through 2 VAC 5-501-110	Added	21:8 VA.R. 861-869	1/26/05
2 VAC 5-530	Repealed	21:8 VA.R. 869	1/26/05
2 VAC 5-531-10 through 2 VAC 5-531-140	Added	21:8 VA.R. 869-908	1/26/05
2 VAC 20-30	Erratum	20:25 VA.R. 3111	--
Title 3. Alcoholic Beverages			
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 5-50-60	Amended	21:7 VA.R. 803	2/26/05
3 VAC 5-70	Erratum	21:1 VA.R. 44	--
3 VAC 5-70	Erratum	21:3 VA.R. 345	--
Title 4. Conservation and Natural Resources			
4 VAC 3-20	Repealed	21:3 VA.R. 317	1/29/05
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 20-25-10 through 4 VAC 20-25-40	Added	21:8 VA.R. 908-909	12/1/04
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 20-620-40	Amended	21:10 VA.R. 1231	1/1/05
4 VAC 20-650-20	Amended	21:8 VA.R. 909	12/1/04
4 VAC 20-720-20	Amended	21:4 VA.R. 408	10/1/04
4 VAC 20-720-20	Amended	21:8 VA.R. 910	12/1/04
4 VAC 20-720-40 through 4 VAC 20-720-100	Amended	21:4 VA.R. 409-411	10/1/04
4 VAC 20-720-40 through 4 VAC 20-720-90	Amended	21:8 VA.R. 911-913	12/1/04
4 VAC 20-720-75	Added	21:8 VA.R. 912	12/1/04
4 VAC 20-910-45 emer	Amended	21:5 VA.R. 499	11/1/04-11/30/04
4 VAC 20-910-45	Amended	21:8 VA.R. 913	12/1/04
4 VAC 20-910-45 emer	Amended	21:10 VA.R. 1234	1/1/05-1/30/05
4 VAC 20-920-45	Added	21:8 VA.R. 914	12/1/04
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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	1/29/05
Title 6. Criminal Justice and Corrections			
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
6 VAC 35-170-10 through 6 VAC 35-170-230	Added	21:9 VA.R. 1073	2/9/05
Title 8. Education			
8 VAC 20-140-10	Repealed	21:3 VA.R. 332	1/1/05
8 VAC 20-200	Erratum	21:9 VA.R. 1169	--
8 VAC 20-200-10	Repealed	21:7 VA.R. 804	3/1/05
8 VAC 20-210-10	Amended	21:4 VA.R. 413	1/1/05
8 VAC 20-260-10 through 8 VAC 20-260-60	Repealed	21:7 VA.R. 805-806	3/1/05
8 VAC 20-360-10	Amended	21:8 VA.R. 1011	3/15/05
8 VAC 20-360-20	Amended	21:8 VA.R. 1012	3/15/05
8 VAC 20-360-30	Repealed	21:8 VA.R. 1012	3/15/05
8 VAC 20-380-10 through 8 VAC 20-380-40	Repealed	21:7 VA.R. 806-807	3/1/05
8 VAC 20-400-10 through 8 VAC 20-400-50	Repealed	21:7 VA.R. 807-808	3/1/05
8 VAC 20-430-10 through 8 VAC 20-430-50	Repealed	21:7 VA.R. 808-809	3/1/05
8 VAC 20-470-10	Repealed	21:4 VA.R. 423	3/1/05
8 VAC 20-480-10	Repealed	21:7 VA.R. 809	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
Title 9. Environment			
9 VAC 5-20	Erratum	21:9 VA.R. 1169	--
9 VAC 5-20-204	Erratum	20:26 VA.R. 3210-3211	--
9 VAC 5-20-204	Amended	21:7 VA.R. 790	1/12/05
9 VAC 5-20-205	Erratum	20:26 VA.R. 3210-3211	--
9 VAC 5-50-400	Amended	21:7 VA.R. 791	1/12/05
9 VAC 5-60-60	Amended	21:7 VA.R. 791	1/12/05
9 VAC 5-60-90	Amended	21:7 VA.R. 791	1/12/05
9 VAC 5-60-91	Repealed	21:7 VA.R. 791	1/12/05
9 VAC 5-60-100	Amended	21:7 VA.R. 791	1/12/05
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 25-31-10	Amended	21:9 VA.R. 1073	2/9/05
9 VAC 25-31-10	Amended	21:10 VA.R. 1233	2/9/05
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 25-31-100	Amended	21:9 VA.R. 1084	2/9/05
9 VAC 25-31-100	Amended	21:10 VA.R. 1233	2/9/05
9 VAC 25-31-120	Amended	21:9 VA.R. 1100	2/9/05
9 VAC 25-31-120	Amended	21:10 VA.R. 1233	2/9/05
9 VAC 25-31-121	Repealed	21:9 VA.R. 1111	2/9/05
9 VAC 25-31-121	Repealed	21:10 VA.R. 1233	2/9/05
9 VAC 25-31-130	Amended	21:2 VA.R. 158	11/3/04
9 VAC 25-31-130	Amended	21:9 VA.R. 1117	2/9/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-31-130	Amended	21:10 VA.R. 1233	2/9/05
9 VAC 25-31-170	Amended	21:2 VA.R. 160	11/3/04
9 VAC 25-31-170	Amended	21:9 VA.R. 1119	2/9/05
9 VAC 25-31-170	Amended	21:10 VA.R. 1233	2/9/05
9 VAC 25-31-200	Amended	21:2 VA.R. 162	11/3/04
9 VAC 25-31-200	Amended	21:9 VA.R. 1121	2/9/05
9 VAC 25-31-200	Amended	21:10 VA.R. 1233	2/9/05
9 VAC 25-31-220	Amended	21:9 VA.R. 1123	2/9/05
9 VAC 25-31-220	Amended	21:10 VA.R. 1233	2/9/05
9 VAC 25-31-390	Amended	21:9 VA.R. 1128	2/9/05
9 VAC 25-31-390	Amended	21:10 VA.R. 1233	2/9/05
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	Erratum	21:9 VA.R. 1170	--
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 25-590-10 through 9 VAC 25-590-100	Amended	21:8 VA.R. 915-919	1/26/05
9 VAC 25-590-120	Amended	21:8 VA.R. 919	1/26/05
9 VAC 25-590-120	Repealed	21:8 VA.R. 919	1/26/05
9 VAC 25-590-140 through 9 VAC 25-590-210	Amended	21:8 VA.R. 919-923	1/26/05
9 VAC 25-590-260	Amended	21:8 VA.R. 924	1/26/05
9 VAC 25-630	Erratum	21:9 VA.R. 1170	--
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
9 VAC 25-660-10 through 9 VAC 25-660-100	Amended	21:8 VA.R. 929-940	1/26/05
9 VAC 25-670-10 through 9 VAC 25-670-100	Amended	21:8 VA.R. 940-957	1/26/05
9 VAC 25-680-10 through 9 VAC 25-680-100	Amended	21:8 VA.R. 957-976	1/26/05
9 VAC 25-690-10 through 9 VAC 25-690-100	Amended	21:8 VA.R. 976-997	1/26/05
9 VAC 25-720-50	Amended	21:9 VA.R. 1130	2/9/05
9 VAC 25-720-60	Amended	21:9 VA.R. 1136	2/9/05
9 VAC 25-720-80	Amended	21:9 VA.R. 1143	2/9/05
9 VAC 25-720-90	Amended	21:9 VA.R. 1152	2/9/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 10. Finance and Financial Institutions			
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
Title 11. Gaming			
11 VAC 10-20-200	Amended	20:25 VA.R. 3083	9/23/04
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	--
Title 12. Health			
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	Erratum	21:8 VA.R. 1016	--
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 5-590-505 emer	Added	21:9 VA.R. 1165	12/21/04-12/20/05
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 30-80-30	Amended	21:7 VA.R. 797	1/12/05
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 30-80-190	Amended	21:7 VA.R. 800	1/12/05
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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
Title 13. Housing			
13 VAC 5-62-260	Amended	20:25 VA.R. 3084	9/8/04
Title 14. Insurance			
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
Title 16. Labor and Employment			
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
Title 18. Professional and Occupational Licensing			
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 90-20-361 through 18 VAC 90-20-364	Repealed	21:9 VA.R. 1156-1157	3/26/05
18 VAC 90-25-15	Added	21:9 VA.R. 1157	3/26/05
18 VAC 90-25-100	Amended	21:9 VA.R. 1158	3/26/05
18 VAC 90-25-110 through 18 VAC 90-25-140	Added	21:9 VA.R. 1158-1160	3/26/05
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

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
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 105-20-46	Added	21:8 VA.R. 998	12/8/04
18 VAC 105-20-47	Added	21:8 VA.R. 998	12/8/04
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
Title 19. Public Safety			
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
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
Title 22. Social Services			
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
Title 24. Transportation and Motor Vehicles			
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 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Education intends to consider promulgating regulations entitled **8 VAC 20-660, Regulations Governing Reenrollment Plans**. The purpose of the proposed action is to establish regulations regarding the transfer of students between public schools, detention homes and juvenile correctional centers. The regulation will establish a reenrollment plan to share information about a student's public and correctional education and to facilitate a student's reenrollment in public schools upon release from commitment.

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

Statutory Authority: §§ 22.1-17.1, 22.1-343 and 16.1-293 of the Code of Virginia.

Public comments may be submitted until February 10, 2005.

Contact: Dr. Cynthia Cave, Director of Student Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2818, FAX (804) 225-2524 or e-mail ccave@mail.vak12ed.edu.

VA.R. Doc. No. R05-93; Filed December 14, 2004, 12:22 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-193, General Virginia Pollutant Discharge Elimination System Permit for Ready-Mixed Concrete Plants**. The purpose of the proposed action is to include appropriate and necessary permitting requirements for discharges of wastewater from concrete product facilities.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia and § 402 of the Clean Water Act (CFR Parts 122, 123 and 124).

Public comments may be submitted until March 11, 2005.

Contact: Lily Choi, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4054, FAX (804) 698-4032 or e-mail ychoi@deq.virginia.gov.

VA.R. Doc. No. R05-112; Filed January 19, 2005, 12:09 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-210, Virginia Water Protection Permit Regulation**. The purpose of the proposed action is to (i) incorporate changes to the Code of Virginia relating to the emergency permitting of water withdrawal projects; (ii) incorporate the U.S. Supreme Court's ruling in Virginia vs. Maryland; (iii) include changes already made to the general permit regulations that corrected administrative procedures, clarified application and permitting requirements, and allowed for a more efficient application review process; (iv) implement a formal preapplication scoping process for water supply projects; (v) clarify the requirement for cumulative impact assessment for water supply projects; (vi) clarify requirements for alternative analysis for water supply projects; (vii) investigate ways to simplify, clarify and improve coordination of state agency reviews and comments for water supply projects; (viii) clarify who does and does not need a permit for a water withdrawal by more clearly defining certain terms in light of the statutory "grandfathering" of certain withdrawals; and (ix) clarify the process and criteria for establishing minimum instream flow requirements and evaluation of responses during drought conditions.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia and § 401 of the Clean Water Act.

Public comments may be submitted until March 4, 2005.

Contact: Scott Kudlas, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4456, FAX (804) 698-4456 or e-mail swkudlas@deq.virginia.gov.

VA.R. Doc. No. R05-106; Filed January 5, 2005, 11:42 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider adopting regulations entitled **9 VAC 25-810, General VPDES Permit for Coin-Operated Laundries**. The purpose of the proposed action is to establish appropriate and necessary permitting requirements for discharges of wastewater from coin-operated laundries.

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: § 62.1-44.15 of the Code of Virginia and § 402 of the Clean Water Act (33 USC 1251 et seq.).

Public comments may be submitted until March 11, 2005.

Contact: George E. Cosby, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4067, FAX (804) 698-4032 or e-mail gecosby@deq.virginia.gov.

VA.R. Doc. No. R05-111; Filed January 19, 2005, 11:36 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 5-590, Waterworks Regulations**. The purpose of the proposed action is to require waterworks (public water systems) to have an emergency management plan for use during power outages.

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

Statutory Authority: § 32.1-170 of the Code of Virginia.

Public comments may be submitted until February 10, 2005.

Contact: Chris Adkins, Geologist Supervisor, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7495, FAX (804) 864-7521 or e-mail chris.adkins@vdh.virginia.gov.

VA.R. Doc. No. R05-96; Filed December 21, 2004, 11 a.m.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

STATE LIBRARY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Library Board intends to consider promulgating regulations entitled **17 VAC 15-120, Regulations Governing the Destruction of Public Records Containing Social Security Numbers**. The purpose of the proposed action is to curb the growing problem of identity theft. Identity theft occurs when a criminal uses another person's personal information to take on that person's identity. The intent of the regulation is to protect individuals from identity theft by eliminating unauthorized access to social

security numbers in public records. The regulation will address best methods for destruction of public records containing social security numbers so that the social security numbers cannot be found and used for identity theft.

Any public records, regardless of media, that contain social security numbers are to be destroyed in a manner that protects the confidentiality of the information. These records are to be destroyed, made electronically inaccessible or erased so as to make social security numbers unreadable by any means.

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

Statutory Authority: § 42.1-82 of the Code of Virginia.

Public comments may be submitted until February 10, 2005.

Contact: Robert Nawrocki, Director, Records Management and Imaging Services, Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3505, FAX (804) 692-3603 or e-mail rnawrocki@va.lib.va.us.

VA.R. Doc. No. R05-95; Filed December 17, 2005, 1:20 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING HOME ADMINISTRATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Nursing Home Administrators intends to consider amending regulations entitled **18 VAC 95-20, Regulations of the Board of Nursing Home Administrators**. The purpose of the proposed action is to clarify educational requirements for initial licensure, authorize additional credit for work experience and education for the administrator-in-training program and amend requirements for preceptors.

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

Statutory Authority: § 54.1-2400 and Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until February 23, 2005.

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

VA.R. Doc. No. R05-104; Filed January 4, 2005, 9:46 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to consider amending regulations entitled **18 VAC 120-30, Regulations Governing Polygraph Examiners**. The purpose of the proposed action is to review and, where necessary, amend current regulations to reflect statutory changes, industry changes (especially those that involve technological advances in equipment and training), and changes suggested by licensees and members of the public during the board's normal course of operations.

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

Statutory Authority: § 54.1-1802 of the Code of Virginia.

Public comments may be submitted until February 23, 2005.

Contact: Kevin Hoeft, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-6166, FAX (804) 367-2474 or e-mail polygraph@dpor.virginia.gov.

VA.R. Doc. No. R05-100; Filed December 23, 2004, 12:01 p.m.

The amended regulation will also respond to technical and programmatic questions that have been raised since 1989, update operational requirements including consolidating requirements for different programs as appropriate, clarify terms, increase consistency between and among programs, and make the regulation easier to understand. The amended regulation is necessary to incorporate current program requirements at the federal and state level and provide standards for programs that have changed or expanded since 1989. A goal of the amended regulation is to integrate relevant federal, interstate, and state changes since 1989. The other major goal is to strengthen the regulation by addressing issues that have been raised during the past several years and by reorganizing and adding sections to make it more functional.

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

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

Public comments may be submitted until March 9, 2005.

Contact: Wenda Singer, Program Consultant, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7148, FAX (804) 726-7132 or e-mail wenda.singer@dss.virginia.gov.

VA.R. Doc. No. R05-110; Filed January 18, 2005, 10:35 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-130, Minimum Standards for Licensed Private Child Placing Agencies**. The purpose of the proposed action is to reflect current federal and state law, interstate compact, and program policy and to reflect other federal and state requirements. Standards for treatment foster care will be added to reflect the current practice of licensed child placing agencies and to allow certification of agencies for Medicaid reimbursement of treatment foster care case management services. Standards regulating intercountry adoptions, assisted conception, and independent living will also be added. The regulation will clarify and strengthen requirements for child placing agency staff and foster and adoptive parents.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22 VAC 40-705, Child Protective Services**. The purpose of the proposed action is to review and amend, as needed, child protective services (CPS) regulations formulated in 1998 related to the protection of rights of children, families, and alleged abusers while keeping children safe from harm.

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

Statutory Authority: §§ 63.2-217 and 63.2-1503 of the Code of Virginia.

Public comments may be submitted until March 9, 2005.

Contact: Rita L. Katzman, Child Protective Services Program Manager, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7554, FAX (804) 726-7895 or e-mail rita.katzman@dss.virginia.gov.

VA.R. Doc. No. R05-109; Filed January 18, 2005, 10:35 a.m.



PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

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

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13 VAC 5-21. Virginia Certification Standards (amending 13 VAC 5-21-10 through 13 VAC 5-21-70; adding 13 VAC 5-21-45).**

Statutory Authority: § 36-137 of the Code of Virginia.

Public Hearing Date: March 17, 2005 - 10 a.m.

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

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or e-mail steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-137 of the Code of Virginia authorizes the Board of Housing and Community Development to make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary. As the regulation is a companion to the building and fire regulations of the department that state law requires keeping up to date, the board updates this regulation whenever updating the building and fire regulations.

Purpose: The reason this regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth is that without the building and fire regulations of the Board of Housing and Community Development being kept up to date by using the latest editions of the nationally recognized model codes and standards and without the correlation of this regulation with the other building and fire regulations of the board, the protection of the health, safety and welfare of Virginia's citizens is not assured since conditions that need to be regulated are not. In addition, where a condition that was previously determined in the nationally recognized codes and standards to need to be regulated is addressed less restrictively in the newest model codes and standards, there would be the risk of exposing Virginia's citizens to unnecessary regulations.

The goals of the regulatory action and problems the regulatory action will solve are the same as the reason the regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth. Without keeping the codes up to date, there is the potential for not regulating necessary conditions, or over regulating conditions determined to be less necessary of regulation.

Substance: There are no substantive changes between the existing regulation and the proposed regulation. However, since this regulation is a companion regulation to the other

building and fire regulations promulgated by the board and needs to be coordinated with those regulations, and since the other building and fire regulations of the board are concurrently undergoing regulatory actions to reference the newest available nationally recognized model codes and standards, the board is therefore accepting comment on all provisions of this regulation.

Issues: The primary advantage to the public of this action is that the regulation will provide the least possible necessary regulation of persons who are required to obtain, or who choose to obtain, certificates by the Board of Housing and Community Development for performing inspections under the building and fire regulations of the board.

There are no advantages to the Department of Housing and Community Development or to the Commonwealth resulting from this action.

There are no disadvantages to the public or to the Commonwealth resulting from this action.

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

Summary of the proposed regulation. The General Assembly mandates in § 36-137 of the Code of Virginia that the Virginia Board of Housing and Community Development issue certificates of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations to any persons seeking to be qualified to perform inspections pursuant to Chapter 6 of Title 36 (Housing) of the Code of Virginia, Chapter 9 of Title 27 (Fire Protection) of the Code of Virginia, and any regulations adopted thereunder.

The proposed regulation includes changes intended to make the regulation consistent with the Code of Virginia. It also makes a number of changes intended to improve the understanding and implementation of the regulation. Existing language is modified, clarifying language is added, and redundant language is deleted.

Estimated economic impact. The proposed regulation includes changes intended to make the regulation consistent with the Code of Virginia.

The existing regulation includes a provision allowing the Board of Housing and Community Development (BHCD) to sanction certificate holders by requiring them to attend special training if it is determined that the certificate holder does not have adequate knowledge, skill, or training to practice in the area of certification. The board is also allowed to impose a probation period on the individual once the training has been completed. The proposed regulation deletes this provision. According to the Department of Housing and Community Development, the board does not have statutory authority to impose this sanction.

The proposed regulation also amends existing language such that BHCD sanctions can only be imposed on certificate holders (i.e., individuals who have obtained a BHCD certificate, are seeking to obtain a certificate and within the certification period, or have been grandfathered into the system). Existing language allows sanctions to be imposed on certificate holders, code officials, technical assistants, and inspectors from code inspection agencies or code review agencies. This could be read to include individuals BHCD had no authority to regulate, such as inspectors who perform private or third party inspections and who do not have to be certified. By deleting some of the existing language and specifying that sanctions can only be imposed on certificate holders, the proposed change makes the regulation consistent with the Code of Virginia.

The remaining changes are intended to improve understanding and implementation of the regulation. Existing language is modified, clarifying language is added, and redundant language is deleted.

As none of the changes appear to be substantive, the proposed regulation is not likely to have a significant economic impact. To the extent that the proposed changes make the regulation consistent with the Code of Virginia and improve its understanding and implementation, they are likely to produce some small economic benefits.

DHCD states in its agency document that it anticipates receiving requests during the public comment period for substantive changes to this regulation. Depending on the nature of the comments received, the agency may choose to repropose the regulation with additional changes. While DHCD does not anticipate many changes to the proposed regulation, one of the changes being discussed relates to additional continuing education requirements. Currently, certificate holders are only required to attend training following code changes. The proposal under consideration would introduce some additional continuing education requirements.

Businesses and entities affected. The proposed regulation applies to individuals certified or seeking to be certified to enforce or perform inspections and reviews under the Uniform Statewide Building Code, the Virginia Amusement Device Regulations, and the Statewide Fire Prevention Code. However, as none of the changes appear to be substantive, the proposed regulation is not likely to have a significant effect on any of these individuals.

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 in Virginia.

Effects on the use and value of private property. The proposed regulation is not likely to have a significant impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis conducted by the Department of Planning and Budget for this proposed regulation.

Summary:

The proposed amendments clarify current provisions by (i) removing unused terms and clarifying the meaning of other terms and (ii) moving several sections within the regulation. Further, proposed amendments remove the authority of the Board of Housing and Community Development to impose a sanction ordering attendance at special training if the board determines the certificate holder lacks adequate level of knowledge, skill or training to practice in the specific area of certification.

13 VAC 5-21-10. Definitions.

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

~~"Active certificate holder" means any certificate holder who has attended the required DHCD designated periodic training courses and is classified by DHCD as active.~~

~~"Applicant" or "candidate" means any a person seeking to become qualified to provide enforcement or perform inspections or reviews under the applicable BHCD regulation by obtaining a certificate from the BHCD.~~

~~"BCAAC" means the Building Code Academy Advisory Committee appointed by the BHCD under subdivision 7 of § 36-137 of the Code of Virginia to advise the BHCD and the DHCD Director on policies, procedures, operations, and other matters pertinent to enhancing the delivery of training services provided by the Building Code Academy.~~

"BHCD" means the Virginia Board of Housing and Community Development.

~~"Certificate" means a document issued by BHCD as a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board BHCD and issued to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to the Uniform Statewide Building Code Chapter 6 (§ 36-97 et seq. of the Code of Virginia) and the Statewide Fire Prevention Code of Title 36 of the Code of Virginia, Chapter 9 (§ 27-94 et seq. of the Code of Virginia) of Title 27 of the Code of Virginia, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.~~

Proposed Regulations

~~"Certificate holder" means any a person certified by the BHCD under this chapter and classified by DHCD as active or inactive to whom the BHCD has issued a certificate.~~

~~"Code academy" means the Virginia Building Code Academy established under subdivision 14 of § 36-139 of the Code of Virginia, and educational institutions established in accordance with or individual or regional training academies accredited by DHCD pursuant to subdivision 7 of § 36-137 of the Code of Virginia, which are accredited by DHCD under 13 VAC 5-80 to conduct classes to prepare individuals pursuing occupations in the building, amusement device or fire inspection professions or to upgrade individuals in technical phases of building amusement device or fire regulations and codes.~~

~~"Code enforcement agency" means the agency or agencies to which responsibility for enforcement of the USBC, VADR, or SFPC has been assigned.~~

~~"Code inspection agency" or "code review agency" means any department, division, company, individual or agency to which inspection or construction document review responsibility under the applicable USBC, VADR, or SFPC has been assigned or delegated and, in addition, shall include such entities whose reports of inspection or review will be the basis of approvals under the applicable USBC, VADR, or SFPC.~~

~~"DFP" means the Virginia Department of Fire Programs.~~

~~"DHCD" means the Virginia Department of Housing and Community Development.~~

~~"Inactive certificate holder" means any certificate holder who has not attended the required DHCD designated periodic training courses and is classified by DHCD as inactive.~~

~~"SFPC" means the Virginia Statewide Fire Prevention Code (13 VAC 5-51).~~

~~"Training" means the facilitation of an individual's learning that is focused on the performance of the job duties and tasks related to the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by BHCD.~~

~~"Training code academy" means training conducted by a code academy and that is divided into the following types of modules: (i) core module means the general foundation training module for persons seeking to become qualified to perform inspections and other duties under the BHCD regulations, which includes emphasis on the legal authority and the regulatory foundation of enforcement and administration of Virginia's building and fire regulations; (ii) management module means the advanced training modules for persons seeking to become qualified to manage and supervise enforcement and inspections and other functions under the BHCD regulations; and (iii) technical module means the foundation and advanced training modules for the various specialty areas related to performing plans review, inspections and other job duties under the BHCD regulations, including but not limited to areas such as building, fire protection, plumbing, electrical, mechanical, amusement device and elevators.~~

~~"Training DFP" means training conducted under the DFP, Regulations Establishing Certification Standards for Fire Inspectors (19 VAC 15-20).~~

~~"TRB" "State Review Board" means the Virginia State Building Code Technical Review Board established under § 36-108 of the Code of Virginia.~~

~~"USBC" means the Virginia Uniform Statewide Building Code (13 VAC 5-64 13 VAC 5-63).~~

~~"VADR" means the Virginia Amusement Device Regulations (13 VAC 5-31).~~

~~B. Words and terms used in this chapter that are defined in the USBC, VADR, or SFPC and that are not defined in this chapter shall have the meaning ascribed to them in those regulations unless the context clearly indicates otherwise.~~

13 VAC 5-21-20. Purpose.

~~The purpose of this chapter is to establish standards to be used by persons desiring to be issued for applicants for a BHCD certificate and standards to be used by DHCD in the evaluation and determination of a person's eligibility for the issuance of BHCD certificates.~~

13 VAC 5-21-31. Proof of qualifications for certificate Qualification and examination requirements.

~~A. Applicants An applicant for a BHCD certificate prior to certification in categories associated with the USBC or the SFPC shall provide to DHCD for verification, a written endorsement from the code official, or the code official's supervisor, or in the case of nongovernment employees, other such documentation as proof of compliance in the locality in which they are employed certifying that the applicant complies with the qualification section as listed in the USBC, or the SFPC or VADR as applicable for each type of certificate sought. When the applicant for a BHCD certificate in categories associated with the USBC or the SFPC is a nongovernment employee, a written endorsement from the applicant's supervisor or a person having a similar relationship to the applicant shall be provided certifying that the applicant complies with the qualification section in the USBC or the SFPC as it would relate to the applicant's job responsibilities for each type of certificate sought.~~

~~B. An applicant for a BHCD certificate in categories associated with the VADR shall provide a written endorsement from the applicant's supervisor or a person having a similar relationship to the applicant certifying that the applicant is generally qualified to conduct activities related to the VADR.~~

~~B. C. Applicants for all BHCD certificates shall provide proof of successful completion of approved examinations for each type of certificate sought, except as provided for in 13 VAC 5-21-45. DHCD shall maintain a list of approved testing agencies and examinations that meet nationally accepted standards for each type of certificate. For information on approved testing agencies and examinations contact: DHCD, Division of Building and Fire Regulation, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7180.~~

~~G. Upon written request by the applicant with the endorsement as required under subsection A of this section, the DHCD may~~

~~approve alternate testing agencies and examinations or may approve any combination of education and experience which would in other ways demonstrate adequate knowledge for the type of certificate sought. Under § 36-139 of the Code of Virginia, the DHCD may also approve other training, experience and educational offerings as equivalent to and in place of code academy technical module training. The types of such combinations of education and experience may include military training, college classes, technical schools, or long-term work experiences, except that long-term work experiences shall not be the sole substitute. DHCD may convene meetings of the BCAAC to review and advise the DHCD concerning the appropriateness of applications for certification under this section.~~

13 VAC 5-21-41. Certification categories and training requirements.

A. DHCD shall maintain a list of BHCD certification categories and required training.

For information on BHCD certification categories and required training, contact: DHCD, Division of Building and Fire Regulation, 501 N. 2nd St., Richmond, VA 23219, (804) 371-7180.

~~B. Prior to receiving certification, all Applicants for all BHCD certification certificates shall attend and complete the code academy core module, except as provided for in 13 VAC 5-21-45. In addition to the completion of the core module, applicants for the following categories of BHCD certification are required to attend and complete additional the following code academy training prior to receiving certification in accordance with the following table , except as provided for in 13 VAC 5-21-45:~~

Category of BHCD Certification	Code Academy Training
Building official	Advanced official module
Fire official	Advanced official module and the 1031 school as administered by the Department of Fire Programs DFP
Building maintenance official	Advanced official module and the property maintenance module
Fire prevention inspector	The 1031 school as administered by the Department of Fire Programs DFP
Amusement device inspector	Amusement device inspection module

~~Exception: Applicants for BHCD provisional certification shall comply with 13 VAC 5-21-51 C.~~

13 VAC 5-21-45. Alternatives to examination and training requirements.

A. ~~An applicant for a BHCD certificate with the written endorsement required by 13 VAC 5-21-31 may submit a written request to DHCD to approve an examination by a testing agency not on the list of approved testing agencies maintained by DHCD to satisfy the examination requirements of 13 VAC 5-21-31. Such an applicant may also submit a written request to DHCD to approve any combination of education and experience to satisfy the examination requirements. DHCD shall consider the approval of any such requests based on whether adequate knowledge has been demonstrated for the type of certification sought. DHCD may request the assistance of BCAAC in any such consideration.~~

~~B. Upon written application by any applicant for a BHCD certificate, DHCD may approve alternative training or a combination of training, education or experience to satisfy the training requirements of 13 VAC 5-21-41. The types of combinations of education and experience may include military training, college classes, technical schools or long-term work experiences, except that long-term work experiences shall not be approved as the sole substitute to satisfy the training requirements. DHCD may request the assistance of BCAAC in any such consideration.~~

13 VAC 5-21-51. Certification Issuance of certificates.

~~A. A BHCD certificate under this chapter shall be issued when the DHCD determines a candidate an applicant has complied with 13 VAC 5-21-31 and 13 VAC 5-21-44 the applicable requirements of this chapter for the certification sought. Certificate holders will be classified by DHCD as active or inactive. An active certificate holder is a person who is certified and who has attended all periodic training courses designated by DHCD subsequent to becoming certified. An inactive certificate holder is a person who is certified but has not attended all such training courses. An inactive certificate holder may request reinstatement from DHCD as an active certificate holder after completing make-up training courses authorized by DHCD. DHCD may also issue provisional certificates in accordance with subsection C of this section.~~

~~B. All certificate holders certified certificates issued by the BHCD since June 1978 are still certified considered to be valid unless revoked and shall be classified as active or inactive or suspended by the BHCD, except that provisional certificates shall remain valid as set out under subsection C of this section. Any certificate holder classified as inactive shall be deemed not to meet the certification requirements of the applicable USBC, VADR, or SFPC. Such inactive certificate holder may complete DHCD designated training and apply to become an active certificate holder.~~

~~C. Any person falling under any one or more of the following circumstances Provisional certificates may be issued by the BHCD to 1. (i) a noncertificate holder person who has been directed by the BHCD to obtain certification a certificate 2. A candidate seeking certification based on demonstration of adequate knowledge and experience for the certificate being sought ; (ii) an applicant requesting a certificate under the alternative examination or training provisions of 13 VAC 5-21-~~

Proposed Regulations

~~45; or 3. The (iii) an applicant when the required DHCD or DFP training has not been provided or offered the required training under 13 VAC 5-21-41 B or approved appropriate alternate training.~~

~~May be issued~~ Such a provisional certificate may be issued under any of the following conditions:

- ~~a. 1. The candidate applicant has satisfactorily completed the code academy core module.~~
- ~~b. 2. The candidate applicant has complied with 13 VAC 5-21-31 A for proof of qualifications provided the written endorsement required by 13 VAC 5-21-31; or~~
- ~~c. 3. The candidate applicant has complied with 13 VAC 5-21-41 completed any training through the code academy or through other providers determined by DHCD to warrant the issuance of the provisional certificate.~~
- ~~d. Such certification is nonrenewable and shall expire one year from the date of issuance.~~

~~Exception: Such provisional certification is renewable and shall not expire one year from the date of issuance when the DHCD or DFP has not provided or offered the required training. However, the DHCD may approve appropriate alternate training.~~

~~When a provisional certificate holder has complied with the provisions of 13 VAC 5-21-31 B for a regular BHCD certificate, DHCD shall issue such certificate.~~

~~D. A certification under this chapter may be denied when the BHCD determines a candidate has not complied with the applicable provisions of this chapter.~~

~~E. All certificate holders certified by the BHCD shall attend continuing education training as specified by DHCD in order to maintain status as an active certificate holder.~~

The provisional certificate is valid for a period of one year after the date of issuance and shall only be issued once to any individual, except that a provisional certificate shall remain valid when the required DHCD or DFP training has not been provided or offered.

13 VAC 5-21-61. Sanctions.

~~When the BHCD determines a certificate holder, code official, technical assistant or an inspector of a code inspection agency or code review agency has failed to (i) maintain a minimally acceptable level of competence under § 36-137(6) of the Code of Virginia, that demonstrates adequate knowledge; (ii) comply with an order issued by the BHCD or TRB, the State Review Board; or (iii) obtain the applicable BHCD certification as may be certificate required under by the applicable USBC, VADR, or SFPC, the BHCD may impose any of the following sanctions on such enforcement personnel covered by this chapter:~~

- 1. A warning letter under this chapter may be issued when the BHCD determines a certificate holder, ~~code official, technical assistant or an inspector of a code inspection agency or code review agency~~ committed any act prohibited by this chapter. The documentation that serves as the basis for such letter shall be ~~made a part of the certification~~

~~file on the certificate holder, technical assistant or inspector kept in records by DHCD for that individual.~~

~~2. Attendance at special training under this chapter may be ordered when the BHCD determines a certificate holder lacks an adequate level of knowledge, skill or training to practice in the specific area of certification. A probation period may also be imposed by the BHCD upon completion of all such training.~~

~~3. 2. A certificate issued under this chapter may be revoked or suspended by the BHCD.~~

13 VAC 5-21-70. Appeal.

Decisions of the BHCD regarding ~~a candidate an applicant for a certificate or a certificate holder~~ shall be final if ~~the candidate or certificate holder makes no appeal unless appealed.~~

~~Decisions of the BHCD~~ Actions under this regulation are ~~ease decisions under~~ governed by the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and are subject to judicial review in accordance with that law.

VA.R. Doc. No. R04-167; Filed January 13, 2005, 11:01 a.m.

* * * * *

Title of Regulation: **13 VAC 5-31. Virginia Amusement Device Regulations (amending 13 VAC 5-31-20, 13 VAC 5-31-40 and 13 VAC 5-31-50).**

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public Hearing Date: March 17, 2005 - 10 a.m.

Public comments may be submitted until April 11, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or e-mail steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-98.3 of the Code of Virginia authorizes the Board of Housing and Community Development to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices. The Code of Virginia further defines amusement devices to mean (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion and (ii) passenger tramways.

Purpose: The reason this regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth is that without the building and fire regulations of the Board of Housing and Community Development being kept up to date by using the latest editions of the nationally recognized model codes and standards and without the correlation of this regulation with the other building and fire regulations of the board, the protection of the health, safety and welfare of Virginia's citizens is not assured since conditions that need to be regulated are not. In addition, where a condition that was previously determined in the nationally recognized codes and standards to need to be

regulated is addressed less restrictively in the newest model codes and standards, there would be the risk of exposing Virginia's citizens to unnecessary regulations.

Substance: There are no substantive changes between the existing regulation and the proposed regulation that could be identified, even though several of the referenced standards have been updated to newer versions. A preliminary review of those newer versions does not indicate that they have substantive changes from the standards used in the existing regulation.

Since this regulation is a companion regulation to the other building and fire regulations promulgated by the board and needs to be coordinated with those regulations, and since the other building and fire regulations of the board are concurrently undergoing regulatory actions to reference the newest available nationally recognized model codes and standards, the board is therefore accepting comment on all provisions of this regulation.

Issues: The primary advantage to the public of this action is that the regulation will provide the least possible necessary regulation of the operators and owners of amusement devices while assuring the safety of the users of such devices and the general public.

There are no advantages to the Department of Housing and Community Development or to the Commonwealth resulting from this action.

There are no disadvantages to the public or to the Commonwealth resulting from this action.

Department of Planning and Budget's Economic Impact

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

Summary of the proposed regulation. The General Assembly mandates in § 36-98.3 of the Code of Virginia that the Virginia Board of Housing and Community Development promulgate regulations pertaining to the construction, maintenance, operation, and inspection of amusement devices. The Code of Virginia defines an amusement device as (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion, and (ii) passenger tramways.

The proposed regulation updates standards incorporated by reference for the construction and operation of amusement devices. Standards for typical amusement devices written by the American Society for Testing Materials (ASTM) and standards for passenger tramways written by the American

National Standards Institute (ANSI) are incorporated by reference into Virginia's amusement device regulations. At the time of drafting the proposed regulation, the ANSI standard and two of the ASTM standards incorporated by reference had newer versions. The proposed regulation updates the existing regulation to incorporate by reference the newer versions of these standards.

The proposed regulation also updates the reference to the Uniform Statewide Building Code (USBC) and makes a few other clarifying changes.

Estimated economic impact. The proposed regulation updates the ASTM and ANSI standards incorporated by reference. The ASTM standard practice for design and manufacture of amusement rides and devices has been updated to include artificial climbing walls and air-supported structures. In addition, the ASTM standard practice for an amusement ride and device manufacturer quality assurance program has been updated. The ANSI requirements relating to passenger ropeways (i.e., aerial tramways, aerial lifts, surface lifts, and tows and conveyors) have also been updated. The proposed regulation incorporates by reference newer versions of these standards and requirements.

According to the Department of Housing and Community Development (DHCD), a review of the new standards did not indicate any substantive changes.

The scope of the ASTM standard practice for design and manufacture of amusement rides and devices now specifically includes artificial climbing walls and air-supported structures. However, according to DHCD, there appear to be no changes in the text itself that would require additional safeguards for artificial climbing walls or air-supported structures. The agency believes that existing policy is meant to cover these types of devices, but there has been some confusion in this regard. The newer version of the ASTM standard clarifies that artificial climbing walls and air-supported structures fall within the scope of these standards. The agency believes that most localities are already enforcing these standards as they apply to artificial climbing walls and air-supported structures. Moreover, due to insurance costs and liability concerns a majority of owners and operators of such devices are already meeting these standards. Thus, updating to the newer version is not likely to require any substantive changes to current practice.

The ASTM standard practice for an amusement ride and device manufacturer quality assurance program has been updated. The scope of these standards has been broadened to specifically include the manufacture of amusement rides and devices (including major modifications). The ANSI requirements relating to passenger ropeways (aerial tramways, aerial lifts, surface lifts, and tows and conveyors) have also been updated. However, according to DHCD, a preliminary review of the new standards did not indicate any substantive changes.

The proposed regulation also updates references to the USBC and makes a few other clarifying changes. The existing USBC is being repealed and a new regulation is being promulgated in its place. The reference to the USBC in the proposed regulation is updated to reflect this change. The

Proposed Regulations

USBC is referenced in the Virginia amusement device regulations in the context of the administration and enforcement of these regulations. The USBC is also referenced in the context of the general requirements for gravity rides. Specifically, when loading or unloading platforms are elevated more than 30 inches, guardrails conforming to the USBC are to be provided. Finally, to the extent that they are not superseded by the Virginia amusement device regulations, provisions of the USBC are to apply to amusement devices. According to DHCD, there are seven substantive changes between the new and old versions of the USBC. However, based on information provided by DHCD, none of the changes to the USBC regulation are likely to have a significant effect on the construction, maintenance, operation, and inspection of amusement devices and, thus, on the use and implementation of the Virginia amusement device regulations.

As none of the changes appear to be substantive, the proposed regulation is not likely to have a significant economic impact. By clarifying the scope of ASTM standards dealing with the design and manufacture of amusement rides and devices, the proposed regulation is likely to improve the understanding and implementation of these standards. Moreover, by updating references to newer versions of nationally recognized codes and standards, the proposed changes are also likely to increase the consistency and uniformity of these practices across states. To the extent that it improves understanding and implementation of the regulation and makes these practices consistent with those used elsewhere in the country, the proposed changes are likely to produce some economic benefits.

DHCD states in its agency document that it anticipates receiving requests during the public comment period for substantive changes to this regulation. Depending on the nature of the comments received, the agency may choose to repropose the regulation with additional changes. Since DHCD drafted the proposed regulation, ASTM has come out with newer versions of several of the standards incorporated by reference. These include newer versions of standards dealing with the maintenance, inspection, and manufacture of amusement rides and devices. Moreover, DHCD has also received some preliminary proposals from the amusement device technical advisory committee. The proposals include changes that deal with fees, insurance requirements, the use of technical bulletins, and the definition of an amusement device. The agency has not yet had a chance to evaluate either the newest ASTM standards or the proposals submitted by the technical advisory committee.

Businesses and entities affected. The proposed regulation applies to owners, operators, and manufacturers of amusement rides and devices in Virginia. The number of such entities is not known. However, as none of the changes appear to be substantive, the proposed regulation is not likely to have a significant effect on any of these businesses and entities.

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 in Virginia.

Effects on the use and value of private property. The proposed regulation is not likely to have a significant impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis conducted by the Department of Planning and Budget for this proposed regulation.

Summary:

The proposed amendments incorporate by reference the 1999 edition of the American National Standards Institute (ANSI) standard, Safety Requirements for Passenger Ropeways (B77.1-1999) and the 2003 edition of the American Society for Testing Materials (ASTM) standards, Standard Practice for Design and Manufacture of Patron Directed, Artificial Climbing Walls, Dry Slide, Coin Operated and Purposeful Water Immersion Amusement Rides and Devices and Air-Supported Structures (F1159-03a) and Standard Practice for Amusement Ride and Device Manufacturer Quality Assurance Program and Manufacturing Requirements (F1193-03a).

13 VAC 5-31-20. Definitions.

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

"Amusement device" means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion and (ii) passenger tramways.

~~"DHCD" means the Virginia Board of Housing and Community Development.~~

"Bungee cord" means the elastic rope to which the jumper is attached which lengthens and shortens to produce a bouncing action.

"Carabineer" means a shaped metal device with a gate used to connect sections of a bungee cord, jump rigging, equipment, or safety gear.

"DHCD" means the Virginia Department of Housing and Community Development.

"Gravity ride" means a ride that is installed on an inclined surface, which depends on gravity for its operation to convey a passenger from the top of the incline to the bottom, and which conveys a passenger in or on a carrier tube, bag, bathing suit, or clothes.

"Ground operator" means a person who assists the jump master to prepare a jumper for jumping.

"Harness" means an assembly to be worn by a bungee jumper to be attached to a bungee cord. It is designed to prevent the wearer from becoming detached from the bungee system.

"Jump master" means a person who has responsibility for the bungee jumper and who takes the jumper through the final stages to the actual jump.

"Jump zone" means the space bounded by the maximum designed movements of the bungee jumper.

"Jumper" means the person who departs from a height attached to a bungee system.

"Landing area" means the surface area of ground or water directly under the jump zone, the area where the lowering device moves the bungee jumper to be landed away from the jump space and the area covered by the movement of the lowering device.

"Operating manual" means the document that contains the procedures and forms for the operation of bungee jumping equipment and activity at a site.

"Passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel cables, chains or belts, or ropes, and usually supported by trestles or towers with one or more spans.

"Platform" means the equipment attached to the structure from which the bungee jumper departs.

"Private inspector" means a person performing inspections who is independent of the company, individual or organization owning, operating or having any vested interest in an amusement device being inspected.

"Ultimate tensile strength" means the greatest amount of load applied to a bungee cord prior to failure.

"USBC" means the Virginia Uniform Statewide Building Code (~~13 VAC 5-61-10 et seq.~~ 13 VAC 5-63).

B. Words and terms used in this chapter which are defined in the USBC shall have the meaning ascribed to them in that regulation unless the context clearly indicates otherwise.

C. Words and terms used in this chapter which are defined in the standards incorporated by reference in this chapter shall have the meaning ascribed to them in those standards unless the context clearly indicates otherwise.

13 VAC 5-31-40. Incorporated standards.

A. The following standards are hereby incorporated by reference for use as part of this chapter:

1. American National Standards Institute (ANSI) Standard No. ~~B77.1-90~~ B77.1-1999 for the regulation of passenger tramways; and

2. American Society for Testing and Materials (ASTM) Standard Nos. F698-94 (*Reapproved 2000*), F747-97, F770-93 (*Reapproved 2000*), F846-92 (*Reapproved 1998*), F853-98, F893-87 (*Reapproved 2000*), ~~F1159-97a~~ F1159-03a, ~~F1193-97~~ F1193-03a, F1305-94 (*Reapproved 2002*), F1950-99, F1957-99 and F2007-00 for the regulation of amusement devices.

The standards referenced above may be procured from:

ANSI
11 W. 42nd Street
New York, NY 10036

ASTM
100 Barr Harbor Dr.
West Conshohocken, PA
19428-2959

B. The provisions of this chapter govern where they are in conflict with any provisions of the standards incorporated by reference in this chapter.

C. The following requirements supplement the provisions of the ASTM standards incorporated by reference in this chapter:

1. The operator of an amusement device shall be at least 16 years of age, except when the person is under the supervision of a parent or guardian and engaged in activities determined not to be hazardous by the Commissioner of the Virginia Department of Labor and Industry;

2. The amusement device shall be attended by an operator at all times during operation except that (i) one operator is permitted to operate two or more amusement devices provided they are within the sight of the operator and operated by a common control panel or station and (ii) one operator is permitted to operate two kiddie rides with separate controls provided the distance between controls is no more than 35 feet and the controls are equipped with a positive pressure switch; and

3. The operator of an amusement device shall not be (i) under the influence of any drugs which may affect the operator's judgment or ability to assure the safety of the public or (ii) under the influence of alcohol.

D. Where an amusement device was manufactured under previous editions of the standards incorporated by reference in this chapter, the previous editions shall apply to the extent that they are different from the current standards.

13 VAC 5-31-50. Certification of amusement device inspectors.

A. Any person, including local building department personnel, inspecting an amusement device relative to a certificate of inspection shall possess a valid certificate of competence as an amusement device inspector from the ~~BHGD~~ Virginia Board of Housing and Community Development.

B. Local building department personnel enforcing this chapter and private inspectors shall attend periodic training courses as designated and required by DHCD.

VA.R. Doc. No. R04-168; Filed January 13, 2005, 11:03 a.m.

Proposed Regulations

Title of Regulation: 13 VAC 5-51. Virginia Statewide Fire Prevention Code (amending 13 VAC 5-51-21, 13 VAC 5-51-31, 13 VAC 5-51-130 and 13 VAC 5-51-135; repealing 13 VAC 5-51-136 and 13 VAC 5-51-155).

Statutory Authority: § 27-97 of the Code of Virginia.

Public Hearing Date: March 17, 2005 - 10 a.m.

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

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or e-mail steve.calhoun@dhcd.virginia.gov.

Basis: Section 27-97 of the Code of Virginia provides the Board of Housing and Community Development the authority to adopt and promulgate a Statewide Fire Prevention Code, which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two boards.

Purpose: The general reason this regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth is that without the building and fire regulations of the Board of Housing and Community Development being kept up to date by using the latest editions of the nationally recognized model codes and standards and without the correlation of this regulation with the other building and fire regulations of the board, the protection of the health, safety and welfare of Virginia's citizens is not assured since conditions that need to be regulated are not. In addition, where a condition that was previously determined in the nationally recognized codes and standards to need to be regulated is addressed less restrictively in the newest model codes and standards, there would be the risk of exposing Virginia's citizens to unnecessary regulations.

The general goals of this regulatory action and general problems this regulatory action will solve are the same as the general reason the regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth. Without keeping the codes up to date, there is the potential for not regulating necessary conditions, or over regulating conditions determined to be less necessary of regulation.

The specific reason this regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth; the specific goal of this regulatory action and the specific problem this regulatory action will solve, in relation to the one identified substantive change between the 2000 edition of the IFC and the 2003 edition of the IFC for comprehensive regulations for the generation and distribution of hydrogen motor vehicle fuel, is to have the latest standards developed by the hydrogen industry specifically incorporated as part of the IFC, and as the IFC is incorporated as part of the SFPC, in the SFPC itself. Prior to this edition of the IFC, regulations for hydrogen fuel were through a reference to the standards of the National Fire Protection Association (NFPA).

Substance: There are generally no substantive changes between the existing regulation and the proposed regulation

that could be identified. One substantive change identified between the 2000 IFC and the 2003 IFC is the addition of comprehensive regulations for hydrogen motor fuel-dispensing and generation facilities based on industry standards.

In addition, however, since this regulation is a companion regulation to the other building and fire regulations promulgated by the board and needs to be coordinated with those regulations, and since the other building and fire regulations of the board are concurrently undergoing regulatory actions to reference the newest available nationally recognized model codes and standards, the board is therefore accepting comment on all of the provisions of this regulation.

Issues: The primary advantage to the public of this action in general is that the regulation will provide the least possible necessary regulations for assuring safety in the use of buildings and structures and in other operations relative to fire safety.

The specific advantage to the public of this action in relation to the addition of the comprehensive regulations for the generation and distribution of hydrogen motor vehicle fuel is to increase the safety of the public by having the latest standards developed by the hydrogen industry specifically incorporated as part of the SFPC to be enforced by local and state fire officials.

There are no advantages to the Department of Housing and Community Development or to the Commonwealth resulting from this action.

There are no disadvantages to the public or to the Commonwealth resulting from this action.

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

Summary of the proposed regulation. The General Assembly mandates in § 27-97 of the Code of Virginia that the Virginia Board of Housing and Community Development adopt and promulgate a Statewide Fire Prevention Code (SFPC), developed cooperatively with the Fire Services Board.

The proposed regulation updates the International Fire Code (IFC) incorporated by reference in the SFPC from the 2000 edition to the 2003 edition. It also updates references to the Uniform Statewide Building Code (USBC) including references to USBC retrofit provisions relating to fire protection equipment and system requirements. Finally, the proposed

regulation deletes language in the existing regulation made redundant by the adoption of the 2003 IFC.

Estimated economic impact. The proposed regulation updates the IFC incorporated by reference in the SFPC from the 2000 edition to the 2003 edition. A preliminary review of the differences between the 2000 edition and the 2003 edition of the IFC by DHCD indicated that new comprehensive regulations for hydrogen motor fuel dispensing and generating facilities have been added to the 2003 IFC. Previous editions of the IFC referenced National Fire Protection Association (NFPA) standards for the use of hydrogen gas at consumer sites. The International Code Council (the organization that develops the IFC) set up a committee to review all existing standards for hydrogen gas and develop regulations for the international codes. The committee reviewed all existing standards, i.e., the NFPA standards for the use of hydrogen gas at consumer sites and other standards referenced in turn by the NFPA. Moreover, as hydrogen fuel use is an emerging technology, the committee also considered latest developments in the use of hydrogen as fuel. According to DHCD, the standards so developed encompass all aspects of the use of hydrogen as fuel and are consistent with existing standards. DHCD does not believe that the provisions relating to the generation and distribution of hydrogen motor fuel in the most recent edition of the IFC are significantly different from existing requirements. Moreover, these provisions were developed in cooperation with the hydrogen industry and were based on the latest industry standards. Finally, as the use of hydrogen as motor fuel is not currently widespread, the number of entities potentially affected by a change in these standards is not likely to be large. DHCD is not aware of any facilities in Virginia involved in the generation and distribution of hydrogen as motor fuel. Thus, updating to the 2003 IFC is not likely to have a significant effect on the hydrogen industry in Virginia.

The proposed regulation also updates references to the USBC, including references to USBC retrofit provisions relating to fire protection equipment and system requirements. The existing USBC is being repealed and a new regulation is being promulgated in its place. References to the USBC in the proposed regulation are updated to reflect this change. Specifically, reference to the USBC retrofit provisions in the proposed regulation is updated. However, according to DHCD, there are no substantive changes to these provisions in the new USBC. Based on a preliminary analysis by DHCD, there are seven substantive changes between the new and existing USBC. However, as the SFPC is an operation and maintenance code and not a construction code, the agency believes that none of these changes is likely to have a significant effect on the use and implementation of the SFPC or on compliance with its requirements. However, some additional retraining of fire officials may be required in order to familiarize them with the major changes to the USBC.

The proposed regulation also deletes language in the existing regulation made redundant by the adoption of the 2003 IFC. According to DHCD, the language being deleted deals with Virginia-specific variances to the 2000 IFC. The need for these variances has been made moot by the adoption of the 2003 IFC that now incorporates these variances.

As none of the changes appear to be substantive, the proposed regulation is not likely to have a significant economic impact. By updating references to newer versions of nationally recognized codes and standards, the proposed changes are likely to increase the consistency and uniformity of these practices across states. To the extent that it improves understanding and implementation of the regulation and makes these practices consistent with those used elsewhere in the country, the proposed changes are likely to produce some economic benefits. Against these benefits there are likely to be some additional costs associated with retraining fire officials such that they are familiar with any major changes to the USBC.

DHCD states in its agency document that it anticipates receiving requests during the public comment period for substantive changes to this regulation. Depending on the nature of the comments received, the agency may choose to repropose the regulation with additional changes. According to DHCD, they have received a number of proposals for changes to the proposed regulation. These include easing some of the restrictions on the use of black gunpowder in old-fashioned firearms such as muskets and allowing for the use of propane grills on the decks of some smaller buildings. In addition, the Fire Services Board code committee has indicated that they intend to submit proposals for change including increasing the maximum size of a trash can permitted for use without a lid, adding an exception to the fireworks provisions to allow flares, and adding new language or modifying existing language to clarify various aspects of the regulation. The agency has not yet had a chance to evaluate the proposals for change.

Businesses and entities affected. The proposed regulation applies to all businesses and individuals responsible for the maintenance and operation of buildings and structures in a manner that safeguards life and property from the hazards of fire, including building owners and operators and inspectors and other officials responsible for enforcing the SFPC. Specifically, the proposed regulation may result in some additional training for fire code officials such that they are familiar with the more substantive changes to the USBC.

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 is not likely to have a significant impact on the use and value of private property.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis conducted by the Department of Planning and Budget for this proposed regulation.

Summary:

The proposed amendments (i) update the International Fire Code (IFC) incorporated by reference in the regulation from the 2000 edition to the 2003 edition; (ii) update references to the Uniform Statewide Building Code (USBC) including

Proposed Regulations

references to USBC retrofit provisions relating to fire protection equipment and system requirements; and (iii) delete language in the existing regulation made redundant by the adoption of the 2003 IFC.

13 VAC 5-51-21. Section 102.0. Applicability.

A. 102.1. General: The provisions of the SFPC shall apply to all matters affecting or relating to structures, processes and premises as set forth in Section 101.0. The SFPC shall supersede any fire prevention regulations previously adopted by a local government or other political subdivision.

B. 102.1.1. Changes: No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group of occupancies, unless such structure is made to comply with the requirements of this code and the USBC.

C. 102.2. Application to pre-1973 buildings and structures: Buildings and structures constructed prior to the USBC (1973) shall comply with the maintenance requirements of the SFPC to the extent that equipment, systems, devices, and safeguards which were provided and approved when constructed shall be maintained. Such buildings and structures, if subject to the state fire and public building regulations (Virginia Public Building Safety Regulations, VR 394-01-05) in effect prior to March 31, 1986, shall also be maintained in accordance with those regulations.

D. 102.3. Application to post-1973 buildings and structures: Buildings and structures constructed under any edition of the USBC shall comply with the maintenance requirements of the SFPC to the extent that equipment, systems, devices, and safeguards which were provided and approved when constructed shall be maintained.

E. 102.4. Referenced codes and standards: The codes and standards referenced in the IFC shall be those listed in Chapter 45 and considered part of the requirements of the SFPC to the prescribed extent of each such reference. Where differences occur between the provisions of this code and the referenced standards, the provisions of this code shall apply.

F. 102.5. Subsequent alteration: Subsequent alteration, enlargement, repair, or conversion of the occupancy classification of structures shall be subject to the current USBC.

G. 102.6. State structures: The SFPC shall be applicable to all state-owned structures in the manner and extent described in § 27-99 of the Code of Virginia.

H. 102.7. Relationship to USBC: Construction inspections of structures, other than state-owned structures, and the review and approval of their construction documents for enforcement of the USBC shall be the sole responsibility of the local building department.

I. 102.8. Existing structures: Upon the completion of structures, responsibility for fire safety protection shall pass to the local fire official or to the State Fire Marshal, who shall also have the authority, in cooperation with any local governing body, to enforce this code. The State Fire Marshal shall also have authority to enforce this code in those

jurisdictions in which the local governments do not enforce this code.

J. 102.9. Inspections for USBC requirements: The fire official shall require that existing structures subject to the requirements of the applicable retrofit provisions relating to the fire protection equipment and system requirements of the USBC, ~~Section 423~~ *New Construction Code, Sections 103.7 and 3411*, comply with the provisions located therein.

13 VAC 5-51-31. Section 103.0. Incorporation by reference.

A. 103.1. General: The following document is adopted and incorporated by reference to be an enforceable part of the SFPC:

The International Fire ~~Code/2000 Code~~ - *2003 Edition*, hereinafter referred to as "IFC," published by the International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401, phone 703-931-4533.

B. 103.1.1. Deletion: Delete IFC Chapter 1.

C. 103.2. Amendments: All requirements of the referenced codes and standards that relate to fees, permits, unsafe notices, disputes, condemnation, inspections, scope of enforcement and all other procedural, and administrative matters are deleted and replaced by the provisions of Chapter 1 of the SFPC.

D. 103.2.1. Other amendments: The SFPC contains provisions adopted by the Virginia Board of Housing and Community Development (BHCD), some of which delete, change or amend provisions of the IFC and referenced standards. Where conflicts occur between such changed provisions and the unchanged provisions of the IFC and referenced standards, the provisions changed by the BHCD shall govern.

Note: The IFC and its referenced standards contain some areas of regulation outside of the scope of the SFPC, as established by the BHCD and under state law. Where conflicts have been readily noted, changes have been made to the IFC and its referenced standards to bring it within the scope of authority; however, in some areas, judgment will have to be made as to whether the provisions of the IFC and its referenced standards are fully applicable.

E. 103.3. International Fire Code. Retroactive fire protection system requirements contained in the IFC shall not be enforced unless specified by the USBC.

13 VAC 5-51-130. IFC Section 202.0. Definitions.

A. Add the following definitions:

Background clearance card: See section 3301.0.

Blaster, restricted: See section 3301.0.

Blaster, unrestricted: See section 3301.0.

DHCD: The Virginia Department of Housing and Community Development.

Local government, local governing body or locality: The governing body of any county, city, or town, other political

subdivision and state agency in this Commonwealth charged with the enforcement of the SFPC under state law.

State Fire Marshal: The State Fire Marshal as provided for by § 36-139.2 of the Code of Virginia.

State Regulated Care Facility (SRCF): A building or part thereof occupied by persons in the care of others where program regulatory oversight is provided by the Virginia Department of Social Services; Virginia Department Mental Health, Mental Retardation and Substance Abuse Services; Virginia Department of Education or Virginia Department of Juvenile Justice (Groups R-2, R-3, R-4 and R-5).

Technical Assistant: Any person employed by, or under contract to, a local enforcing agency for enforcing the SFPC.

TRB: The Virginia State Building Code Technical Review Board.

USBC: The Virginia Uniform Statewide Building Code (13 ~~VAC 5-61-10 et seq.~~ 13 VAC 5-63).

B. Change the following definition to read:

Code official, fire official or fire code official: The officer or other designated authority charged with administration and enforcement of this code, or a duly authorized representative. For the purpose of this code, the term "code official," "fire official," or "fire code official" shall have the same meaning as used in § 27-98.1 of the Code of Virginia.

13 VAC 5-51-135. IFC Chapter 9. Fire Protection Systems.

A. Delete section 901.4.3.

B. Change section 901.6 to read:

901.6. Inspection, testing and maintenance. To the extent that equipment, systems, devices, and safeguards, such as fire detection, alarm and extinguishing systems, which were provided and approved by the building official when constructed, shall be maintained in an operative condition at all times. And where such equipment, systems, devices, and safeguards are found not to be in an operative condition, the fire official shall order all such equipment to be rendered safe in accordance with the USBC.

Exception: When the fire official determines through investigation or testing or reports by a nationally recognized testing agency that specific, required water sprinkler or water-spray extinguishing equipment has been identified as failing to perform or operate through not less than 30 randomly selected sprinkler heads at four or more building sites anywhere in the nation, the fire official shall order all such equipment to be rendered safe.

C. Change the following definition in section 902 to read:

Automatic fire-extinguishing system. An approved system of devices and equipment which automatically detects a fire and discharges an approved fire-extinguishing agent onto or in the area of a fire. Such system shall include an automatic sprinkler system, unless otherwise expressly stated.

~~D. Delete section 903.1.2.~~

~~E. D.~~ Change item 1 in section 906.1 to read:

1. In Group A, B, E, F, H, I, M, R-1, R-4 and S occupancies.

13 VAC 5-51-136. IFC Chapter 14. Fire Safety During Construction and Demolition. (Repealed.)

A. Change section 1410.1 to read:

~~1410.1. Required access. Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet (30,480 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Temporary vehicle access shall be maintained until permanent fire apparatus access roads are available.~~

B. Change section 1412.4 to read:

~~1412.4. Water supply. Approved water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible material arrives on site.~~

13 VAC 5-51-155. IFC Chapter 45. Referenced Standards. (Repealed.)

Add new referenced standards as follows:

Standard reference Number	Title	Referenced in code section number
NFPA 13-99	Installation of Sprinkler Systems	Table 704.1, 903.3.1.1, 903.3.2, 903.3.5.1.1, 904.11, 907.9, 2308.2, 3403.3.7.5.1, 3404.3.8.4
NFPA 13D-99	Installation of Sprinkler Systems in One and Two-Family Dwellings and Manufactured Homes	913.1.2, 903.3.1.3, 903.3.5.1.1
NFPA 13R-99	Installation of Sprinkler Systems in Residential Occupancies Up to and Including Four Stories in Height	903.1.2, 903.3.1.3, 903.3.5.1.1, 903.3.5.1.2, 903.4
NFPA 72-99	National Fire Alarm Code	509.1, Table 901.6.1, 903.4.1, 904.3.5, 907.2, 907.2.1, 907.2.1.1, 907.2.10, 907.2.10.4, 907.2.11.2, 907.2.11.3, 907.2.12.2.3, 907.2.12.3, 907.3, 907.5, 907.6, 907.10.2, 907.11, 907.15, 907.17, 907.18, 907.20, 907.20.2, 907.20.5, 909.12, 909.12.3, 2309.3, 3904.1.6,

Proposed Regulations

	4004.1.7
--	----------

DOCUMENTS INCORPORATED BY REFERENCE

2000 *The International Fire Code - 2003 Edition*, International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401.

VA.R. Doc. No. R04-169; Filed January 13, 2005, 11:09 a.m.

Titles of Regulations: **13 VAC 5-62. Virginia Uniform Statewide Building Code (USBC) (repealing 13 VAC 5-62-10 through 13 VAC 5-62-480).**

13 VAC 5-63. Virginia Uniform Statewide Building Code (USBC) (adding 13 VAC 5-63-10 through 13 VAC 5-63-540).

Statutory Authority: § 36-98 of the Code of Virginia.

Public Hearing Date: March 17, 2005 - 10 a.m.

Public comments may be submitted until April 11, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or e-mail steve.calhoun@dhcd.virginia.gov.

Basis: The General Assembly mandates in § 36-98 of the Code of Virginia that the Virginia Board of Housing and Community Development adopt and promulgate a Uniform Statewide Building Code that supersedes the building codes and regulations of counties, municipalities, and other political subdivisions and state agencies.

Purpose: The reason this regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth is that without the building and fire regulations of the Board of Housing and Community Development being kept up to date by using the latest editions of the nationally recognized model codes and standards and without the correlation of this regulation with the other building and fire regulations of the board, the protection of the health, safety and welfare of Virginia's citizens is not assured since conditions that need to be regulated are not. In addition, where a condition that was previously determined in the nationally recognized codes and standards to need to be regulated is addressed less restrictively in the newest model codes and standards, there would be the risk of exposing Virginia's citizens to unnecessary regulations.

The goals of this regulatory action and general problems this regulatory action will solve are the same as the general reason the regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth. Without keeping the codes up to date, there is the potential for not regulating necessary conditions, or overregulating conditions determined to be less necessary of regulation.

Substance: Since this regulation is a companion regulation to the other building and fire regulations promulgated by the board and needs to be coordinated with those regulations,

and since the other building and fire regulations of the board are concurrently undergoing regulatory actions to reference the newest available nationally recognized model codes and standards, the board is therefore accepting comment on all provisions of this regulation.

The new substantive provisions that have been identified are the major differences between the 2000 edition of the I-Codes, which were incorporated in the existing regulation, and the 2003 editions of the I-Codes, which are being incorporated in this regulatory action. The identified changes are: (i) garage construction requirements under the IRC have changed to require greater fire safety methods of construction when the garage is located beneath a habitable room, (ii) the use of fire retardant treated wood in roof construction of buildings of noncombustible type construction is now permitted with certain limitations, (iii) drains in both residential and commercial swimming pools are now required to have entrapment avoidance features, (iv) provisions for exterior walls adjacent to courtyards in commercial buildings have been deleted, which will permit window and door openings in such walls, (v) inclusion of provisions which permit the use of a "putty pad" protection system for electrical outlets in walls required to be of fire resistant construction methods, (vi) the use of platform lifts in lieu of ramps to provide an accessible route for persons with disabilities is now permitted in courtroom areas and exterior routes where site constraints make the use of ramps infeasible, and (vii) a prohibition against the use of wired glass and a requirement for the use of tempered glass in its place was added.

Issues: The primary advantage to the public of this action is that the regulation will provide the least possible necessary regulations for assuring safety in the use of buildings and structures.

There are no advantages to the Department of Housing and Community Development or to the Commonwealth resulting from this action.

There are no disadvantages to the public or to the Commonwealth resulting from this action.

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

Summary of the proposed regulation. The General Assembly mandates in § 36-98 of the Code of Virginia that the Virginia Board of Housing and Community Development adopt and promulgate a Uniform Statewide Building Code, that supersedes the building codes and regulations of counties,

municipalities, and other political subdivisions and state agencies.

The proposed regulatory action repeals the existing Uniform Statewide Building Code (USBC) and promulgates a new regulation in its place. The new regulation updates building codes and standards developed by the International Code Council (ICC) and incorporated by reference into the USBC from the 2000 edition to the 2003 edition. The codes being updated include the International Building Code (IBC), the International Residential Code, and the International Property Maintenance Code. The International Plumbing Code, the International Mechanical Code, the ICC Electrical Code, the International Fuel Gas Code, and the International Energy Conservation Code, which are referenced by the IBC, have also been updated from the 2000 edition to the 2003 edition. In addition to updating references to existing ICC codes, the proposed regulation incorporates the International Existing Building Code, a new code developed by the ICC. According to the Department of Housing and Community Development (DHCD), the existing regulation is being repealed largely because of the extensive reformatting required to incorporate the new International Existing Building Code into the USBC. Finally, the proposed regulation deletes some documents incorporated by reference into the existing USBC. According to DHCD, the adoption of the 2003 ICC codes makes it unnecessary to incorporate these documents by reference.

Updating from the 2000 edition to the 2003 edition of the ICC codes (i) requires greater fire safety methods of garage construction in residential buildings when a garage is located below a habitable room, (ii) allows the limited use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings, (iii) requires installation of entrapment avoidance devices in the drains of all commercial and residential swimming pools, (iv) eliminates several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings, (v) allows a putty pad protection system to be used for electrical outlets on fire-rated walls, (vi) permits the use of platform lifts instead of ramps in certain areas to accommodate people with disabilities, and (vii) prohibits the use of wired glass in Group E (educational) occupancies and requires the use of tempered glass in its place.

The proposed regulation also modifies existing language, rearranges sections, and reformats the existing USBC. According to DHCD, these are not substantive changes. Many of the changes are in order to incorporate the new International Existing Building Code. Incorporation of the International Existing Building Code is not likely to have a significant effect on design and construction practices in the state because the minimum requirements for compliance (or compliance alternatives) are unchanged between the proposed and existing USBC. The International Existing Building Code provides more prescriptive provisions for the rehabilitation of buildings than provided for under the existing USBC. All other changes are intended to clarify various aspects of the USBC. All Virginia-specific requirements relating to the construction, rehabilitation, or maintenance of buildings are unchanged between the existing and proposed USBC.

Estimated economic impact. The proposed regulation updates building codes and standards developed by the ICC and incorporated by reference into the USBC from the 2000 edition to the 2003 edition. The following are identified by DHCD as the substantive changes between the 2000 edition and the 2003 edition of the ICC codes¹.

(1) The proposed regulation requires greater fire safety methods of garage construction in residential buildings when a garage is located below a habitable room. Specifically, if a residential building is constructed with a habitable room above the garage, the ceiling of the garage must be covered with a N-inch Type X (fire resistant) gypsum board or equivalent that provides a one-hour fire rating. The existing requirement is for the ceiling to be covered with a 1/2-inch gypsum board or equivalent that provides a 20-minute fire rating. According to DHCD, a 4' X 8' board of N-inch Type X gypsum is likely to cost approximately \$10 more than a 1/2-inch gypsum board of similar dimensions. Thus, for a standard 12' X 22' single garage, it is likely to cost an additional \$80 to \$90 to meet the requirements of the regulation.² The additional cost will only be incurred on new residential construction in which the garage is constructed with a habitable room above it. New construction of garages with habitable rooms adjacent to them and existing residential construction are unaffected by the proposed change.

The proposed change is also likely to produce some economic benefits. Use of more fire resistant material on the ceiling of garages with habitable rooms above them could reduce the risk of damage to life and property from fires originating in a garage. The ICC code writing body determined that fires could spread more easily through the ceiling of a garage than through its walls. The use of fire resistant material on the ceiling increases the time it takes for the fire to spread to the house and, thus, allows more time for people to be rescued and property to be salvaged from the residence. The proposed requirement has been in the commercial building code for many years. Given the increased prevalence of residential construction with habitable rooms above garages, the ICC determined that the additional protection against fire was also required in the residential building code. According to DHCD, construction of habitable rooms above garages is an increasing trend, especially in high-end developments.

The net economic impact of the proposed change will depend on whether the additional cost of protecting against the risk of damage to life and property from fire is greater than or less than the benefits of doing so. It is not possible to make a precise determination of the net economic impact at this time. Such an estimate would require data on the number of fires originating in a garage below a habitable room and the resulting damage to life and property. It would also require calculating the reduction in the risk to life and property by the

¹ It should be kept in mind that many of the differences between the 2000 edition and the 2003 edition of the ICC codes may not have a significant effect on current design and construction practices, especially in commercial construction. According to DHCD, due to insurance and liability concerns, design and construction professionals tend to stay abreast of the latest issues and commercial buildings tend to be designed and constructed to standards above and beyond those required by the USBC.

² A standard 18' x 22' double garage is likely to require an additional \$120-\$130 to protect the ceiling in accordance with the requirements of the regulation.

Proposed Regulations

use of more fire resistant material. However, the additional costs of complying with the requirements of the regulation are not very large. Moreover, the ICC code writing body determined the risk to be significant enough to recommend the use of more fire resistant material on the ceiling of garages below habitable rooms. Thus, to the extent that the proposed change reduces the risk of damage to life and property from fire without imposing any sizeable additional costs, it is likely to produce a net positive economic impact.

(2) The proposed regulation allows the limited use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings. Under existing regulations, wood treated with fire retardant can only be used in roof construction of buildings less than three stories in height. The proposed regulation will allow fire retardant treated wood to also be used in Type II construction (smaller noncombustible buildings) of all heights and Type I construction (larger noncombustible buildings) where the vertical distance from the upper floor to the roof is 20 feet or more.

The proposed change is likely to produce some economic benefits. Rather than using noncombustible framing (steel and concrete), the proposed change will allow another method of construction for Type II and certain types of Type I buildings, thus providing a greater diversity in construction methods. According to DHCD, the proposed change is in response to fire retardant treated wood becoming available under new standards to assure its quality. Allowing this type of wood to be used in roof construction of Type II and certain Type I buildings will increase the range of design options in the construction of these types of buildings. The proposed change could also provide some cost savings. Use of wood treated with fire retardant requires a different method of construction than roof construction with steel and concrete, making it difficult to precisely estimate the cost savings associated with the proposed change. According to DHCD, steel construction averages \$130 per square foot and concrete construction averages \$177 per square foot for commercial buildings. While the average cost of wood construction for commercial buildings is not readily available, it averages between \$45 and \$150 per square foot for residential buildings. Wood construction costs for commercial buildings are likely to be similar to the wood construction costs for residential buildings. Thus, the proposed change could result in some cost savings.

The proposed change could also impose additional economic costs by increasing the risk of damage to life and property from fire. Commercial buildings using fire retardant treated wood in roof construction could pose more of a fire hazard than a commercial building using steel and concrete in its roof construction. However, according to DHCD, there have been no serious problems and no known failures of the type of wood being allowed for use in roof construction. Moreover, the ICC code writing body recognized the safety record of fire retardant treated wood and determined that its use would provide a safe and low cost alternative to using steel and concrete in the roof construction of certain types of buildings. Thus, it is not likely that the limited use of this type of wood in roof construction permitted under the proposed regulation will significantly increase the risk of damage to life and property from fire. To the extent that the proposed change provides a

greater range of construction and design options and reduces the cost of construction for certain types of building without significantly increasing the risk to life and property, it is likely to produce a net positive economic impact.

(3) The proposed regulation requires installation of entrapment avoidance devices in the drains of all new commercial and residential swimming pools. The commercial and residential building codes now require the use of anti-vortex drain covers or the use of other approved methods for preventing entrapment by swimming pool drains. There have been several instances of death and injury (especially among children) due to body part entrapment in the drain of a swimming pool, wading pool, or spa. In a 2003 draft report, the Consumer Products Safety Commission (CPSC) reports that it is aware of 73 cases of body entrapment, including 12 confirmed deaths, between January 1990 and October 2003.³ Of these, 31 incidents occurred at swimming pools (commercial and residential). The deaths occurred after the body or limb was held against the swimming pool drain by the suction of the circulation pump. In addition, the report states that two instances of evisceration and disembowelment were reported to the CPSC over the same period. Specifically, with respect to children, the CPSC knows of 18 incidents, including five deaths, involving body part entrapment of children between the ages of two and 14. DHCD is not aware of any such injuries or fatalities in Virginia. However, this could be in part due to the lack of a reporting and recording mechanism for such incidents. The use of anti-vortex drain covers or other entrapment avoidance devices is likely to reduce the occurrence of such incidents. The minimum cost of installing an anti-vortex drain cover meeting the requirements of the regulation ranges from \$10 to \$30. According to DHCD, insurance and liability concerns ensure that most swimming pools currently manufactured in the United States are already fitted with anti-entrapment devices. Thus, the proposed change is likely to affect the construction of those pools that do not always include entrapment avoidance devices, such as homemade pools and pools imported from other countries.

While there are costs and benefits associated with the proposed change, it is not possible to make a precise determination of its net economic impact. The cost of installing entrapment avoidance devices is easily determined. However, it is not possible to precisely estimate the benefits of the proposed change, i.e., the reduction in the number of deaths and injuries by installing anti-entrapment devices in swimming pools. Based on the CPSC report, it would appear that the risk of death or injury due to body part entrapment in swimming pool drains without entrapment avoidance devices is significant. On the other hand, the cost of installing such a device is not very large and most swimming pools manufactured in the United States already come with these devices installed. Thus, to the extent that the proposed change reduces the risk of death and injury due to body part entrapment in swimming pool drains without imposing any sizeable additional costs, it is likely to produce a net positive economic impact.

³ U.S. Consumer Product Safety Commission, Washington, D.C., 2003. *Draft Guidelines for Entrapment Hazards: Making Pools and Spas Safer.*

(4) The proposed regulation eliminates several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings. In determining whether the walls facing a courtyard are permitted to have window and door openings, the existing regulation assumes a property line between the opposite walls of the courtyard. In general, only if the walls are more than 10 feet apart are window and door openings permitted. Exceptions to this rule are allowed when not more than two levels of the building open into the courtyard, the aggregate area of the building (including the courtyard) is within the allowable area, and the building is not a Group I (institutional) classification. In the case of these exceptions, courtyard walls do not have to be 10 feet apart in order to have window and door openings. The proposed regulation eliminates these requirements for commercial buildings containing courtyards. Courtyard walls will now have no restrictions regarding the number of window and door openings permitted. The exterior wall of the building itself will not have any limits on window and door openings unless it is within 10 feet of another building on the same lot or within 10 feet of the property line.

The proposed change could produce costs and benefits. Increased costs could manifest themselves in the form of an increased risk of fire spreading within a building and from one building to another due to the lifting of restrictions on the number of window and door openings allowed in courtyard walls. By restricting the number of window and door openings, the existing regulation could reduce the risk of a fire spreading from a building to its courtyard and hence, to other parts of the building and to neighboring buildings. The benefits are likely to manifest themselves in the form of greater flexibility in designing commercial buildings with courtyards. Window and door openings can now be incorporated into courtyard walls where previously they had not been allowed.

The net economic impact of the proposed change will depend on whether the costs of removing restrictions on window and door openings in courtyard walls are greater than or less than the benefits of doing so. According to DHCD, there are very few existing commercial buildings that (i) contain a courtyard less than 10 feet wide or (ii) cannot avail themselves of the exceptions provided for under the existing regulation. This could be either because it is unusual to construct courtyards that are less than 10 feet wide and do not fall under any of the exceptions or because existing restrictions on window and door openings discourage the construction of such courtyards. In the former case, the proposed change is not likely to produce significant costs or benefits. In the latter case, lifting the restrictions could result in more buildings being constructed with courtyards that have window and door openings that previously would not have been allowed, potentially increasing the risk of a fire spreading within a building and from one building to another. Under these circumstances, the net economic impact of the proposed change will depend on whether the increased risk of fire is greater than or less than the benefits of allowing window and door openings in courtyard walls. There is not enough information available at this time to make a precise determination of the net economic impact of the proposed change. Such a calculation would require being able to

estimate the impact of the proposed change on the construction of commercial buildings containing courtyards and on the increased risk of a fire spreading. It would also require being able to estimate the benefits of providing additional flexibility in the construction of commercial building with courtyards. However, neither the costs nor the benefits associated with the proposed change are likely to be very large. According to DHCD, removing existing restrictions on window and door openings in courtyard walls is not likely to have a significant effect on the spread of fire within a building or to neighboring buildings⁴. Moreover, the agency does not believe that the proposed change will lead to significant changes to current design and construction practices for commercial buildings.

(5) The proposed regulation allows a putty pad protection system to be used for electrical outlets on fire-rated walls. Under the existing regulation, electrical boxes in fire-rated walls are required to be separated by at least 24 inches horizontally. The proposed regulation will allow electrical boxes to be side by side or on both sides of a fire-rated wall without a horizontal separation distance as long as a putty pad type fire resistant pad is wrapped around the boxes. Thus, the proposed change provides more flexibility in the placement of electrical outlets on fire-rated walls.

The proposed change is likely to have costs and benefits associated with it. The costs could manifest themselves in the form of an increased risk of fire from electrical outlets and boxes. However, according to DHCD, the proposed change is not likely to have a significant effect on the risk of fire. Putty pad type fire resistant pads have been tested and shown to protect outlets from the spread of fire. The benefits of the proposed change could manifest themselves in the form of increased flexibility in the placement of electrical boxes on fire-rated walls. However, these benefits are likely to be limited. According to DHCD, putty pads are permitted under the 2000 IBC as long as they meet the specified American Society for Testing and Materials standard and can be used as an alternative to existing requirements. The proposed change will now allow putty pads to be used with less documentation than required under the existing regulation. A 7.25" × 7.25" × 0.19" putty pad meeting the requirements of the regulation costs approximately \$6.

The net economic impact of the proposed change will depend on the magnitude of the costs and benefits accruing from it. Neither the costs nor the benefits associated with the proposed change appear to be very large. Thus, while it is not possible to precisely estimate the net economic impact of the proposed change, the net economic impact is not likely to be very large.

(6) The proposed regulation permits the use of platform lifts instead of ramps in certain areas to accommodate people with disabilities. The existing regulation allows platform (or wheelchair) lifts to be used instead of ramps or elevators only

⁴ According to DHCD, as a courtyard is defined as an open, uncovered space as the heat of a fire moves perpendicular to the opening in a building, lifting restrictions on the number of door openings in courtyard walls is not likely to have a significant effect on the spread of a fire to neighboring buildings. Moreover, a fire is more likely to spread within a building through interior walls rather than across a courtyard.

Proposed Regulations

under certain limited circumstances. The proposed change expands the instances when platform lifts may be used instead of a ramp or elevator to include providing access to raised areas in courtrooms. In addition, the proposed regulation allows the use of platform lifts for exterior accessible routes where site constraints make the use of ramps infeasible. Platform lifts can currently be used on exterior accessible routes where ramp use is infeasible, but only after its use has been approved as a modification under the existing USBC. Under the proposed regulation, platform lifts can be used as an alternative to ramps without having to obtain approval.

The proposed change increases the options available for providing access to people with disabilities. By providing an additional space saving alternative to ramps and elevators in courtrooms and by allowing platform lifts to be used when ramp use for exterior accessible routes is infeasible, the proposed regulation is likely to produce economic benefits. At the same time, it is not likely to impose any significant costs. Platform lifts meeting the requirements of the regulation are a safe alternative to ramps and elevators. The increased use of platform lifts could result in more instances when people with disabilities will be required to use a different access route than people without disabilities. However, the increase in such instances is likely to be limited as ramps are generally cheaper to install than platform lifts⁵. Thus, platform lifts are likely to be installed only when the installation of ramps is problematic. The proposed change was recommended by the Architectural and Transportation Compliance Board and based on the new Americans with Disabilities Act accessibility guidelines. Thus, the proposed change is likely to have a net positive economic impact, improving access for people with disabilities without imposing any significant economic costs.

(7) The proposed regulation prohibits the use of wired glass in Group E (educational) occupancies and requires the use of tempered glass in its place. Under the existing regulation, wired glass products are permitted for use as safety glazing in fire-rated doors in all types of occupancies. Under the proposed regulation, tempered glass will have to be used in place of wired glass in fire-rated doors of all new educational buildings, gymnasiums, and play areas. At the time that wired glass was first permitted for use in fire-rated doors, it was the only glazing product to offer a significant degree of fire protection. Most other types of glass could not endure the thermal shock test⁶ or the high temperatures in the fire test furnace. However, wired glass has low impact resistance and tends to shatter more easily than other types of glass. In addition, the wire mesh within the glass can cause additional injuries when the glass does break. Due to its fire resistant qualities, wired glass has been exempt from CPSC's mandatory high impact test standards for over two decades. However, today there are many alternatives to wired glass that provide an equivalent level of fire protection and better impact resistance.

Thus, the proposed change is likely to have costs and benefits associated with it. The costs could manifest themselves either in the form of reduced fire protection or in the form of higher costs to maintain the existing level of fire protection. A 100-square-inch sheet of wired glass to be used in a fire-rated door typically has a 90-minute fire rating. Tempered glass meeting the same fire rating could cost as much as 20 times more. According to DHCD, there are many new products available that would meet the proposed requirement, ranging in price from being comparable to wired glass to being 20 times more expensive. However, the proposed change only applies to new school construction. The fraction of glazing requiring safety or impact resistant glazing in new school construction is minimal. According to DHCD, a 100,000 square foot school construction project would require approximately 10 square feet of safety or impact resistant glazing. Thus, even if tempered glass were to cost 20 times as much wired glass, the increase in cost would still account for a very small fraction of total construction costs.⁷

The proposed change is also likely to produce some economic benefits. As tempered glass has better impact resistance than wired glass, the proposed change is likely to reduce the risk to public health and safety from breaking glass. There is some uncertainty regarding the number of injuries caused by wired glass. CPSC reports only nine wired glass related injuries between 1982 and 2002 that required emergency room treatment. However, other sources indicate that the figure is much higher. According to the Center for Injury Control at the Rollins School of Public Health, Emory University, 90% of the 2,500 glass door injuries seen each year in the CPSC system involve wired glass. Switching from wired glass to tempered glass is likely to reduce the occurrence of such injuries. DHCD is not aware of any serious injuries in Virginia from the breaking of wired glass.

The net economic impact of the proposed change will depend on whether the additional cost of replacing wired glass with tempered glass in fire-rated doors at educational facilities is greater than or less than its benefits. In order to make a precise determination of the net economic impact we would have to weigh the increased fire risk (or the increased cost of providing the same fire protection) against the reduced risk of injuries from breaking glass. There is not enough data on either the costs or the benefits to make such a determination at this time.

In addition to the costs and benefits associated with each change, the proposed regulation is likely to produce some additional overall benefits. According to DHCD, the 2003 ICC codes are easier to understand and implement than previous editions. Moreover, the proposed USBC includes a number of changes intended to clarify and improve the understanding of the regulation. Thus, by improving understanding and implementation of the requirements of the USBC, the proposed regulation is likely to produce some overall benefits.

⁵ According to DHCD, platform lifts can cost anywhere between \$4,000 and \$15,000.

⁶ The thermal shock test determines how hot glass will react when hit by water from a fire hose or sprinkler.

⁷ At a cost of \$10 per square foot for wired glass, even a 20-fold increase in the price of safety or impact resistant glazing would increase costs from a little under 0.001% of total construction costs to less than 0.02% of total construction costs.

DHCD states in its agency document that it anticipates receiving requests during the public comment period for substantive changes to this regulation. Depending on the nature of the comments received, the agency may choose to repropose the regulation with additional changes. DHCD has a number of technical advisory committees looking at various issues and developing proposals for change. Some of the committees have been established to look into implementing changes to the Code of Virginia. For example, the 2004 General Assembly amended the Code of Virginia to require that the Board of Housing and Community Development promulgate regulations establishing (i) standards of design and construction for commercial, industrial, and multi-family buildings such that they contain the appropriate equipment and can be used by emergency public safety personnel to send and receive emergency communications and (ii) standards for smoke detectors and other fire detection and suppression systems such that the safety of facilities marketed to senior citizens is improved. DHCD also has a number of committees reviewing issues relating to the rehabilitation code, the propane gas industry, the design and construction of elevators, the expanded use of platform lifts, and the training and certification of building and fire officials. The agency has already received a number of proposals for change from these committees. In addition, it has also received a number of proposals from various individuals and interest groups. In all, the agency states that it has received between 60 and 100 proposals for change. Following an evaluation of the various proposals for change, DHCD will decide whether to repropose the regulation or not. However, the agency notes that there have been no substantive proposals or comments against updating from the 2000 ICC codes to the 2003 ICC codes. It is possible that some of the changes to the regulation at the reproposed stage will affect the costs and benefits discussed in this analysis.

Businesses and entities affected. The proposed regulation affects property developers, contractors, construction companies, and homebuilders. Some of the proposed changes are likely to increase the cost of construction. These include requiring greater fire safety methods of garage construction in residential construction when a garage is located below a habitable room, requiring the installation of entrapment avoidance devices in the drains of all commercial and residential swimming pools, and substituting tempered glass for wired glass in fire-rated doors of Group E (educational) occupancies. Other changes increase the number of construction and design options available and are likely to provide economic benefits. Such changes include allowing the use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings, eliminating several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings, allowing the use of a putty pad protection system for electrical outlets on fire-rated walls, and permitting the use of platform lifts instead of ramps under certain circumstances to accommodate people with disabilities.

Thus, while some of the changes are likely to impose additional costs, others are likely to provide economic benefits for businesses and entities involved in the design and

construction of buildings. It is not possible at this time to determine the net impact of all the changes on these entities. Moreover, regardless of whether the changes result in an overall cost or an overall benefit to building design and construction businesses, it is possible that neither all the costs nor all the benefits will accrue solely to them. Some or all of the additional costs or benefits may be passed on to the eventual owners of the building. The extent to which the costs or benefits are shared between these entities and the eventual owners will depend on the nature of the property market and the elasticity of demand for commercial and residential property in Virginia.

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. Some of the proposed changes are likely to add to construction costs while others are likely to reduce costs by providing additional flexibility in construction and design. However, the net impact of all the changes on employment in the construction industry is not likely to be significant.

Effects on the use and value of private property. The proposed regulation is not likely to have significant effect on the use and value of private property. Some of the proposed changes are likely to increase the costs of construction for commercial and residential buildings. However, other changes are likely to reduce construction costs by increasing flexibility in construction and design of commercial and residential buildings. It is not possible at this time to determine the overall economic impact of all the changes.

However, regardless of whether the changes result in an overall net economic cost or an overall net economic benefit, not all of it will accrue to entities involved in the design and construction of commercial and residential buildings. Some or all of the additional costs or benefits may be passed on to the eventual owners of the building. The extent to which the costs or benefits are shared between construction and design companies and the eventual owners will depend on the nature of the property market and the elasticity of demand for commercial and residential property in Virginia.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis conducted by the Department of Planning and Budget for this proposed regulation.

Summary:

The proposed action repeals the existing Uniform Statewide Building Code (USBC) and promulgates a new regulation in its place. The new regulation updates building codes and standards developed by the International Code Council (ICC) and incorporated by reference into the USBC from the 2000 edition to the 2003 edition. The codes being updated include the International Building Code (IBC), the International Residential Code, and the International Property Maintenance Code. The International Plumbing Code, the International Mechanical Code, the ICC Electrical Code, the International Fuel Gas Code, and the

Proposed Regulations

International Energy Conservation Code, which are referenced by the IBC, have also been updated from the 2000 edition to the 2003 edition. In addition to updating references to existing ICC codes, the proposed regulation incorporates the International Existing Building Code, a new code developed by the ICC. Finally, the proposed regulation deletes some documents incorporated by reference into the existing USBC.

Updating from the 2000 edition to the 2003 edition of the ICC codes (i) requires greater fire safety methods of garage construction in residential buildings when a garage is located below a habitable room; (ii) allows the limited use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings; (iii) requires installation of entrapment avoidance devices in the drains of all commercial and residential swimming pools; (iv) eliminates several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings; (v) allows a putty pad protection system to be used for electrical outlets on fire-rated walls; (vi) permits the use of platform lifts instead of ramps in certain areas to accommodate people with disabilities; and (vii) prohibits the use of wired glass in Group E (educational) occupancies and requires the use of tempered glass in its place.

The proposed regulation also modifies existing language, rearranges sections, and reformats the existing USBC, mostly in order to incorporate the new International Existing Building Code. The International Existing Building Code provides more prescriptive provisions for the rehabilitation of buildings than provided for under the existing USBC. All other changes are intended to clarify various aspects of the USBC.

CHAPTER 63.

VIRGINIA UNIFORM STATEWIDE BUILDING CODE.

PART I. CONSTRUCTION.

13 VAC 5-63-10. Chapter 1 Administration; Section 101 General.

A. Section 101.1 Short title. The Virginia Uniform Statewide Building Code, Part I, Construction, may be cited as the Virginia Construction Code or as the USBC.

B. Section 101.2 Incorporation by reference. Chapters 2 – 35 of the 2003 International Building Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the USBC. The term "IBC" means the 2003 International Building Code, published by the International Code Council, Inc. Any codes and standards referenced in the IBC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference. In addition, any provisions of the appendices of the IBC specifically identified to be part of the USBC are also considered to be part of the incorporation by reference.

Note 1: The IBC references the whole family of International Codes including the following major codes:

2003 International Plumbing Code

2003 International Mechanical Code

2003 ICC Electrical Code (which in turn references the 2002 National Electrical Code)

2003 International Fuel Gas Code

2003 International Energy Conservation Code

2003 International Residential Code

Note 2: The International Residential Code is applicable to the construction of detached one- and two-family dwellings and townhouses as set out in Section 310.

C. Section 101.3 Numbering system. A dual numbering system is used in the USBC to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IBC. IBC numbering system designations are provided in the catchlines of the Virginia Administrative Code sections. Cross references between sections or chapters of the USBC use only the IBC numbering system designations. The term "chapter" is used in the context of the numbering system of the IBC and may mean a chapter in the USBC, a chapter in the IBC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

D. Section 101.4 Arrangement of code provisions. The USBC is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 – 35 of the IBC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IBC that are specifically identified. The terminology "changes to the text of the incorporated chapters of the IBC that are specifically identified" shall also be referred to as the "state amendments to the IBC." Such state amendments to the IBC are set out using corresponding chapter and section numbers of the IBC numbering system. In addition, since Chapter 1 of the IBC is not incorporated as part of the USBC, any reference to a provision of Chapter 1 of the IBC in the provisions of Chapters 2 - 35 of the IBC is generally invalid. However, where the purpose of such a reference would clearly correspond to a provision of Chapter 1 established herein, then the reference may be construed to be a valid reference to such corresponding Chapter 1 provision.

E. Section 101.5 Use of terminology and notes. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 – 35 of the IBC or in the state amendments to the IBC means the USBC, unless the context clearly indicates otherwise. The term "this code" or "the code" where used in a code or standard referenced in the IBC means that code or standard, unless the context clearly indicates otherwise. The use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision. Notes in the IBC, in the codes and standards referenced in the IBC and in the state amendments to the IBC may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

F. Section 101.6 Order of precedence. The provisions of Chapter 1 of this code supersede any conflicting provisions of Chapters 2 – 35 of the IBC and any conflicting provisions of the codes and standards referenced in the IBC. In addition, the state amendments to the IBC supersede any conflicting provisions of Chapters 2 – 35 of the IBC and any conflicting provisions of the codes and standards referenced in the IBC. Further, the provisions of Chapters 2 – 35 of the IBC supersede any conflicting provisions of the codes and standards referenced in the IBC.

G. Section 101.7 Administrative provisions. The provisions of Chapter 1 establish administrative requirements, which include but are not limited to provisions relating to the scope of the code, enforcement, fees, permits, inspections and disputes. Any provisions of Chapters 2 – 35 of the IBC or any provisions of the codes and standards referenced in the IBC that address the same subject matter to a lesser or greater extent are deleted and replaced by the provisions of Chapter 1. Further, any administrative requirements contained in the state amendments to the IBC shall be given the same precedence as the provisions of Chapter 1. Notwithstanding the above, where administrative requirements of Chapters 2 – 35 of the IBC or of the codes and standards referenced in the IBC are specifically identified as valid administrative requirements in Chapter 1 of this code or in the state amendments to the IBC, then such requirements are not deleted and replaced.

Note: The purpose of this provision is to eliminate overlap, conflicts and duplication by providing a single standard for administrative, procedural and enforcement requirements of this code.

H. Section 101.8 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

Note: The order of precedence outlined in Section 101.6 may be determinative in establishing how to apply the definitions in the IBC and in the referenced codes and standards.

13 VAC 5-63-20. Section 102 Purpose and scope.

A. Section 102.1 Purpose. In accordance with § 36-99 of the Code of Virginia, the purpose of the USBC is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged.

B. Section 102.2 Scope. This section establishes the scope of the USBC in accordance with § 36-98 of the Code of Virginia. The USBC shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies. This code also shall supersede the provisions of local ordinances applicable to single-family residential construction that (i) regulate dwelling foundations

or crawl spaces, (ii) require the use of specific building materials or finishes in construction, or (iii) require minimum surface area or numbers of windows; however, this code shall not supersede proffered conditions accepted as a part of a rezoning application, conditions imposed upon the grant of special exceptions, special or conditional use permits or variances, conditions imposed upon a clustering of single-family homes and preservation of open space development through standards, conditions, and criteria established by a locality pursuant to subdivision 8 of § 15.2-2242 of the Code of Virginia or subdivision A 12 of § 15.2-2286 of the Code of Virginia, or land use requirements in airport or highway overlay districts, or historic districts created pursuant to § 15.2-2306 of the Code of Virginia, or local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

Note: Requirements relating to functional design are contained in Section 103.11 of this code.

C. Section 102.2.1 Invalidity of provisions. To the extent that any provisions of this code are in conflict with Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia or in conflict with the scope of the USBC, those provisions are considered to be invalid to the extent of such conflict.

D. Section 102.3 Exemptions. The following are exempt from this code:

1. Equipment and related wiring installed by a provider of publicly regulated utility service or a franchised cable television operator and electrical equipment and related wiring used for radio, broadcast or cable television, telecommunications or information service transmission. Such exempt equipment and wiring shall be under the ownership and control of the service provider or its affiliates and shall be located on either public rights of way or private property for which the service provider has rights of occupancy and entry; however, the structures, including their service equipment, housing or supporting such exempt equipment and wiring shall be subject to the USBC. The installation of equipment and wiring exempted by this section shall not create an unsafe condition prohibited by the USBC.

2. Manufacturing and processing machines, including all of the following service equipment associated with the manufacturing or processing machines.

2.1. Electrical equipment connected after the last disconnecting means.

2.2. Plumbing piping and equipment connected after the last shutoff valve or backflow device and before the equipment drain trap.

2.3. Gas piping and equipment connected after the outlet shutoff valve.

3. Parking lots and sidewalks, which are not part of an accessible route.

4. Recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment when such equipment is not regulated by the VADR.

Proposed Regulations

5. *Industrialized buildings; except, the applicable requirements of this code affecting site preparation, footings, foundations, proper anchoring and utility connections of the unit remain in full force and effect, including requirements for issuing permits and certificates of occupancy.*

6. *Manufactured homes, except the applicable requirements of this code affecting site preparation, skirting installation, footings, foundations, proper anchoring and utility connections of the manufactured home remain in full force and effect, including requirements for issuing permits and certificates of occupancy.*

7. *Farm buildings and structures, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § 35.1-1 of the Code of Virginia and licensed as such by the Virginia Board of Health pursuant to Chapter 2 (§ 35.1-11 et seq.) of Title 35.1 of the Code of Virginia. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.*

13 VAC 5-63-30. Section 103 Application of code.

A. *Section 103.1 General. In accordance with § 36-99 of the Code of Virginia, the USBC shall prescribe building regulations to be complied with in the construction and rehabilitation of buildings and structures, and the equipment therein.*

B. *Section 103.2 When applicable to new construction. Construction for which a permit application is submitted to the local building department after (insert effective date) shall comply with the provisions of this code, except when construction documents for proposed construction were substantially complete prior to the above date and a permit application is submitted to the building official within one year after the above date. In such cases, construction shall comply with either the provisions of this code or the provisions of this code in effect immediately prior to (insert effective date). This provision shall also apply to subsequent amendments to this code based on the effective date of such amendments. In addition, when a permit has been properly issued under a previous edition of this code, this code shall not require changes to the approved construction documents, design or construction of such a building or structure, provided the permit has not been suspended or revoked.*

C. *Section 103.3 Change of occupancy. No change shall be made in the existing occupancy classification of any structure when the current USBC requires a greater degree of structural strength, fire protection, means of egress, ventilation or sanitation. When such a greater degree is required, the owner or the owner's agent shall make written application to the local building department for a new certificate of occupancy and shall obtain the new certificate of occupancy prior to the use of the structure under the new occupancy classification. When impractical to achieve compliance with this code for the new occupancy classification, the building official shall issue modifications upon application and as provided for in Section 106.3.*

Exception: This section shall not be construed to permit noncompliance with any applicable flood load or flood-resistant construction requirements of this code.

D. *Section 103.4 Additions. Additions to buildings and structures shall comply with the requirements of this code for new construction and an existing building or structure plus additions shall comply with the height and area provisions of Chapter 5. Further, this code shall not require changes to the design or construction of any portions of the building or structure not altered or affected by an addition, unless the addition has the effect of lowering the current level of safety.*

Exception: This section shall not be construed to permit noncompliance with any applicable flood load or flood-resistant construction requirements of this code.

E. *Section 103.5 Reconstruction, alteration or repair. The following criteria is applicable to reconstruction, alteration or repair of buildings or structures provided the reconstruction, alteration or repair does not adversely affect the performance of the building or structure, cause the building or structure to become unsafe or lower existing levels of health and safety.*

1. *Parts of the building or structure not being reconstructed, altered or repaired shall not be required to comply with the requirements of this code applicable to newly constructed buildings or structures.*

2. *The installation of material or equipment, or both, that is neither required nor prohibited shall only be required to comply with the provisions of this code relating to the safe installation of such material or equipment.*

3. *Material or equipment, or both, may be replaced in the same location with material or equipment of a similar kind or capacity or of greater capacity.*

Exception: This section shall not be construed to permit noncompliance with any applicable flood load or flood-resistant construction requirements of this code.

F. *Section 103.6. Use of rehabilitation code. Notwithstanding any requirements of this code to the contrary, compliance with Part II of the Virginia Uniform Statewide Building Code, also known as the "Virginia Rehabilitation Code," shall be an acceptable alternative to compliance with this code for the rehabilitation of existing buildings and structures.*

G. *Section 103.7. Retrofit requirements. The local building department shall enforce the provisions of Section 3411, which require certain existing buildings to be retrofitted with fire protection systems and other safety equipment. Retroactive fire protection system requirements contained in the International Fire Code, including but not limited to such requirements in Sections 903, 905 and 907, shall not be applicable unless required for compliance with the provisions of Section 3411.*

H. *Section 103.8 Nonrequired equipment. The following criteria for nonrequired equipment is in accordance with § 36-103 of the Code of Virginia. Building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the edition of the USBC in effect at the time a building was constructed without meeting current requirements of the code, provided the installation does not*

create a hazardous condition. Permits for installation shall be obtained in accordance with this code. In addition, as a requirement of this code, when such nonrequired equipment is to be installed, the building official shall notify the appropriate fire official or fire chief.

I. Section 103.9 Equipment changes. Upon a change in the fuel source involving the installation of new equipment or appliances including, but not limited to, furnaces, water heaters or boilers, where not inspected by the local building department, persons performing such changes or installations shall certify to the building official that the flue liner of the chimney is operable, free of obstructions or blockages and properly sized for the connected appliances and that the changes or installations meet applicable requirements of this code.

J. Section 103.10 Use of certain provisions of referenced codes. The following provisions of the IBC and of other indicated codes or standards are to be considered valid provisions of this code. Where any such provisions have been modified by the state amendments to the IBC, then the modified provisions apply.

1. Special inspection requirements in Chapters 2 – 35.
2. Chapter 34, Existing Structures, except that Section 3410, Compliance Alternatives, shall not be used to comply with the retrofit requirements identified in Section 103.7 and shall not be construed to permit noncompliance with any applicable flood load or flood-resistant construction requirements of this code.
3. Testing requirements and requirements for the submittal of construction documents in any of the ICC codes referenced in Chapter 35.
4. Section R301.2 of the International Residential Code authorizing localities to determine climatic and geographic design criteria.

K. Section 103.11 Functional design. The following criteria for functional design is in accordance with § 36-98 of the Code of Virginia. The USBC shall not supersede the regulations of other state agencies that require and govern the functional design and operation of building related activities not covered by the USBC, including but not limited to (i) public water supply systems, (ii) waste water treatment and disposal systems, (iii) solid waste facilities, nor shall state agencies be prohibited from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance with provisions of this code. In addition, as established by this code, the building official may refuse to issue a permit until the applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. For purposes of coordination, the locality may require reports to the building official by other departments as a condition for issuance of a building permit or certificate of occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the locality. All enforcement of these conditions shall not be the responsibility of the building official, but rather the agency imposing the condition.

Note: Identified state agencies with functional design approval are listed in the "Related Laws Package," which is available from DHCD.

L. Section 103.12 Amusement devices and inspections. In accordance with § 36-98.3 of the Code of Virginia, to the extent they are not superseded by the provisions of § 36-98.3 of the Code of Virginia and the VADR, the provisions of the USBC shall apply to amusement devices. In addition, as a requirement of this code, inspections for compliance with the VADR shall be conducted either by local building department personnel or private inspectors provided such persons are certified as amusement device inspectors under the VCS.

M. Section 103.13 State buildings and structures. This section establishes the application of the USBC to state-owned buildings and structures in accordance with § 36-98.1 of the Code of Virginia. The USBC shall be applicable to all state-owned buildings and structures, with the exception that §§ 2.2-1159, 2.2-1160 and 2.2-1161 of the Code of Virginia shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

Any state-owned building or structure for which preliminary plans were prepared or on which construction commenced after the initial effective date of the USBC, shall remain subject to the provisions of the USBC that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of this code.

Acting through the Division of Engineering and Buildings, the Virginia Department of General Services shall function as the building official for state-owned buildings. The department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It shall provide for the inspection of state-owned buildings and enforcement of the USBC and standards for access by the physically handicapped by delegating inspection and USBC enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the department. The department may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the department shall provide the local building department with a written summary of its reasons for doing so.

13 VAC 5-63-40. Section 104 Enforcement, generally.

A. Section 104.1 Scope of enforcement. This section establishes the requirements for enforcement of the USBC in accordance with § 36-105 of the Code of Virginia. Enforcement of the provisions of the USBC for construction and rehabilitation shall be the responsibility of the local building department. Whenever a county or municipality does

Proposed Regulations

not have such a building department, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such enforcement. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the USBC; however, where the town does not elect to administer and enforce the code, the county in which the town is situated shall administer and enforce the code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the USBC for that portion of the town that is situated within their respective boundaries.

The local governing body shall inspect and enforce this code for elevators except for elevators in single and two-family homes and townhouses. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

Upon a finding by the local building department, following a complaint by a tenant of a residential rental unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the code, the local building department shall enforce such provisions. If the local building department receives a complaint that a violation of the USBC exists that is an immediate and imminent threat to the health or safety of the owner or tenant of a residential dwelling unit or a nearby residential dwelling unit, and the owner or tenant of the residential dwelling unit that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject dwelling, the local building official or his agent may present sworn testimony to a court of competent jurisdiction and request that the court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject dwelling for the purpose of determining whether violations of the USBC exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

Note: The maintenance requirements for elevators and the provisions regulating existing unsafe buildings and structures are contained in Part III of the Virginia Uniform Statewide Building Code, also known as the "Virginia Maintenance Code."

B. Section 104.1.1 Rental inspections. In accordance with § 36-105.1:1 of the Code of Virginia, this section is applicable to rental inspection programs. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit which has its own

cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with the USBC and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided for in subdivision 3 of this subsection, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section; and

2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize a locality-wide rental inspection district and a local governing body shall limit the boundaries of the proposed rental inspection district to such areas of the locality that meet the criteria set out in this subsection; or

3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of the USBC that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental

dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

The rental inspection ordinance may include a provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to \$50. For purposes of this subsection, notice sent by regular first class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for above, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of the USBC that affect the safe, decent and sanitary living conditions for the tenants of such property.

If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10% of the dwelling units, of a multifamily development, that includes all of the multifamily buildings that are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of the USBC that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce the USBC, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in the fee schedule established pursuant to this section.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under the USBC to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of the USBC that affect the safe, decent and sanitary living conditions for the tenants.

Except as provided for above, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with the USBC, provided that there are no violations of the USBC that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided above, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of the USBC during the exemption period, the building department may revoke the exemption previously granted under this section.

A local governing body may establish a fee schedule for enforcement of the USBC, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

The provisions of this section shall not in any way alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia.

The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 of the Code of Virginia to enforce the Building Code.

Unless otherwise provided in this section, penalties for violation of this section shall be the same as the penalties provided in the USBC.

C. Section 104.2 Interagency coordination. When any inspection functions under this code are assigned to a local agency other than the local building department, such agency shall coordinate its reports of inspection with the local building department.

Proposed Regulations

13 VAC 5-63-50. Section 105 Local building department.

A. Section 105.1 Appointment of building official. Every local building department shall have a building official as the executive official in charge of the department. The building official shall be appointed in a manner selected by the local governing body. After permanent appointment, the building official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. DHCD shall be notified by the appointing authority within 30 days of the appointment or release of a permanent or acting building official.

Note: Building officials are subject to sanctions in accordance with the VCS.

B. Section 105.1.1 Qualifications of building official. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor, housing inspector or superintendent of building construction, with at least three years in responsible charge of work. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of structures, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

C. Section 105.1.2 Certification of building official. An acting or permanent building official shall be certified as a building official in accordance with the VCS within one year after being appointed as acting or permanent building official.

Exception: A building official in place prior to April 1, 1983, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

D. Section 105.1.3 Noncertified building official. Except for a building official exempt from certification under the exception to Section 105.3, any acting or permanent building official who is not certified as a building official in accordance with the VCS shall complete an orientation course provided by DHCD within 60 days of appointment and shall attend the core module of the Virginia Building Code Academy or an equivalent course in an individual or regional code academy accredited by DHCD within 180 days of appointment. This requirement is in addition to meeting the certification requirement in Section 105.1.2.

E. Section 105.1.4 Continuing education requirements. Building officials shall attend periodic training courses designated by DHCD.

F. Section 105.2 Technical assistants. The building official, subject to any limitations imposed by the locality, shall employ, appoint or contract with technical assistants to assist the building official in the enforcement of the USBC. DHCD shall be notified by the building official within 60 days of the

employment of, contracting with or termination of all technical assistants.

Note: Technical assistants are subject to sanctions in accordance with the VCS.

G. Section 105.2.1 Qualifications of technical assistants. A technical assistant shall have at least three years of experience in general building construction; building, fire or housing inspections; and general knowledge of plumbing, electrical or mechanical systems. Any combination of education and experience that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The locality may establish additional qualification requirements.

H. Section 105.2.2 Certification of technical assistants. A technical assistant shall be certified in the appropriate subject area within three years after being retained. When required by local policy to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exception: A technical assistant in place prior to March 1, 1988, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

I. Section 105.2.3 Continuing education requirements. Technical assistants shall attend periodic training courses designated by DHCD.

J. Section 105.3 Conflict of interest. The minimum standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

K. Section 105.4 Records. The local building department shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspection in accordance with The Library of Virginia's General Schedule Number Six.

13 VAC 5-63-60. Section 106 Powers and duties of the building official.

A. Section 106.1 Powers and duties, generally. The building official shall enforce this code as set out herein and as interpreted by the State Review Board.

B. Section 106.2 Delegation of authority. The building official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the building official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

C. Section 106.3 Issuance of modifications. Upon written application by an owner or an owner's agent, the building official may approve a modification of any provision of the USBC provided the spirit and functional intent of the code are observed and public health, welfare and safety are assured. The decision of the building official concerning a modification shall be made in writing and the application for a modification and the decision of the building official concerning such

modification shall be retained in the permanent records of the local building department.

Note: The USBC references nationally recognized model codes and standards. Future amendments to such codes and standards are not automatically included in the USBC; however the building official should give them due consideration in deciding whether to approve a modification.

D. Section 106.3.1 Substantiation of modification. The building official may require or may consider a statement from an RDP or other person competent in the subject area of the application as to the equivalency of the proposed modification. In addition, the building official may require the application to include construction documents sealed by an RDP.

13 VAC 5-63-70. Section 107 Fees.

A. Section 107.1 Authority for charging fees. In accordance with § 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement of the USBC.

B. Section 107.1.1 Fee schedule. The local governing body shall establish a fee schedule incorporating unit rates, which may be based on square footage, cubic footage, estimated cost of construction or other appropriate criteria. A permit or any amendments to an existing permit shall not be issued until the designated fees have been paid, except that the building official may authorize the delayed payment of fees.

C. Section 107.1.2 Refunds. When requested in writing by a permit holder, the locality shall provide a fee refund in the case of the revocation of a permit or the abandonment or discontinuance of a building project. The refund shall not be required to exceed an amount which correlates to work not completed.

D. Section 107.2 Code academy fee levy. In accordance with subdivision 7 of § 36-137 of the Code of Virginia, the local building department shall collect a 1.75% levy of fees charged for building permits issued under this code and transmit it quarterly to DHCD to support training programs of the Virginia Building Code Academy. Localities that maintain individual or regional training academies accredited by DHCD shall retain such levy.

13 VAC 5-63-80. Section 108 Application for permit.

A. Section 108.1 When applications are required. Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of any of the following activities, except that applications for emergency construction, alterations or equipment replacement shall be submitted by the end of the first working day that follows the day such work commences. In addition, the building official may authorize work to commence pending the receipt of an application or the issuance of a permit.

1. Construction or demolition of a building or structure, including the installation or altering of any equipment regulated by the USBC. For change of occupancy, application for a permit shall be made when a new certificate of occupancy is required under Section 103.3.

2. Movement of a lot line that increases the hazard to or decreases the level of safety of an existing building or structure in comparison to the building code under which such building or structure was constructed.

3. Removal or disturbing of any asbestos containing materials during the construction or demolition of a building or structure, including additions.

B. Section 108.2 Exemptions from application for permit. Notwithstanding the requirements of Section 108.1, application for a permit and any related inspections shall not be required for the following; however, this section shall not be construed to exempt such activities from other applicable requirements of this code. In addition, when an owner or an owner's agent requests that a permit be issued for any of the following, then a permit shall be issued and any related inspections shall be required.

1. Installation of wiring and equipment that (i) operates at less than 50 volts, (ii) is for network powered broadband communications systems, or (iii) is exempt under Section 102.3(1), except when any such installations are located in a plenum, penetrate fire rated or smoke protected construction or are a component of any of the following:

- 1.1. Fire alarm system.
- 1.2. Fire detection system.
- 1.3. Fire suppression system.
- 1.4. Smoke control system.
- 1.5. Fire protection supervisory system.
- 1.6. Elevator fire safety control system.
- 1.7. Access or egress control system or delayed egress locking or latching system.
- 1.8. Fire damper.
- 1.9. Door control system.

2. Detached accessory structures used as tool and storage sheds, playhouses or similar uses, provided the floor area does not exceed 150 square feet (14 m²) and the structures are not accessory to a Group F or H occupancy.

3. Detached prefabricated buildings housing the equipment of a publicly regulated utility service, provided the floor area does not exceed 150 square feet (14 m²).

4. Tents or air-supported structures, or both, that cover an area of 900 square feet (84 m²) or less, including within that area all connecting areas or spaces with a common means of egress or entrance, provided such tents or structures are used or intended to be used for the gathering together of 50 or less persons.

5. Fences not part of the barrier for a swimming pool.

6. Retaining walls that are not over four feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.

Proposed Regulations

7. Swimming pools that have a surface area not greater than 150 square feet (13.95 m²), do not exceed 5,000 gallons (19 000 L) and are less than 24 inches (610 mm) deep.

8. Ordinary repairs not including (i) the cutting away of any wall, partition or portion thereof; (ii) the removal or cutting of any structural beam or loadbearing support; (iii) the removal or change of any required means of egress; (iv) the rearrangement of parts of a structure affecting the egress requirements; (v) the addition to, alteration of, replacement of or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas or oil, soil, waste, vent or similar piping, electric wiring or mechanical work; or (vi) any other work affecting public health or general safety. However, ordinary repairs shall include, but are not limited to, the following:

8.1. Either within the dwelling unit in Group R-2 occupancies that are four stories or less in height or in Group R-3, R-4 and R-5 occupancies, or both, replacement of (i) either mechanical or plumbing equipment or appliances, or both, provided such equipment or appliances are not fueled by gas or oil; (ii) floor coverings or porch flooring, or both; and (iii) windows, doors, electrical switches, electrical outlets, light fixtures or ceiling fans.

8.2. In Group R-3, R-4 or R-5 occupancies, replacement of either roof coverings or siding or the installation of siding, or both, provided the buildings or structures are not subject to wind speeds greater than 100 miles per hour (160 km/hr).

8.3. Installation of cabinets, painting, replacement of interior floor finish or interior covering materials, or both, and repair of (i) plaster, (ii) interior tile, and (iii) any other interior wall covering.

9. Signs under the conditions in Section H101.2 of Appendix H.

C. Section 108.3 Applicant information, processing by mail. Application for a permit shall be made by the owner or lessee of the relevant property or the agent of either or by the RDP, contractor or subcontractor associated with the work or any of their agents. The full name and address of the owner, lessee and applicant shall be provided in the application. If the owner or lessee is a corporate body, the full name and address of the responsible officers shall also be provided. A permit application may be submitted by mail and such permit applications shall be processed by mail, unless the permit applicant voluntarily chooses otherwise. In no case shall an applicant be required to appear in person.

D. Section 108.4 Prerequisites to obtaining permit. In accordance with § 54.1-1111 of the Code of Virginia, any person applying to the building department for the construction, removal or improvement of any structure shall furnish prior to the issuance of the permit either (i) satisfactory proof to the building official that he is duly licensed or certified under the terms or Chapter 11 (§ 54.1-1000 et seq.) of Title 54.1 of the Code of Virginia to carry out or superintend the same or (ii) file a written statement, supported by an affidavit,

that he is not subject to licensure or certification as a contractor or subcontractor pursuant to Chapter 11 of Title 54.1 of the Code of Virginia. The applicant shall also furnish satisfactory proof that the taxes or license fees required by any county, city, or town have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.

E. Section 108.5 Mechanics' lien agent designation. In accordance with § 36-98.01 of the Code of Virginia, a building permit issued for any one- or two-family residential dwelling shall at the time of issuance contain, at the request of the applicant, the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1 of the Code of Virginia. If the designation of a mechanics' lien agent is not so requested by the applicant, the building permit shall at the time of issuance state that none has been designated with the words "None Designated."

F. Section 108.6 Application form, description of work. The application for a permit shall be submitted on a form or forms supplied by the local building department. The application shall contain a general description and location of the proposed work and such other information as determined necessary by the building official.

G. Section 108.7 Amendments to application. An application for a permit may be amended at any time prior to the completion of the work governed by the permit. Additional construction documents or other records may also be submitted in a like manner. All such submittals shall have the same effect as if filed with the original application for a permit and shall be retained in a like manner as the original filings.

H. Section 108.8 Time limitation of application. An application for a permit for any proposed work shall be deemed to have been abandoned six months after the date of filing unless such application has been pursued in good faith or a permit has been issued, except that the building official is authorized to grant one or more extensions of time if a justifiable cause is demonstrated.

13 VAC 5-63-90. Section 109 Construction documents.

A. Section 109.1 Submittal of documents. Construction documents shall be submitted with the application for a permit. The number of sets of such documents to be submitted shall be determined by the locality. Construction documents for one- and two-family dwellings may have floor plans reversed provided an accompanying site plan is approved.

Exception: Construction documents do not need to be submitted when the building official determines the proposed work is of a minor nature.

Note: Information on the types of construction required to be designed by an RDP is included in the "Related Laws Package" available from DHCD.

B. Section 109.2 Site plan. When determined necessary by the building official, a site plan shall be submitted with the application for a permit. The site plan shall show to scale the size and location of all proposed construction, including any associated wells, septic tanks or drain fields. The site plan shall also show to scale the size and location of all existing

structures on the site, the distances from lot lines to all proposed construction, the established street grades and the proposed finished grades. When determined necessary by the building official, the site plan shall contain the elevation of the lowest floor of any proposed buildings. The site plan shall also be drawn in accordance with an accurate boundary line survey. When the application for a permit is for demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures that are to remain on the site.

Note: Site plans are generally not necessary for alterations, renovations, repairs or the installation of equipment.

C. Section 109.3 Engineering details. When determined necessary by the building official, construction documents shall include adequate detail of the structural, mechanical, plumbing or electrical components. Adequate detail may include computations, stress diagrams or other essential technical data and when proposed buildings are more than two stories in height, adequate detail may specifically be required to include where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems and how such floor penetrations will be protected to maintain the required structural integrity or fire-resistance rating, or both. All engineered documents, including relevant computations, shall be sealed by the RDP responsible for the design.

D. Section 109.4 Examination of documents. The building official shall examine or cause to be examined all construction documents or site plans, or both, within a reasonable time after filing. If such documents or plans do not comply with the provisions of this code, the permit applicant shall be notified in writing of the reasons, which shall include any adverse construction document review comments or determinations that additional information or engineering details need to be submitted. The review of construction documents for new one- and two-family dwellings for determining compliance with the technical provisions of this code not relating to the site, location or soil conditions associated with the dwellings shall not be required when identical construction documents for identical dwellings have been previously approved in the same locality under the same edition of the code and such construction documents are on file with the local building department.

E. Section 109.4.1 Expedited construction document review. The building official may accept reports from an approved person or agency that the construction documents have been examined and conform to the requirements of the USBC and may establish requirements for the person or agency submitting such reports. In addition, where such reports have been submitted, the building official may expedite the issuance of the permit.

F. Section 109.5 Approval of construction documents. The approval of construction documents shall be limited to only those items within the scope of the USBC. Either the word "Approved" shall be stamped on all required sets of approved construction documents or an equivalent endorsement in writing shall be provided. One set of the approved construction documents shall be retained for the records of

the local building department and one set shall be kept at the building site and shall be available to the building official at all reasonable times.

G. Section 109.6 Phased approval. The building official is authorized to issue a permit for the construction of foundations or any other part of a building or structure before the construction documents for the whole building or structure have been submitted, provided that adequate information and detailed statements have been filed complying with pertinent requirements of this code. The holder of such permit for the foundation or other parts of a building or structure shall proceed at the holder's own risk with the building operation and without assurance that a permit for the entire structure will be granted.

13 VAC 5-63-100. Section 110 Permits.

A. Section 110.1 Approval and issuance of permits. The building official shall examine or cause to be examined all applications for permits or amendments to such applications within a reasonable time after filing. If the applications or amendments do not comply with the provisions of this code or all pertinent laws and ordinances, the permit shall not be issued and the permit applicant shall be notified in writing of the reasons for not issuing the permit. If the application complies with the applicable requirements of this code, a permit shall be issued as soon as practicable. The issuance of permits shall not be delayed in an effort to control the pace of construction of new detached one- or two-family dwellings.

B. Section 110.2 Types of permits. Separate or combined permits may be required for different areas of construction such as building construction, plumbing, electrical, and mechanical work, or for special construction as determined appropriate by the locality. In addition, permits for two or more buildings or structures on the same lot may be combined. Annual permits may also be issued for alterations to an existing structure. The annual permit holder shall maintain a detailed record of all alterations made under the annual permit. Such record shall be available to the building official and shall be submitted to the local building department if requested by the building official.

C. Section 110.3 Asbestos inspection in buildings to be renovated or demolished; exceptions. In accordance with § 36-99.7 of the Code of Virginia, the local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1985, to be renovated or demolished until the local building department receives certification from the owner or his agent that the affected portions of the building have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 of the Code of Virginia and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR Part 61, Subpart M), and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.1101). Local educational agencies that are subject to the requirements established by

Proposed Regulations

the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR Part 763 and subsequent amendments thereto.

To meet the inspection requirements above, except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by a statement that the materials to be repaired or replaced are assumed to contain friable asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor.

The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than 35 cubic feet off facility components where the length or area could not be measured previously.

An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

D. Section 110.4 Fire apparatus access road requirements. The permit applicant shall be informed of any requirements for providing or maintaining fire apparatus access roads prior to the issuance of a building permit.

E. Section 110.5 Signature on and posting of permits; limitation of approval. The signature of the building official or authorized representative shall be on or affixed to every permit. A copy of the permit shall be posted on the construction site for public inspection until the work is completed. Such posting shall include the street or lot number, if one has been assigned, to be readable from a public way. In addition, each building or structure to which a street number has been assigned shall, upon completion, have the number displayed so as to be readable from the public way.

A permit shall be considered authority to proceed with construction in accordance with this code, the approved construction documents, the permit application and any approved amendments or modifications. The permit shall not be construed to otherwise authorize the omission or amendment of any provision of this code.

F. Section 110.6 Suspension of a permit. Any permit shall become invalid if work on the site authorized by the permit is not commenced within six months after issuance of the permit, or if the authorized work on the site is suspended or abandoned for a period of six months after the time of commencing the work; however, permits issued for building

equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. It shall be the responsibility of the permit applicant to prove to the building official that work has not been suspended or abandoned. Upon written request, the building official may grant one or more extensions of time, not to exceed one year per extension.

G. Section 110.7 Revocation of a permit. The building official may revoke a permit or approval issued under this code in the case of any false statement, misrepresentation of fact or incorrect information supplied by the applicant in the application or construction documents on which the permit or approval was based.

13 VAC 5-63-110. Section 111 RDP services.

A. Section 111.1 When required. In accordance with § 54.1-410 of the Code of Virginia and under the general authority of this code, the local building department shall establish a procedure to ensure that construction documents under Section 109 are prepared by an RDP in any case in which the exemptions contained in §§ 54.1-401, 54.1-402 or § 54.1-402.1 of the Code of Virginia are not applicable or in any case where the building official determines it necessary. When required under § 54.1-402 of the Code of Virginia or when required by the building official, or both, construction documents shall bear the name and address of the author and his occupation.

Note: Information on the types of construction required to be designed by an RDP is included in the "Related Laws Package" available from DHCD.

B. Section 111.2 Special inspection requirements. Inspectors conducting special inspections for concrete, soil, reinforcing steel, structural steel, masonry and bituminous materials shall be RDPs or shall comply with ASTM E329-03. When ASTM E329-03 is used, submittal shall include written documentation of the applicable agency's laboratory accreditation, or personnel certification, or both. The permit applicant shall be informed of any requirements for providing such special inspections prior to the issuance of a building permit and all fees and costs related to the inspections shall be the responsibility of the building owner.

13 VAC 5-63-120. Section 112 Workmanship, materials and equipment.

A. Section 112.1 General. It shall be the duty of any person performing work covered by this code to comply with all applicable provisions of this code and to perform and complete such work so as to secure the results intended by the USBC.

B. Section 112.2 Alternative methods or materials. In accordance with § 36-99 of the Code of Virginia, where practical, the provisions of this code are stated in terms of required level of performance so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, this section and other applicable requirements of this code provide for acceptance of materials and methods whose performance is substantially equal in safety to those specified on the basis of reliable test and evaluation data

presented by the proponent. In addition, as a requirement of this code, the building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device, assembly or method of construction.

C. Section 112.3 Documentation and approval. In determining whether any material, equipment, device, assembly or method of construction complies with this code, the building official shall approve items listed by nationally recognized independent laboratories and may consider the recommendations of RDPs. Approval shall be issued when the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code and that the material, equipment, device, assembly or method of construction offered is, for the purpose intended, at least the equivalent of that prescribed by the code in quality, strength, effectiveness, fire resistance, durability and safety. Such approval is subject to all applicable requirements of this code and the material, equipment, device, assembly or method of construction shall be installed or constructed, or both, in accordance with the conditions of the approval. In addition, the building official may revoke such approval whenever it is discovered that such approval was issued in error or on the basis of incorrect information, or where there are repeated violations of the USBC.

D. Section 112.4 Used material and equipment. Used materials, equipment and devices may be approved provided they have been reconditioned, tested or examined and found to be in good and proper working condition and acceptable for use by the building official.

13 VAC 5-63-130. Section 113 Inspections.

A. Section 113.1 General. In accordance with § 36-105 of the Code of Virginia, any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. The building official shall coordinate all reports of inspections for compliance with the USBC, with inspections of fire and health officials delegated such authority, prior to the issuance of an occupancy permit.

B. Section 113.2 Prerequisites. The building official may conduct a site inspection prior to issuing a permit. When conducting inspections pursuant to this code, all personnel shall carry proper credentials.

C. Section 113.3 Minimum inspections. The permit holder shall assure that the following minimum inspections have been conducted and approved by the building official when applicable to the construction or permit:

1. Inspection of footing excavations and reinforcement material for concrete footings prior to the placement of concrete.
2. Inspection of foundation systems during phases of construction necessary to assure compliance with this code.
3. Inspection of preparatory work prior to the placement of concrete.

4. Inspection of structural members and fasteners prior to concealment.

5. Inspection of electrical, mechanical and plumbing materials, equipment and systems prior to concealment.

6. Inspection of energy conservation material prior to concealment.

7. Final inspection.

D. Section 113.4 Additional inspections. The building official may designate additional inspections and tests to be conducted during the construction of a building or structure and shall so notify the permit holder. When construction reaches a stage of completion that requires an inspection, the permit holder shall notify the building official. Any ladder, scaffolding or test equipment necessary to conduct or witness the requested inspection shall be provided by the permit holder.

E. Section 113.5 In-plant and factory inspections. When required by the provisions of this code, materials, equipment or assemblies shall be inspected at the point of manufacture or fabrication. The building official shall require the submittal of an evaluation report of such materials, equipment or assemblies. The evaluation report shall indicate the complete details of the assembly including a description of the assembly and its components, and describe the basis upon which the assembly is being evaluated. In addition, test results and other data as necessary for the building official to determine conformance with the USBC shall be submitted. For factory inspections, an identifying label or stamp permanently affixed to materials, equipment or assemblies indicating that a factory inspection has been made shall be acceptable instead of a written inspection report, provided the intent or meaning of such identifying label or stamp is properly substantiated.

F. Section 113.6 Approval or notice of defective work. The building official shall either approve the work in writing or give written notice of defective work to the permit holder. Upon request of the permit holder, the notice shall reference the USBC section that serves as the basis for the defects and such defects shall be corrected and reinspected before any work proceeds that would conceal such defects. A record of all reports of inspections, tests, examinations, discrepancies and approvals issued shall be maintained by the building official and shall be communicated promptly in writing to the permit holder. Approval issued under this section may be revoked whenever it is discovered that such approval was issued in error or on the basis of incorrect information, or where there are repeated violations of the USBC.

G. Section 113.7 Approved inspection agencies. The building official may accept reports of inspections and tests from approved individuals or approved inspection agencies, which satisfy qualifications and reliability requirements. Under circumstances where the building official is unable to make the inspection or test within two working days of a request or an agreed upon date, the building official shall accept reports for review from such approved individuals or agencies. Such reports shall be in writing and shall be certified by the individual inspector or by the responsible officer when the report is from an agency.

Proposed Regulations

Note: Photographs, videotapes or other sources of pertinent data or information may be considered as constituting such reports and tests.

H. Section 113.8 Final inspection. Upon completion of a building or structure and before the issuance of a certificate of occupancy, a final inspection shall be conducted to ensure that any defective work has been corrected and that all work complies with the USBC and has been approved, including any work associated with modifications under Section 106.3. The approval of a final inspection shall be permitted to serve as the new certificate of occupancy required by Section 116.1 in the case of additions or alterations to existing buildings or structures that already have a certificate of occupancy.

13 VAC 5-63-140. Section 114 Stop work orders.

A. Section 114.1 Issuance of order. When the building official finds that work on any building or structure is being executed contrary to the provisions of this code or any pertinent laws or ordinances, or in a manner endangering the general public, a written stop work order may be issued. The order shall identify the nature of the work to be stopped and be given either to the owner of the property involved, to the owner's agent or to the person performing the work. Following the issuance of such an order, the affected work shall cease immediately. The order shall state the conditions under which such work may be resumed.

B. Section 114.2 Limitation of order. A stop work order shall apply only to the work identified in the order, provided that other work on the building or structure may be continued if not concealing the work covered by the order.

13 VAC 5-63-150. Section 115 Violations.

A. Section 115.1 Violation a misdemeanor; civil penalty. In accordance with § 36-106 of the Code of Virginia, it shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any code provisions, to violate any such provisions. Any locality may adopt an ordinance that establishes a uniform schedule of civil penalties for violations of specified provisions of the code that are not abated or remedied promptly after receipt of a notice of violation from the local enforcement officer.

Note: See the full text of § 36-106 of the Code of Virginia for additional requirements and criteria pertaining to legal action relative to violations of the code.

B. Section 115.2 Notice of violation. The building official shall issue a written notice of violation to the responsible party if any violations of this code or any directives or orders of the building official have not been corrected or complied with in a reasonable time. The notice shall reference the code section upon which the notice is based and direct the discontinuance and abatement of the violation or the compliance with such directive or order. The notice shall be issued by either delivering a copy to the responsible party by mail to the last known address or delivering the notice in person or by leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place if the person in charge of the premises cannot be found. The notice of violation shall indicate the right of appeal by referencing the appeals section. When the owner of the building or structure,

or the permit holder for the construction in question, or the tenants of such building or structure, are not the responsible party to whom the notice of violation is issued, then a copy of the notice shall also be delivered to the such owner, permit holder or tenants.

C. Section 115.2.1 Notice not to be issued under certain circumstances. When violations are discovered more than two years after the certificate of occupancy is issued or the date of initial occupancy, whichever occurred later, or more than two years after the approved final inspection for an alteration or renovation, a notice of violation shall only be issued upon advice from the legal counsel of the locality that action may be taken to compel correction of the violation. When compliance can no longer be compelled by prosecution under § 36-106 of the Code of Virginia, the building official shall document the existence of the violation and the edition of the USBC the violation is under.

D. Section 115.3 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the building official shall submit a written request to the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality so authorizes, the building official may issue or obtain a summons or warrant. Compliance with a notice of violation notwithstanding, the building official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation within one calendar year for failure to obtain a required construction permit prior to commencement of work subject to this code.

Note: See § 19.2-8 of the Code of Virginia concerning the statute of limitations for building code prosecutions.

E. Section 115.4 Penalties and abatement. Penalties for violations of the USBC shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

13 VAC 5-63-160. Section 116 Certificates of occupancy.

A. Section 116.1 General; when to be issued. A certificate of occupancy indicating completion of the work for which a permit was issued shall be obtained prior to the occupancy of any building or structure, except as provided for in this section generally and as specifically provided for in Section 113.8 for additions or alterations. The certificate shall be issued after completion of the final inspection and when the building or structure is in compliance with this code and any pertinent laws or ordinances, or when otherwise entitled. The building official shall, however, issue a certificate of occupancy within five working days after being requested to do so, provided the building or structure meets all of the requirements for a certificate.

B. Section 116.1.1 Temporary certificate of occupancy. Upon the request of a permit holder, a temporary certificate of occupancy may be issued before the completion of the work covered by a permit, provided that such portion or portions of

a building or structure may be occupied safely prior to full completion of the building or structure without endangering life or public safety.

C. Section 116.2 Contents of certificate. A certificate of occupancy shall specify the following:

1. The edition of the USBC under which the permit is issued.
2. The group classification and occupancy in accordance with the provisions of Chapter 3.
3. The type of construction as defined in Chapter 6.
4. If an automatic sprinkler system is provided and whether or not such system was required.
5. Any special stipulations and conditions of the building permit.

D. Section 116.3 Suspension or revocation of certificate. A certificate of occupancy may be revoked or suspended whenever the building official discovers that such certificate was issued in error or on the basis of incorrect information, or where there are repeated violations of the USBC. The revocation or suspension shall be in writing.

E. Section 116.4 Issuance of certificate for existing buildings or structures. Upon written request from the owner or the owner's agent, or as otherwise determined necessary by the building official, a certificate of occupancy shall be issued for an existing building or structure provided there are no current violations of the Virginia Maintenance Code or the Virginia Statewide Fire Prevention Code (13 VAC 5-51) and the occupancy classification of the building or structure has not changed. An inspection shall be performed prior to the issuance of the certificate and such buildings and structures shall not be prevented from continued use.

13 VAC 5-63-170. Section 117 Temporary and moved buildings and structures; demolition.

A. Section 117.1 Temporary building and structures. The building official is authorized to issue a permit for temporary buildings or structures. Such permits shall be limited as to time of service, but shall not be permitted for more than one year, except that upon the permit holder's written request, the building official may grant one or more extensions of time, not to exceed one year per extension. The building official is authorized to terminate the approval and order the demolition or removal of temporary buildings or structures during the period authorized by the permit when determined necessary.

B. Section 117.2 Moved buildings and structures. Any building or structure moved into a locality or moved to a new location within a locality shall not be occupied or used until a certification of occupancy is issued for the new location. Such moved buildings or structures shall be required to comply with the requirements of this code for a newly constructed building or structure unless meeting all of the following requirements relative to the new location:

1. There is no change in the occupancy classification from its previous location.

2. The building or structure was in compliance with all state and local requirements applicable to it in its previous location and is in compliance with all state and local requirements applicable if originally constructed in the new location.

3. The building or structure did not become unsafe during the moving process due to structural damage or for other reasons.

4. Any alterations, reconstruction, renovations or repairs made pursuant to the move are in compliance with applicable requirements of this code.

C. Section 117.3 Demolition of buildings and structures. Prior to the issuance of a permit for the demolition of any building or structure, the owner or the owner's agent shall provide certification to the building official that all service connections of utilities have been removed, sealed or plugged satisfactorily and a release has been obtained from the associated utility company. The certification shall further provide that written notice has been given to the owners of adjoining lots and any other lots that may be affected by the temporary removal of utility wires or the temporary disconnection or termination of other services or facilities relative to the demolition. In addition, the requirements of Chapter 33 of the IBC for any necessary retaining walls or fences during demolition shall be applicable and when a building or structure is demolished or removed, the established grades shall be restored.

13 VAC 5-63-180. Section 118 Buildings and structures becoming unsafe during construction.

A. Section 118.1 Applicability. This section applies to buildings and structures for which a construction permit has been issued under this code and construction has not been completed or a certificate of occupancy has not been issued, or both. In addition, this section applies to any building or structure that is under construction or that was constructed without obtaining the required permits under this edition or any edition of the USBC.

Note: Existing buildings and structures other than those under construction or subject to this section are subject to the Virginia Maintenance Code that also has requirements for unsafe conditions.

B. Section 118.2 Repair or removal of unsafe buildings or structures. Any building or structure subject to this section that is either deteriorated, improperly maintained, of faulty construction, deficient in adequate exit facilities, a fire hazard or dangerous to life or the public welfare, or both, or any combination of the foregoing, is an unsafe building or structure and shall be made safe through compliance with this code or shall be taken down and removed if determined necessary by the building official.

C. Section 118.3 Inspection report and notice of unsafe building or structure. The building official shall inspect any building or structure reported to be unsafe and shall prepare a report to be filed in the records of the local building department. In addition to a description of any unsafe conditions found, the report shall include the occupancy classification of the building or structure and the nature and extent of any damages caused by collapse or failure of any

Proposed Regulations

building components. If the building or structure is determined by the building official to be unsafe, a notice of unsafe building or structure shall be issued in person to the owner and any permit holder. The notice shall describe any unsafe conditions and specify any repairs or improvements necessary to make the building or structure safe, or alternatively, when determined necessary by the building official, require the unsafe building or structure, or any portion of it, to be taken down and removed. The notice shall stipulate a time period for the repair or demolition of the unsafe building or structure and contain a statement requiring the person receiving the notice to determine whether to accept or reject the terms of the notice. If any persons to which the notice of unsafe building or structure is to be issued cannot be found after diligent search, as equivalent service, the notice shall be sent by registered or certified mail to the last known address of such persons and a copy of the notice posted in a conspicuous place on the premises.

D. Section 118.4 Vacating the unsafe building or structure. If any portion of an unsafe building or structure has collapsed or fallen, or if the building official determines there is actual and immediate danger of any portion collapsing or falling, and when life is endangered by the occupancy of the unsafe building or structure, the building official shall be authorized to order the occupants to immediately vacate the unsafe building or structure. When an unsafe building or structure is ordered to be vacated, the building official shall post a notice at each entrance that reads as follows:

"This Building (or Structure) is Unsafe and its Occupancy (or Use) is Prohibited by the Building Official."

After posting, occupancy or use of the unsafe structure shall be prohibited except when authorized to enter to conduct inspections, make required repairs or as necessary to demolish the building or structure.

E. Section 118.5 Emergency repairs. The building official may also authorize emergency repairs to unsafe buildings or structures to the extent authorized by the local governing body when it is determined that there is an immediate danger of any portion of the unsafe building or structure collapsing or falling and when life is endangered. Emergency repairs may also be authorized when a violation of this code results in a fire hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants. Such emergency repairs shall be limited to those necessary to achieve temporary safety and shall be permitted whether or not legal action to compel compliance has been instituted.

F. Section 118.6 Further action to raze. Whenever the owner of an unsafe building or structure fails to comply with a notice of unsafe building or structure issued under Section 118.3, the building official shall be permitted to cause the unsafe building or structure to be razed or removed when so authorized by the local governing body.

Note: Sections 15.2-906, 15.2-906 and 15.2-1115 of the Code of Virginia may provide additional authority for governmental actions to remove unsafe buildings or structures and the recovery of associated expenditures.

13 VAC 5-63-190. Section 119 Appeals.

A. Section 119.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local building department a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. In addition, as an authorization in this code, separate LBBCAs may be established to hear appeals of different enforcement areas such as electrical, plumbing or mechanical requirements. Each such LBBCA shall comply with the requirements of this section.

B. Section 119.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

C. Section 119.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

D. Section 119.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

E. Section 119.5 Right of appeal; filing of appeal application. The owner of a building or structure, the owner's agent or any other person involved in the design or construction of a building or structure may appeal a decision of the building official concerning the application of the USBC to such building or structure and may also appeal a refusal by the building official to grant a modification to the provisions of the USBC pertaining to such building or structure. The applicant

shall submit a written request for appeal to the LBBCA within 90 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the building official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a building official's decision.

Note: To the extent that a decision of a building official pertains to amusement devices there may be a right of appeal under the VADR.

F. Section 119.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

G. Section 119.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the building official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be by resolution signed by the chairman and retained as part of the record of the appeal. Copies of the resolution shall be given or sent to all parties. In addition, the resolution shall contain the following wording:

"Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days. Application forms are available from the Office of the State Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7150."

H. Section 119.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the building

official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the building official's decision. For appeals from a LBBCA, a copy of the building official's decision and the resolution of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the building official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

13 VAC 5-63-200. Chapter 2 Definitions: Section 202 Definitions.

A. Add the following definitions to Section 202 of the IBC to read:

Building regulations. Any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

Construction. The construction, reconstruction, alteration, repair, or conversion of buildings and structures.

Day-night average sound level (Ldn). See Section 1202.1.

DHCD. The Virginia Department of Housing and Community Development.

Equipment. Plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

Farm building or structure. A building or structure not used for residential purposes, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm.
2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products.
3. Business or office uses relating to the farm operations.

Proposed Regulations

4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm.

5. Storage or use of supplies and materials used on the farm.

6. Implementation of best management practices associated with farm operations.

Industrialized building. A combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes shall not be considered industrialized buildings for the purpose of this code.

Local board of building code appeals (LBBCA). See Section 119.1.

Local building department. The agency or agencies of any local governing body charged with the administration, supervision, or enforcement of this code, approval of construction documents, inspection of buildings or structures, or issuance of permits, licenses, certificates or similar documents.

Local governing body. The governing body of any city, county or town in this Commonwealth.

Locality. A city, county or town in this Commonwealth.

Manufactured home. A structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

Skirting. A weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

Sound transmission class (STC) rating. See Section 1202.1.

State regulated care facility (SRCF). A building with an occupancy in Group R-2, R-3, R-4 or R-5 occupied by persons in the care of others where program oversight is provided by the Virginia Department of Social Services, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, the Virginia Department of Education or the Virginia Department of Juvenile Justice.

State Review Board. The Virginia State Building Code Technical Review Board as established under § 36-108 of the Code of Virginia.

Technical assistant. Any person employed by, or under contract to, a local building department or local enforcing agency for enforcing the USBC, including but not limited to inspectors and plans reviewers.

VADR. The Virginia Amusement Device Regulations (13 VAC 5-31).

VCS. The Virginia Certification Standards (13 VAC 5-21).

Working day. A day other than Saturday, Sunday or a legal local, state or national holiday.

B. Change the following definitions in Section 202 of the IBC to read:

Building. A combination of materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

Owner. The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee or lessee in control of a building or structure.

Registered Design Professional (RDP). An architect or professional engineer, licensed to practice architecture or engineering, as defined under § 54.1-400 of the Code of Virginia.

Structure. An assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

C. Delete the following definitions from Section 202 of the IBC:

Agricultural building.

Existing building.

13 VAC 5-63-210. Chapter 3 Use and occupancy classification.

A. Add an exception to Section 308.2 of the IBC to read:

Exception: Group homes licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services or the Virginia Department of Social Services that house no more than eight persons with one or more resident counselors shall be classified as Group R-2, R-3, R-4 or R-5. Not more than five of the persons may require physical assistance from staff to respond to an emergency situation.

B. Change Section 308.5.2 of the IBC to read:

308.5.2 Child care facility. A facility other than family day homes under Section 310.4 that provides supervision and personal care on less than a 24-hour basis for more than five children 2-1/2 years of age or less shall be classified as Group I-4.

Exception: A child day care facility that provides care for more than five but no more than 100 children 2-1/2 years or less of age, when the rooms where such children are cared for are located on the level of exit discharge and each of these child

care rooms has an exit door directly to the exterior, shall be classified as Group E.

C. Add a new occupancy classification to Section 310 of the IBC to read:

R-5 Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures.

D. Add Section 310.3 to the IBC to read:

310.3 Group R-5. The construction of Group R-5 structures shall comply with the International Residential Code, also referred to as the "IRC." The amendments to the IRC set out in Section 310.6 shall be made to the IRC for its use as part of this code. In addition, all references to Section 101.2 in the IBC relating to the construction to one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height shall be considered to be references to this section.

E. Add Section 310.4 to the IBC to read:

310.4 Family day homes. Family day homes where program oversight is provided by the Virginia Department of Social Services shall be classified as Group R-2, R-3 or R-5.

Note: Family day homes may generally care for up to 12 children. See the DHCD Related Laws Package for additional information.

F. Add Section 310.5 to the IBC to read:

310.5 Radon-resistant construction in Group R-3 and R-4 structures. Group R-3 and R-4 structures shall be subject to the radon-resistant construction requirements in Appendix F in localities enforcing such requirements pursuant to Section R324 of the IRC.

G. Add Section 310.6 to the IBC to read:

310.6 Amendments to the IRC. The following changes shall be made to the IRC for its use as part of this code.

1. Change Section R301.2.1 to read:

R301.2.1 Wind limitations. Buildings and portions thereof shall be limited by wind speed, as defined in Table R301.2(1), and construction methods in accordance with this code. Basic wind speeds shall be determined from Table R301.2(4). Where different construction methods and structural materials are used for various portions of a building, the applicable requirements of this section for each portion shall apply. Where loads for windows, skylights and exterior doors are not otherwise specified, the loads listed in Table R301.2(2) adjusted for height and exposure per Table R301.2(3), shall be used to determine design load performance requirements for windows and doors. Basic wind speed for the special wind regions indicated, near mountainous terrain, and near gorges, shall be in accordance with local jurisdiction requirements determined in accordance with Section 6.5.4 of ASCE 7.

2. Change Note "e" of Table R301.2(1) to read:

e. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed table (Table R301.2(4)). Wind exposure category shall be determined on a site specific basis in accordance with Section R301.2.1.4.

3. Change Figure R301.2(4) to Table R301.2(4) to read:

**Table R301.2(4)
Basic Wind Speeds for Virginia Localities Based on Basic
Wind Speed (3 Second Gust) Map**

90 V mph (m/s)	100 V mph (m/s)	110 V mph (m/s)	Special Wind Region
All other localities	City of Chesapeake	Accomack County	Bland County
	City of Franklin	Northampton County	Grayson County
	Gloucester County	City of Virginia Beach	Scott County
	City of Hampton		Smyth County
	Isle of Wight County		Tazewell County
	Lancaster County		Washington County
	Mathews County		Wythe County
	Middlesex County		
	City of Newport News		
	City of Norfolk		
	Northumberland County		
	City of Poquoson		
	City of Portsmouth		
	Southampton County		
	City of Suffolk		
	Surry County		
	York County		

Note: The basic wind speed for a town shall be the same as the basic wind speed shown for the county in which the town is located.

4. Change Section R303.8 to read:

R303.8 Required heating. Every dwelling unit or portion thereof which is to be rented, leased or let on terms either expressed or implied to furnish heat to the occupants thereof shall be provided with heating facilities capable of maintaining the room temperatures at 65°F (18°C) during the period from October 15 to May 1 during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours when measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls. The capability of the heating system shall be based on the winter design temperature for heating facilities established by the jurisdiction.

Proposed Regulations

5. Add Section R303.9 to read:

R303.9 Insect screens. Every door, window and other outside opening required for ventilation purposes shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device.

6. Add Section R306.5 to read:

R306.5 Water supply sources and sewage disposal systems. Water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health.

7. Change Section R310.1 to read:

R310.1 Emergency escape and rescue required. Basements with habitable space and each sleeping room shall have at least one openable emergency escape and rescue opening. Where emergency escape and rescue openings are provided, they shall have a sill height of not more than 44 inches (1118 mm) above the floor. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with Section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside, except that tilt-out or removable sash designed windows shall be permitted to be used. Emergency escape and rescue openings with a finished height below the adjacent ground elevation shall be provided with a window well in accordance with Section R310.2.

Exception: Dwelling units equipped throughout with an approved automatic sprinkler system installed in accordance with NFPA 13, 13R or 13D.

8. Change Section R310.1.1 to read:

R310.1.1 Minimum opening area. All emergency escape and rescue openings shall have a minimum net clear opening of 5.7 square feet (0.530 m²), including the tilting or removal of the sash as the normal operation to comply with sections R310.1.2 and R310.1.3.

Exception: Grade floor openings shall have a minimum net clear opening of 5 square feet (0.465 m²).

9. Change Section R311.5.3.1 to read:

R311.5.3.1 Riser height. The maximum riser height shall be 8-1/4 inches (210 mm). The riser shall be measured vertically between the leading edges of the adjacent treads. The greatest riser height within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm).

10. Change Section R311.5.3.2 to read:

R311.5.3.2 Tread depth. The minimum tread depth shall be 9 inches (229 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than

3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 10 inches (254 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12 inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

11. Add Section R324 Radon-Resistant Construction.

12. Add Section R324.1 to read:

R324.1 Local enforcement of radon requirements. Following official action under Article 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia by a locality in areas of high radon potential, as indicated by Zone 1 on the U.S. EPA Map of Radon Zones (IRC Figure AF101), such locality shall enforce the provisions contained in Appendix F.

Exemption: Buildings or portions thereof with crawl space foundations which are ventilated to the exterior, shall not be required to provide radon-resistant construction.

13 Add Section R325 Swimming Pools, Spas and Hot Tubs.

14. Add Section R325.1 to read:

R325.1 Use of Appendix G for swimming pools, spas and hot tubs. In addition to other applicable provisions of this code, swimming pools, spas and hot tubs shall comply with the provisions in Appendix G.

15. Add Section R326 Patio Covers.

16. Add Section R326.1 to read:

R326.1 Use of Appendix H for patio covers. Patio covers shall comply with the provisions in Appendix H.

17. Add Section R327 Sound Transmission.

18. Add Section R327.1 to read:

R327.1 Sound transmission between dwelling units. Construction assemblies separating dwelling units shall provide airborne sound insulation as required in Appendix K.

19. Add Section R327.2 to read:

R327.2 Airport noise attenuation. This section applies to the construction of the exterior envelope of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means or egress within airport noise zones when enforced by a locality pursuant to § 15.2-2295 of the Code of Virginia. The exterior envelope of such structures shall comply with Section 1207.4 of the state amendments to the IBC.

20. Change Section R401.4 to read:

R401.4 Soil tests. Localities having 20% and greater moderate and high shrink/swell potential of the jurisdictional land area shall implement an expansive soil test policy. Localities having less than 20% moderate to high shrink/swell potential of the jurisdictional land area may

Proposed Regulations

adopt a soil test policy. The policy shall establish minimum criteria to determine the circumstances which require testing for expansive soils and the minimum testing requirements. The policy shall be established in a manner selected by the local government having jurisdiction. When required, testing shall be in accordance with Section R403.1.8.1. When soils are determined to be expansive, foundation design shall be in accordance with Section R403.1.8. All localities shall obtain and retain as a reference guide a copy of the applicable National Cooperative Soil Survey produced

cooperatively by the Natural Resources Conservation Service and the Virginia Polytechnic Institute and State University, where this survey is available. Table R401.4, List of Virginia land areas by Shrink/Swell Ratings, shall be used to determine the percentage of jurisdictional land area which has moderate or high shrink/swell potential.

Exception: For additions to one- and two-family dwellings or slab-on-grade accessory structures and decks where there is no indication of a shrink-swell condition for the area.

Table R401.4
List of Virginia Land Areas by Shrink/Swell Ratings

20% and greater potential		Less than 20% potential	
Accomack County	Nelson County	Alexandria, City of	Henry County
Albemarle County	Newport News, City of	Alleghany County	Highland County
Amelia County	Norfolk, City of	Amherst County	Hopewell, City of
Appomattox County	Northampton County	Bath County	Isle of Wight County
Arlington County	Orange County	Bedford County	King and Queen County
Augusta County	Page County	Bedford, City of	King George County
Bland County	Poquoson, City of	Brunswick County	King William County
Botetourt County	Portsmouth, City of	Buchanan County	Lancaster County
Buckingham County	Powhatan County	Caroline County	Loudoun County
Buena Vista, City of	Prince Edward County	Carroll County	Lunenburg County
Campbell County	Prince George County	Charlotte County	Manassas, City of
Charles City County	Prince William County	Charlottesville, City of	Martinsville, City of
Chesapeake, City of	Pulaski County	Clifton Forge, City of	Mecklenburg County
Chesterfield County	Radford, City of	Colonial Heights, City of	Middlesex County
Clarke County	Richmond, City of	Covington, City of	New Kent County
Culpeper County	Roanoke County	Craig County	Northumberland County
Cumberland County	Roanoke, City of	Danville, City of	Norton, City of
Emporia, City of	Rockbridge County	Dickenson County	Nottoway County
Fairfax County	Rockingham County	Dinwiddie County	Patrick County
Fairfax, City of	Russell County	Essex County	Petersburg, City of
Fauquier County	Salem, City of	Floyd County	Pittsylvania County
Fluvanna County	Scott County	Franklin County	Rappahannock County
Franklin, City of	Shenandoah County	Fredericksburg, City of	Richmond County
Frederick County	Smyth County	Galax, City of	Staunton, City of
Giles County	Southampton County	Gloucester County	Warren County
Goochland County	Spotsylvania County	Grayson County	Waynesboro, City of
Greene County	Stafford County	Hanover County	Williamsburg, City of
Greensville County	Suffolk, City of	Harrisonburg, City of	Wise County
Halifax County	Surry County	Henrico County	
Hampton, City of	Sussex County		
James City County	Tazewell County		
Lee County	Virginia Beach, City of		
Lexington, City of	Washington County		
Louisa County	Westmoreland County		
Lynchburg, City of	Winchester, City of		
Madison County	Wythe County		
Mathews County	York County		
Montgomery County			

21. Change Section R403.1 to read:

R403.1 General. All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, wood foundations, or other approved structural systems which shall be of sufficient design to accommodate all loads according to Section R301 and to transmit the resulting loads to the soil within the limitations as determined from the character of the soil. Footings shall be supported on undisturbed natural soils or engineered fill.

Exception: One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, not exceeding 256 square feet (23.7824 m²) of building area, provided all of the following conditions are met:

1. The building height is not more than 12 feet.
2. The maximum height from the finished floor level to grade does not exceed 18 inches.

Proposed Regulations

3. The supporting structural elements in direct contact with the ground shall be placed level on firm soil and when such elements are wood they shall be approved pressure preservative treated suitable for ground contact use.

4. The structure is anchored to withstand wind loads as required by this code.

5. The structure shall be of light-frame construction whose vertical and horizontal structural elements are primarily formed by a system of repetitive wood or light gauge steel framing members, with walls and roof of light weight material, not slate, tile, brick or masonry.

22. Change Section R506.2.1 to read:

R506.2.1 Fill. Fill Material shall be free of vegetation and foreign material and shall be natural nonorganic material

that is not susceptible to swelling when exposed to moisture. The fill shall be compacted to assure uniform support of the slab, and except where approved, the fill depth shall not exceed 24 inches (610 mm) for clean sand or gravel and 8 inches (203 mm) for earth.

Exception: Material other than natural material may be used as fill material when accompanied by a certification from an RDP and approved by the building official.

23. Change Section R506.2.2 to read:

R506.2.2 Base. A 4-inch-thick (102 mm) base course consisting of clean graded sand, gravel or crushed stone passing a 2-inch (51 mm) sieve shall be placed on the prepared subgrade when the slab is below grade.

Exception: A base course is not required when the concrete slab is installed on well drained or sand-gravel mixture soils classified as Group I according to the United Soil Classification System in accordance with Table R405.1. Material other than natural material may be used as base course material when accompanied by a certification from an RDP and approved by the building official.

24. Add Section M2201.2.1.1 to read:

M2201.2.1.1 Abandonment of home fuel tanks. When supply tanks are removed or abandoned, the fill piping, gauges and other appurtenances, except the vent, shall be disconnected and the fill pipe plugged or removed.

25. Delete Section P2602.1.

26. Change Section P3114.1 to read:

P3114.1 General. Vent systems utilizing air admittance valves shall comply with this section. Individual- and branch-type air admittance valves shall conform to ASSE 1051.

27. Change the trap sizes as shown in the following categories of Table P3201.7:

Plumbing Fixture	Trap Size Minimum (inches)
Clothes washer standpipe	1-1/2
Shower	1-1/2

28. Add Section E3501.8 to read:

E3501.8 Energizing service equipment. The building official shall give permission to energize the electrical service equipment of a one- or two-family dwelling unit when all of the following requirements have been approved:

- 1. The service wiring and equipment, including the meter socket enclosure, shall be installed and the service wiring terminated.*
- 2. The grounding electrode system shall be installed and terminated.*
- 3. At least one receptacle outlet on a ground fault protected circuit shall be installed and the circuit wiring terminated.*
- 4. Service equipment covers shall be installed.*
- 5. The building roof covering shall be installed.*
- 6. Temporary electrical service equipment shall be suitable for wet locations unless the interior is dry and protected from the weather.*

13 VAC 5-63-220. Chapter 4 Special detailed requirements based on use and occupancy.

A. Change Section 408.3.5 of the IBC to read:

408.3.5 Sallyports. A sallyport shall be permitted in a means of egress where there are provisions for continuous and unobstructed passage through the sallyport during an emergency egress condition. A sallyport is a security vestibule with two or more doors where the intended purpose is to prevent continuous and unobstructed passage by allowing the release of only one door at a time.

B. Add Section 415.1.1 to the IBC to read:

415.1.1 Flammable and combustible liquids. Notwithstanding the provisions of this chapter, the storage, handling, processing, and transporting of flammable and combustible liquids shall be in accordance with the mechanical code and the fire code listed in Chapter 35 of this code. Regulations governing the installation, repair, upgrade, and closure of underground and aboveground storage tanks under the Virginia State Water Control Board regulations 9 VAC 25-91 and 9 VAC 25-580 are adopted and incorporated by reference to be an enforceable part of this code. Where differences occur between the provisions of this code and the incorporated provisions of the State Water Control Board regulations, the provisions of the State Water Control Board regulations shall apply.

C. Add IBC Section 419 Site Work for Manufactured Homes and Industrialized Buildings.

D. Add Section 419.1 to the IBC to read:

419.1 General. The provisions of this section shall apply to the installation of manufactured homes and industrialized buildings.

E. Add Section 419.2 to the IBC to read:

419.2 Site work. Construction work associated with the installation of a manufactured home or industrialized building shall comply with the manufacturer's installation instructions and to the extent not provided for in the manufacturer's installation instructions applicable requirements of this code. Where the manufacturer's installation instructions for manufactured homes are not available, the NCSBCS/ANSI A225.1 standard, 1994 edition, may be substituted for the manufacturer's installation instructions. In addition, Appendix E of the International Residential Code entitled, "Manufactured Housing used as Dwellings," shall be an acceptable alternative to this code for construction work associated with the installation of manufactured homes and for additions, alterations and repairs to manufactured homes.

F. Add Section 419.3 to the IBC to read:

419.3 Wind load requirements for manufactured homes. Manufactured homes shall be anchored to withstand the wind loads established by the federal regulation for the area in which the manufactured home is installed. For the purpose of this code, Wind Zone II of the federal regulation shall include the cities of Chesapeake, Norfolk, Portsmouth, and Virginia Beach.

G. Add Section 419.4 to the IBC to read:

419.4 Skirting requirements for manufactured homes. As used in this section, "skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade. Manufactured homes installed or relocated shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches (457 mm) in any dimension and not less than three square feet (.28 m²) in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of this code.

13 VAC 5-63-230. Chapter 7 Fire-Resistant-Rated Construction.

A. Add Section 701.2 to the IBC to read:

701.2 Fire-resistance assembly marking. Concealed fire walls, vertical fire separation assemblies, fire barriers, fire partitions and smoke barriers shall be designated above ceilings and on the inside of all ceiling access doors which provide access to such fire rated assemblies by signage having letters no smaller than one inch (25.4 mm) in height. Such signage shall

indicate the fire-resistance rating of the assembly and the type of assembly and be provided at horizontal intervals of no more than eight feet (2438 mm).

Note: An example of suggested formatting for the signage would be "ONE HOUR FIRE PARTITION."

B. Add exceptions 12 and 13 to Section 707.2 of the IBC to read:

12. Noncombustible shafts connecting communicating floor levels in Group I-3 occupancies where the area complies with Section 408.5. Where additional stories are located above or below, the shaft shall be permitted to continue with fire and smoke damper protection provided at the fire resistance rated floor/ceiling assembly between the noncommunicating stories.

13. A floor opening that complies with Section 408 in an occupancy in Group I-3.

C. Delete Section 707.14.1 of the IBC.

D. Add exception 4 to Section 715.3.3 of the IBC to read:

4. Horizontal sliding doors in smoke barriers that comply with Section 408.3 are permitted in smoke barriers in occupancies in Group I-3.

E. Add an exception to Section 715.4.4.1 of the IBC to read:

Exception: Security glazing in doors and windows in smoke barriers in Group I-3 shall be considered to be fire-protection-rated glazing when protected on both sides by an automatic sprinkler system. Individual panels of glazing shall not exceed 1,296 square inches (0.84 m²), shall be in a gasketed frame and installed in such a manner that the framing system will deflect without breaking (loading) glazing before the sprinkler system operates. The sprinkler system shall be designed to wet completely the entire surface of the affected glazing when actuated.

13 VAC 5-63-240. Chapter 9 Fire protection systems.

A. Change the following definition in Section 902 of the IBC to read:

Automatic fire-extinguishing system. An approved system of devices and equipment which automatically detects a fire and discharges an approved fire-extinguishing agent onto or in the area of a fire and shall include among other systems an automatic sprinkler system, unless otherwise expressly stated.

B. Change Section 903.2.7 of the IBC to read:

903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area, except in the following Group R-2 occupancies when the necessary water pressure or volume, or both, for the system is not available:

Exceptions:

1. Buildings which do not exceed two stories, including basements which are not considered as a story above grade, and with a maximum of 16 dwelling units per fire area. Each dwelling unit shall have at least one door

Proposed Regulations

opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

2. Buildings where all dwelling units are not more than two stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit and a two-hour fire barrier is provided between each pair of dwelling units. Each bedroom of a dormitory or boarding house shall be considered a dwelling unit under this exception.

C. Add an exception to Section 905.2 of the IBC to read:

Exception: The residual pressure of 100 psi for 2-1/2 inch hose connection and 65 psi for 1-1/2 inch hose connection is not required in buildings equipped throughout with an automatic sprinkler system in accordance with section 903.3.1.1 and where the highest floor level is not more than 150 feet above the lowest level of fire department vehicle access.

D. Change Section 906.1 of the IBC to read:

906.1 General. Portable fire extinguishers shall be provided in occupancies and locations as required by the International Fire Code, except that portable fire extinguishers shall not be required to be installed in Group R-2 occupancies.

E. Add Section 907.9.1.1.1 to the IBC to read:

907.9.1.1.1 Location of appliances in Group I-3 occupancies. Wall-mounted visible alarm notification appliances in Group I-3 occupancies shall be permitted to be a maximum of 120 inches (3048 mm) above the floor or ground, measured to the bottom of the appliance and shall otherwise comply with Section 702.3.3.1 of ICC A117.1.

F. Change Section 909.6 of the IBC to read:

909.6 Pressurization method. When approved by the building official, the means of controlling smoke shall be permitted by pressure differences across smoke barriers. Maintenance of a tenable environment is not required in the smoke-control zone of fire origin.

G. Add footnote "c" to Table 910.3 to read:

c. Smoke and heat vents are not required when storage areas are protected by early-suppression fast-response (ESFR) sprinklers installed in accordance with NFPA 13 or NFPA 231.

13 VAC 5-63-245. Chapter 10 Means of egress.

A. Change Section 1004.1 of the IBC to read:

1004.1 Design occupant load. In determining means of egress requirements, the number of occupants for whom means of egress facilities are to be provided shall be established in accordance with Sections 1004.1.1, 1004.1.2 or 1004.1.3 and shall not exceed the occupant load permitted by Section 1004.2.

B. Change Section 1004.9 of the IBC to read:

1004.9 Multiple occupancies. Where a building contains two or more occupancies, the means of egress requirements shall apply to each portion of the building based on the occupancy

of that space. Where two or more occupancies utilize portions of the same means of egress system, those egress components shall meet the more stringent requirements of all occupancies that are served.

Exception: A 750 square feet or less room or space used for assembly purposes by less than 50 persons and which is accessory to another group shall be included as a part of that main group.

C. Change Section 1008.1.8.6 of the IBC to read:

1008.1.8.6 Delayed egress locks. Approved, listed, delayed egress locks shall be permitted to be installed on doors serving any occupancy including Group A-3, airport facilities, except Group A, E and H occupancies in buildings which are equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with the items 1 through 6 below. A building occupant shall not be required to pass through more than one door equipped with a delayed egress lock before entering an exit.

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locks shall have the capability of being unlocked by a signal from the fire command center.

4. The initiation of an irreversible process which will release the latch in not more than 15 seconds when a force of not more than 15 pounds (67 N) is applied for 1 second to the release device. Initiation of the irreversible process shall activate an audible signal in the vicinity of the door. Once the door lock has been released by the application of force to the releasing device, relocking shall be by manual means only.

Exception: Where approved, a delay of not more than 30 seconds is permitted.

5. A sign shall be provided on the door located above and within 12 inches (305 mm) of the release device reading: PUSH UNTIL ALARM SOUNDS. DOOR CAN BE OPENED IN 15 SECONDS.

Exception: Where approved, such sign shall read: PUSH UNTIL ALARM SOUNDS. DOOR CAN BE OPENED IN 30 SECONDS.

6. Emergency lighting shall be provided at the door.

D. Add Section 1008.1.8.8 to the IBC to read:

1008.1.8.8 Locking arrangements in correctional facilities. In occupancies in Groups A-3, A-4, B, E, F, I, M and S within penal facilities, doors in means of egress serving rooms or spaces occupied by persons whose movements must be controlled for security reasons shall be permitted to be locked if equipped with egress control devices which shall unlock manually and by at least one of the following means:

1. Actuation of an automatic fire suppression system required by Section 903.2.

2. Actuation of a key-operated manual alarm station required by Section 907.2.

3. A signal from a central control station.

E. Add Section 1008.1.10 to the IBC to read:

1008.1.10 Locking certain residential sliding doors. In dwelling units of Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent it from being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

F. Add Section 1008.1.11 to the IBC to read:

1008.1.11 Door viewers in certain residential buildings. Entrance doors to dwelling units of Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

G. Add exception 7 to Section 1009.3 of the IBC to read:

7. Stairways in penal facilities serving guard towers, observation stations and control rooms not more than 250 square feet (23 m²) in area shall be permitted to have risers not exceeding 8 inches (203 mm) in height and treads not less than 9 inches (229 mm) in depth.

H. Change Section 1013.2 of the IBC to read:

1013.2 Egress through intervening spaces. Egress from a room or space shall not pass through adjoining or intervening rooms or areas, except where such adjoining rooms or areas are accessory to the area served; are not a high-hazard occupancy; and provide a discernible path of egress travel to an exit. A maximum of one exit access is permitted to pass through kitchens, store rooms, closets or spaces used for similar purposes provided such a space is not the only means of exit access. An exit access shall not pass through a room that can be locked to prevent egress. Means of egress from dwelling units or sleeping areas shall not lead through other sleeping areas, toilet rooms or bathrooms.

Exceptions:

1. Means of egress are not prohibited through a kitchen area serving adjoining rooms constituting part of the same dwelling unit or guestroom.

2. Means of egress are not prohibited through rooms or spaces in a high-hazard occupancy where such rooms or spaces are the same occupancy group.

I. Change exception 2 of Section 1014.2.1 of the IBC to read:

2. Where a building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2, the separation distance of the exit doors or exit access doorways shall not be less than one-

fourth of the length of the maximum overall diagonal dimension of the area served.

J. Change Table 1016.1 of the IBC to read:

Table 1016.1.
Corridor Fire-Resistance Rating.

Occupancy	Occupant Load Served By Corridor	Required Fire-Resistance Rating (hours)	
		Without sprinkler system	With sprinkler system ^b
H-1, H-2, H-3	All	1	1
H-4, H-5	Greater than 30	1	1
A, B, E, F, M, S, U	Greater than 30	1	0
R	Greater than 10	1	0.5
I-2 ^a , I-4	All	Not Permitted	0
I-1, I-3	All	Not Permitted	0

^aFor requirements for occupancies in Group I-2, see Section 407.3.

^bBuildings equipped throughout with an automatic sprinkler system in accordance with Sections 903.3.1.1 or 903.3.1.2.

13 VAC 5-63-250. Chapter 11 Accessibility.

Add Section 1106.8 to the IBC to read:

1106.8 Identification of accessible parking spaces. In addition to complying with applicable provisions of this chapter, all accessible parking spaces shall be identified by above grade signs. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. All above grade parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2133 mm) above the parking surface. All disabled parking signs shall include the following language: PENALTY, \$100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four feet above the parking surface.

13 VAC 5-63-260. Chapter 12 Interior environment.

A. Add the following definitions to Section 1202.1 of the IBC:

Day-night average sound level (Ldn). A 24-hour energy average sound level expressed in dBA, with a 10 decibel penalty applied to noise occurring between 10 p.m. and 7 a.m.

Sound transmission class (STC) rating. A single number characterizing the sound reduction performance of a material tested in accordance with ASTM E90-90, "Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions."

B. Add Section 1203.4.4 to the IBC to read:

1203.4.4 Insect screens in occupancies other than Group R. Every door, window and other outside opening for natural ventilation serving structures classified as other than a

Proposed Regulations

residential group containing habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device.

Exception: Screen doors shall not be required for out swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are provided.

C. Add Section 1203.4.5 to the IBC to read:

1203.4.5 Insect screens in Group R occupancies. Every door, window and other outside opening required for natural ventilation purposes which serves a structure classified as a residential group shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device.

D. Change Section 1207.1 of the IBC to read:

1207.1 Scope. Sections 1207.2 and 1207.3 shall apply to common interior walls, partitions and floor/ceiling assemblies between adjacent dwelling units or between dwelling units and adjacent public areas such as halls, corridors, stairs or service areas. Section 1207.4 applies to the construction of the exterior envelope of Group R occupancies within airport noise zones when enforced by a locality pursuant to § 15.2-2295 of the Code of Virginia.

E. Add Section 1207.4 to the IBC to read:

1207.4 Airport noise attenuation standards. Where the Ldn is determined to be 65 dBA or greater, the minimum STC rating of structure components shall be provided in compliance with Table 1207.4. As an alternative to compliance with Table 1207.4, structures shall be permitted to be designed and constructed so as to limit the interior noise level to no greater than 45 Ldn. Exterior structures, terrain and permanent plantings shall be permitted to be included as part of the alternative design. The alternative design shall be certified by an RDP.

F. Add Table 1207.4 to the IBC to read:

Table 1207.4.
Airport Noise Attenuation Standards.

Ldn	STC of exterior walls and roof/ceiling assemblies	STC of doors and windows
65-69	39	25
70-74	44	33
75 or greater	49	38

13 VAC 5-63-270. Chapter 16 Structural design.

A. Delete Figure 1609 of the IBC and replace with Table 1609 to read as follows:

90 V mph (m/s)	100 V mph (m/s)	110 V mph (m/s)	Special Wind Region
All other localities	City of Chesapeake	Accomack County	Bland County
	City of Franklin	Northampton County	Grayson County
	Gloucester County	City of Virginia Beach	Scott County
	City of Hampton		Smyth County
	Isle of Wight County		Tazewell County
	Lancaster County		Washington County
	Mathews County		Wythe County
	Middlesex County		
	City of Newport News		
	City of Norfolk		
	Northumberland County		
	City of Poquoson		
	City of Portsmouth		
	Southampton County		
	City of Suffolk		
	Surry County		
	York County		

Note: The basic wind speed for a town shall be the same as the basic wind speed shown for the county in which the town is located.

B. Change Section 1609.3 of the IBC to read:

1609.3 Basic wind speed. The basic wind speed, in mph, for the determination of the wind loads shall be determined by Table 1609. All references to Figure 1609 in the IBC shall be considered to be references to Table 1609. The basic wind speed for special wind regions shall be in accordance with local jurisdiction requirements determined in accordance with Section 6.5.4 of ASCE 7.

In nonhurricane-prone regions, when the basic wind speed is estimated from regional climatic data, the basic wind speed shall be not less than the wind speed associated with an annual probability of 0.02 (50-year mean recurrence interval),

and the estimate shall be adjusted for equivalence to a 3-second gust wind speed at 33 feet (10 m) above ground in exposure Category C. The data analysis shall be performed in accordance with Section 6.5.4 of ASCE 7.

C. Add Section 1612.1.1 to the IBC to read:

1612.1.1 Elevation of manufactured homes. New or replacement manufactured homes to be located in any flood

hazard zone shall be placed in accordance with the applicable elevation requirements of this code.

Exception: Manufactured homes installed on sites in an existing manufactured home park or subdivision shall be permitted to be placed no less than 36 inches (914 mm) above grade in lieu of being elevated at or above the base flood elevation provided no manufactured home at the same site has sustained flood damage exceeding 50% of the market value of the home before the damage occurred.

13 VAC 5-63-280. Chapter 17 Structural test and special inspections.

A. Change Section 1704.1 of the IBC to read:

1704.1. General. Where application is made for construction as described in this section, the owner or the RDP in responsible charge acting as the owner's agent shall employ one or more special inspectors to provide inspections during construction on the types or work listed under Section 1704. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the building official, for inspection of the particular type of construction or operation requiring special inspection. These inspections are in addition to the inspections specified in Section 113.3.

Exceptions:

1. Special inspections are not required for work of a minor nature or as warranted by conditions in the jurisdiction as approved by the building official.
2. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by the laws of this Commonwealth and regulations governing the professional registration and certification of engineers and architects.
3. Unless otherwise required by the building official, special inspections are not required for occupancies in Groups R-3, R-4 or R-5 and occupancies in Group U that are accessory to a residential occupancy including, but not limited to, those listed in Section 312.1.

B. Change Section 1704.1.1 of the IBC to read:

1704.1.1 Building permit requirement. The permit applicant shall submit a statement of special inspections prepared by the RDP in responsible charge in accordance with Section 111.1. This statement shall include a complete list of materials and work requiring special inspections by this section, the inspections to be performed and a list of the individuals, approved agencies or firms intended to be retained for conducting such inspections.

C. Add a category "11" to Table 1704.4 of the IBC to read:

Verification and inspection	Continuous	Periodic	Referenced Standard	IBC Reference
11. Inspection of concrete formwork, shoring and reshoring.	-	X	ACI 318: 6.1, 6.2	1906

13 VAC 5-63-290. Chapter 18 Soils and Foundations.

Change the exception to Section 1803.5 of the IBC to read:

Exception: Compacted fill material less than 12 inches (305 mm) in depth need not comply with an approved report, provided it is a natural non-organic material that is not susceptible to swelling when exposed to moisture and it has been compacted to a minimum of 90% Modified Proctor in accordance with ASTM D1557. The compaction shall be verified by a qualified inspector approved by the building official. Material other than natural material may be used as fill material when accompanied by a certification from an RDP and approved by the building official.

13 VAC 5-63-300. Chapter 27 Electrical.

Add Section 2701.1.1 to the IBC to read:

2701.1.1 Changes to the ICC Electrical Code. The following changes shall be made to the ICC Electrical Code:

1. Add Section 801.2.1 to the ICC Electrical Code to read:

801.2.1 Temporary connection to dwelling units. The building official shall give permission to energize the electrical service equipment of a one- or two-family dwelling unit when all of the following requirements have been approved:

1. The service wiring and equipment, including the meter socket enclosure, shall be installed and the service wiring terminated.
2. The grounding electrode system shall be installed and terminated.
3. At least one receptacle outlet on a ground fault protected circuit shall be installed and the circuit wiring terminated.
4. Service equipment covers shall be installed.
5. The building roof covering shall be installed.
6. Temporary electrical service equipment shall be suitable for wet locations unless the interior is dry and protected from the weather.

2. Change Section 1202.2 of the ICC Electrical Code to read:

1202.2 Nonmetallic-sheathed cable. The use of Type NM, NMC and NMS (nonmetallic sheathed) cable wiring methods in buildings not exceeding four floors above grade shall not be limited based upon construction type of the building. For the purpose of this section, the first floor of a building shall be that floor that has 50% or more of the exterior wall surface level with or above finished grade. One additional level that is the first level and not designed for human habitation and used only for vehicle parking, storage, or similar use shall be permitted.

13 VAC 5-63-310. Chapter 28 Mechanical Systems.

A. Change Section 2801.1 of the IBC to read:

2801.1 Scope. Mechanical appliances, equipment and systems shall be constructed and installed in accordance with

Proposed Regulations

this chapter, the International Mechanical Code and the International Fuel Gas Code. Masonry chimneys, fireplaces and barbecues shall comply with the International Mechanical Code and Chapter 21 of this code.

Exception: This code shall not govern the construction of water heaters, boilers and pressure vessels to the extent which they are regulated by the Virginia Boiler and Pressure Vessel Regulations (16 VAC 25-50). However, the building official may require the owner of a structure to submit documentation to substantiate compliance with those regulations.

B. Add IBC Section 2802 Heating Facilities.

C. Add Section 2802.1 to the IBC to read:

2802.1 Required heating in dwelling units. Heating facilities shall be required in every dwelling unit or portion thereof which is to be rented, leased or let on terms, either expressed or implied, to furnish heat to the occupants thereof. The heating facilities shall be capable of maintaining the room temperature at 65°F (18°C) during the period from October 15 to May 1 during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours when measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls. The capability of the heating system shall be based on the outside design temperature required for the locality by this code.

D. Add Section 2802.2 to the IBC to read:

2802.2 Required heating in nonresidential structures. Heating facilities shall be required in every enclosed occupied space in nonresidential structures. The heating facilities shall be capable of producing sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours. The required room temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls.

Processing, storage and operation areas that require cooling or special temperature conditions and areas in which persons are primarily engaged in vigorous physical activities are exempt from these requirements.

E. Add IBC Section 2803 Fuel Gas.

F. Add Section 2803.1 to the IBC to read:

2803.1 Changes to the International Fuel Gas Code. The following changes shall be made to the International Fuel Gas Code:

1. Change Section 301.1 of the International Fuel Gas Code to read:

301.1 Scope. This code shall apply to the installation of fuel gas piping systems, fuel gas utilization equipment, and related accessories as follows:

- 1. Coverage of piping systems shall extend from the point of delivery to the connections with gas utilization equipment. (See "point of delivery.")*
- 2. Systems with an operating pressure of 125 psig (862 kPa gauge) or less.*

Piping systems for gas-air mixtures within the flammable range with an operating pressure of 10 psig (69 kPa gauge) or less.

LP-Gas piping systems with an operating pressure of 20 psig (140 kPa gauge) or less.

3. Piping systems requirements shall include design, materials, components, fabrication, assembly, installation, testing and inspection.

4. Requirements for gas utilization equipment and related accessories shall include installation, combustion and ventilation air and venting.

This code shall not apply to the following:

- 1. Portable LP-Gas equipment of all types that are not connected to a fixed fuel piping system.*
- 2. Installation of farm equipment such as brooders, dehydrators, dryers, and irrigation equipment.*
- 3. Raw material (feedstock) applications except for piping to special atmosphere generators.*
- 4. Oxygen-fuel gas cutting and welding systems.*
- 5. Industrial gas applications using gases such as acetylene and acetylenic compounds, hydrogen, ammonia, carbon monoxide, oxygen, and nitrogen.*
- 6. Petroleum refineries, pipeline compressor or pumping stations, loading terminals, compounding plants, refinery tank farms, and natural gas processing plants.*
- 7. Integrated chemical plants or portions of such plants where flammable or combustible liquids or gases are produced by chemical reactions or used in chemical reactions.*
- 8. LP-Gas installations at utility gas plants.*
- 9. Liquefied natural gas (LNG) installations.*
- 10. Fuel gas piping in power and atomic energy plants.*
- 11. Proprietary items of equipment, apparatus, or instruments such as gas generating sets, compressors, and calorimeters.*
- 12. LP-Gas equipment for vaporization, gas mixing, and gas manufacturing.*
- 13. Temporary LP-Gas piping for buildings under construction or renovation that is not to become part of the permanent piping system.*
- 14. Installation of LP-Gas systems for railroad switch heating.*
- 15. Installation of LP-Gas and compressed natural gas (CNG) systems on vehicles.*
- 16. Except as provided in Section 401.1.1, gas piping, meters, gas pressure regulators, and other appurtenances used by the serving gas supplier in the distribution of gas, other than undiluted LP-Gas.*
- 17. Building design and construction, except as specified herein.*

2. Add Section 404.8.3 to the International Fuel Gas Code to read:

404.8.3 Coating application. Joints in ferrous metal piping exposed in exterior locations shall not be coated prior to testing and approval.

13 VAC 5-63-320. Chapter 29 Plumbing systems.

A. Change Section 2901.1 of the IBC to read:

2901.1 Scope. The provisions of this chapter and the International Plumbing Code shall govern the design and installation of all plumbing systems and equipment, except that water supply sources and sewage disposal systems are regulated and approved by the Virginia Department of Health. The approval of pumping and electrical equipment associated with such water supply sources and sewage disposal systems shall, however, be the responsibility of the building official.

B. Add Section 2901.1.1 to the IBC to read:

2901.1.1 Changes to the International Plumbing Code. The following change shall be made to the International Plumbing Code:

1. Delete Sections 311 and 311.1.

13 VAC 5-63-330. Chapter 30 Elevators and conveying equipment.

Change Section 3002.4 of the IBC to read:

3002.4 Elevator car to accommodate ambulance stretcher. In buildings four or more stories in height where an elevator or elevators are provided, at least one of the elevators shall be capable of providing fire department personnel emergency access to all floors and shall have the elevator car of such a size and arrangement to accommodate a 24-inch by 76-inch (610 mm by 1930 mm) ambulance stretcher in the horizontal, open position. The elevator shall be identified by the international symbol for emergency medical services (star of life). The symbol shall not be less than three inches (76 mm) high and shall be placed inside on both sides of the hoistway door frame.

Exception: Elevators in multistory dwelling units or guest rooms.

13 VAC 5-63-340. Chapter 33 Safeguards during construction.

Delete IBC Sections 3305 and 3305.1.

13 VAC 5-63-350. Chapter 34 Existing structures.

A. Change Section 3401.1 of the IBC to read:

3401.1 Scope. The provisions of this chapter and the applicable requirements of Chapter 1 shall control the alteration, repair, addition and change of occupancy of existing structures.

B. Delete IBC Sections 3401.2 and 3401.3.

C. Delete IBC Section 3403.

D. Change Section 3405.1 of the IBC to read:

3405.1 Standards for replacement glass. In accordance with § 36-99.2 of the Code of Virginia, any replacement glass installed in buildings constructed prior to first edition of the USBC shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

E. Delete IBC Section 3406.

F. Delete IBC Section 3408.

G. Change Section 3410.2 of the IBC to read:

3410.2 Applicability. When specifically requested by an owner or an owner's agent in structures where there is work involving additions, alterations or changes of occupancy, the provisions in Sections 3410.2.1 through 3410.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, S and U. These provisions shall not apply to buildings with occupancies in Group H or I.

H. Add IBC Section 3411 Retrofit Requirements.

I. Add Section 3411.1 to the IBC to read:

3411.1 Scope. In accordance with Section 103.7 and as setout herein, the following buildings are required to be provided with certain fire protection equipment or systems or other retrofitted components.

J. Add Section 3411.2 to the IBC to read:

3411.2 Smoke detectors in colleges and universities. In accordance with Section 36-99.3 of the Code of Virginia, college and university buildings containing dormitories for sleeping purposes shall be provided with battery-powered or AC-powered smoke detector devices installed therein in accordance with this code in effect on July 1, 1982. All public and private college and university dormitories shall have installed such detectors regardless of when the building was constructed. The chief administrative office of the college or university shall obtain a certificate of compliance with the provisions of this subsection from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Virginia Department of General Services. The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled 24 hours a day by military guards.

K. Add Section 3411.3 to the IBC to read:

3411.3 Smoke detectors in certain juvenile care facilities. In accordance with § 36-99.4 of the Code of Virginia, battery-powered or AC-powered smoke detectors shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children and juveniles which are operated by or under the auspices of the Virginia Department of Juvenile Justice, regardless of when the building was constructed, by July 1, 1986, in accordance with the provisions of this code that were in effect on July 1, 1984. Administrators of such homes and facilities shall be responsible for the installation of the smoke detector devices.

L. Add Section 3411.4 to the IBC to read:

Proposed Regulations

3411.4 *Smoke detectors for the deaf and hearing-impaired.* In accordance with Section 36-99.5 of the Code of Virginia, smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;
2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or
3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

M. Add Sections 3411.5, 3411.5.1 and 3411.5.2 to the IBC to read:

3411.5 *Assisted living facilities (formerly known as adult care residences or homes for adults).* Existing assisted living facilities licensed by the Virginia Department of Social Services shall comply with this section.

3411.5.1. *Fire protective signaling system and fire detection system.* A fire protective signaling system and an automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in assisted living facilities by August 1, 1994.

Exception: Assisted living facilities that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

3411.5.2. *Single and multiple station smoke detectors.* Battery or AC-powered single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in assisted living facilities by August 1, 1994.

Exception: Assisted living facilities that are equipped throughout with single and multiple station smoke detectors.

N. Add Section 3411.6 to the IBC to read:

3411.6 *Smoke detectors in buildings containing dwelling units.* AC-powered smoke detectors with battery backup or an equivalent device shall be required to be installed to replace a defective or inoperative battery-powered smoke detector located in buildings containing one or more dwelling units or

rooming houses offering to rent overnight sleeping accommodations, when it is determined by the building official that the responsible party of such building or dwelling unit fails to maintain battery-powered smoke detectors in working condition.

O. Add Section 3411.7 to the IBC to read:

3411.7 *Fire suppression, fire alarm and fire detection systems in nursing homes and facilities.* Fire suppression systems as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing facilities licensed by the Virginia Department of Health by January 1, 1993, regardless of when such facilities or institutions were constructed. Units consisting of certified long-term care beds located on the ground floor of general hospitals shall be exempt from the requirements of this section.

Fire alarm or fire detector systems, or both, as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing homes and nursing facilities licensed by the Virginia Department of Health by August 1, 1994.

P. Add Section 3411.8 to the IBC to read:

3411.8 *Fire suppression systems in hospitals.* Fire suppression systems shall be installed in all hospitals licensed by the Virginia Department of Health as required by the edition of this code in effect on October 1, 1995, regardless of when such facilities were constructed.

Q. Add Section 3411.9 to the IBC to read:

3411.9 *Identification of handicapped parking spaces by above grade signs.* All parking spaces reserved for the use of handicapped persons shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of handicapped persons. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the handicapped within the meaning of this section. All above grade handicapped parking space signs shall have the bottom edge of the sign no lower than four feet (1219 mm) nor higher than seven feet (2133 mm) above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of Chapter 11 of this code. All disabled parking signs shall include the following language: PENALTY, \$100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four feet above the parking surface.

R. Add Section 3411.10 to the IBC to read:

3411.10 *Smoke detectors in hotels and motels.* Smoke detectors shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, by the dates indicated, regardless of when constructed.

S. Add Section 3411.11 to the IBC to read:

3411.11 Sprinkler systems in hotel and motels. By September 1, 1997, an automatic sprinkler system shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, regardless of when constructed.

T. Add Section 3411.12 to the IBC to read:

3411.12 Fire suppression systems in dormitories. An automatic fire suppression system shall be provided throughout all buildings having a Group R-2 fire area which are more than 75 feet (22,860 mm) or six stories above the lowest level of exit discharge and which are used, in whole or in part, as a dormitory to house students by any public or private institution of higher education, regardless of when such buildings were constructed, in accordance with the edition of this code in effect on August 20, 1997, and the requirements for sprinkler systems under the edition of the NFPA 13 standard referenced by that code. The automatic fire suppression system shall be installed by September 1, 1999. The chief administrative office of the college or university shall obtain a certificate of compliance from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

Exceptions:

- 1. Buildings equipped with an automatic fire suppression system in accordance with Section 903.3.1.1 or the 1983 or later editions of NFPA 13.*
- 2. Any dormitory at a state-supported military college or university which is patrolled 24 hours a day by military guards.*
- 3. Application of the requirements of this section shall be modified in accordance with the following:*

3.1. Building systems, equipment or components other than the fire suppression system shall not be required to be added or upgraded except as necessary for the installation of the fire suppression system and shall only be required to be added or upgraded where the installation of the fire suppression system creates an unsafe condition.

3.2. Residential sprinklers shall be used in all sleeping rooms. Other sprinklers shall be quick response or residential unless deemed unsuitable for a space. Standard response sprinklers shall be used in elevator hoist ways and machine rooms.

3.3. Sprinklers shall not be required in wardrobes in sleeping rooms that are considered part of the building construction or in closets in sleeping rooms, when such wardrobes or closets (i) do not exceed 24 square feet (2.23 ²) in area, (ii) have the smallest dimension less than 36 inches (914 mm), and (iii) comply with all of the following:

3.3.1. A single station smoke detector monitored by the building fire alarm system is installed in the room containing the wardrobe or closet that will activate the general alarm for the building if the single station

smoke detector is not cleared within five minutes after activation.

3.3.2. The minimum number of sprinklers required for calculating the hydraulic demand of the system for the room shall be increased by two and the two additional sprinklers shall be corridor sprinklers where the wardrobe or closet is used to divide the room. Rooms divided by a wardrobe or closet shall be considered one room for the purpose of this requirement.

3.3.3. The ceiling of the wardrobe, closet or room shall have a fire resistance rating of not less than 1/2 hour.

3.4. Not more than one sprinkler shall be required in bathrooms within sleeping rooms or suites having a floor area between 55 square feet (5.12 m²) and 120 square feet (11.16 m²) provided the sprinkler is located to protect the lavatory area and the plumbing fixtures are of a noncombustible material.

3.5. Existing standpipe residual pressure shall be permitted to be reduced when the standpipe serves as the water supply for the fire suppression system provided the water supply requirements of NFPA 13 - 94 are met.

3.6. Limited service controllers shall be permitted for fire pumps when used in accordance with their listing.

3.7. Where a standby power system is required, a source of power in accordance with Section 701-11 (d) or 701-11 (e) of NFPA 70 - 96 shall be permitted.

U. Add Section 3411.13 to the IBC to read:

3411.13 Fire extinguishers and smoke detectors in SRCF's. SRCF's shall be provided with at least one approved type ABC portable fire extinguisher with a minimum rating of 2A10BC installed in each kitchen. In addition, SRCF's shall provide at least one approved and properly installed battery operated smoke detector outside of each sleeping area in the vicinity of bedrooms and bedroom hallways and on each additional floor.

V. Add Section 3411.14 to the IBC to read:

3411.14 Smoke detectors in adult day care centers. Battery-powered or AC-powered smoke detector devices shall be installed in all adult day care centers licensed by the Virginia Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the provisions of this code in effect on October 1, 1990. The licensee shall obtain a certificate of compliance from the building official of the locality in which the center is located, or in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

13 VAC 5-63-360. Chapter 35 Referenced standards.

Add new referenced standard to the IBC as follows:

Proposed Regulations

Standard reference number	Title	Referenced in code section number
ASTM E329-02	Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction	111.2

13 VAC 5-63-370. Appendix F Rodent proofing.

The following provisions of Appendix F of the IBC are part of this code:

F101.2 Foundation wall ventilation openings.

F101.6 Pier and wood construction. (Includes all provisions.)

13 VAC 5-63-380. Appendix H Signs.

The following provisions of Appendix H of the IBC are part of this code:

H101.2 Signs exempt from permits.

H102 Definitions. (Includes all definitions.)

H103 Location. (Includes Section H103.1.)

H105 through H114. (Includes all provisions.)

13 VAC 5-63-390. Appendix I Patio covers.

The following provisions from Appendix I of the IBC are part of this code:

I101 through I104 (Includes all provisions.)

PART II. REHABILITATION.

13 VAC 5-63-400. Chapter 1 Administration; Section 101 General.

A. Section 101.1 Short title. The Virginia Uniform Statewide Building Code, Part II, Rehabilitation, may be cited as the Virginia Rehabilitation Code.

B. Section 101.2 Incorporation by reference. Chapters 2 – 14 of the 2003 International Existing Building Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the Virginia Rehabilitation Code. The term "IEBC" means the 2003 International Existing Building Code, published by the International Code Council, Inc. Any codes and standards referenced in the IEBC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference.

C. Section 101.3 Numbering system. A dual numbering system is used in the Virginia Rehabilitation Code to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IEBC. IEBC numbering system designations are provided in the catch-lines of the Virginia Administrative Code sections and cross references between sections or chapters of the Virginia Rehabilitation Code use

only the IEBC numbering system designations. The term "chapter" is used in the context of the numbering system of the IEBC and may mean a chapter in the Virginia Rehabilitation Code, a chapter in the IEBC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

D. Section 101.4 Arrangement of code provisions. The Virginia Rehabilitation Code is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 – 14 of the IEBC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IEBC that are specifically identified. The terminology "changes to the text of the incorporated chapters of the IEBC that are specifically identified" shall also be referred to as the "state amendments to the IEBC." Such state amendments to the IEBC are set out using corresponding chapter and section numbers of the IEBC numbering system. In addition, since Chapter 1 of the IEBC is not incorporated as part of the Virginia Rehabilitation Code, any reference to a provision of Chapter 1 of the IEBC in the provisions of Chapters 2 - 14 of the IEBC is generally invalid. However, where the purpose of such a reference would clearly correspond to a provision of Chapter 1 established herein, then the reference may be construed to be a valid reference to such corresponding Chapter 1 provision.

E. Section 101.5 Use of terminology and notes. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 – 14 of the IEBC or in the state amendments to the IEBC means the Virginia Rehabilitation Code, unless the context clearly indicates otherwise. The term "this code," or "the code," where used in a code or standard referenced in the IEBC means that code or standard, unless the context clearly indicates otherwise. The term "USBC" where used in this code means Part I of the Virginia Uniform Statewide Building Code, also known as the "Virginia Construction Code," unless the context clearly indicates otherwise. In addition, the use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision. Notes in the IEBC, in the codes and standards referenced in the IEBC and in the state amendments to the IEBC may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

F. Section 101.6 Order of precedence. The provisions of Chapter 1 of this code supercede any conflicting provisions of Chapters 2 – 14 of the IEBC and any conflicting provisions of the codes and standards referenced in the IEBC. In addition, the state amendments to the IEBC supersede any conflicting provisions of Chapters 2 – 14 of the IEBC and any conflicting provisions of the codes and standards referenced in the IEBC. Further, the provisions of Chapters 2 – 14 of the IEBC supersede any conflicting provisions of the codes and standards referenced in the IEBC.

G. Section 101.7 Administrative provisions. The provisions of Chapter 1 establish administrative requirements, which include but are not limited to provisions relating to the scope

and enforcement of the code. Any provisions of Chapters 2 – 14 of the IEBC or any provisions of the codes and standards referenced in the IEBC that address the same subject matter to a lesser or greater extent are deleted and replaced by the provisions of Chapter 1. Further, any administrative requirements contained in the state amendments to the IEBC shall be given the same precedence as the provisions of Chapter 1. Notwithstanding the above, where administrative requirements of Chapters 2 – 14 of the IEBC or of the codes and standards referenced in the IEBC are specifically identified as valid administrative requirements in Chapter 1 of this code or in the state amendments to the IEBC, then such requirements are not deleted and replaced.

Note: The purpose of this provision is to eliminate overlap, conflicts and duplication by providing a single standard for administrative, procedural and enforcement requirements of this code.

H. Section 101.8 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

13 VAC 5-63-410. Section 102 Purpose and scope.

A. Section 102.1 Purpose. In accordance with § 36-99.01 of the Code of Virginia, the General Assembly of Virginia has declared that (i) there is an urgent need to improve the housing conditions of low and moderate income individuals and families, many of whom live in substandard housing, particularly in the older cities of the Commonwealth; (ii) there are large numbers of older residential buildings in the Commonwealth, both occupied and vacant, which are in urgent need of rehabilitation and must be rehabilitated if the state's citizens are to be housed in decent, sound, and sanitary conditions; and (iii) the application of those building code requirements currently in force to housing rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

The General Assembly further declares that (i) there is an urgent need to improve the existing condition of many of the Commonwealth's stock of commercial properties, particularly in older cities; (ii) there are large numbers of older commercial buildings in the Commonwealth, both occupied and vacant, that are in urgent need of rehabilitation and that must be rehabilitated if the citizens of the Commonwealth are to be provided with decent, sound and sanitary work spaces; and (iii) the application of the existing building code to such rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

B. Section 102.2 Scope. In accordance with Section 103.6 of the USBC, this code shall be an acceptable alternative to compliance with the Virginia Construction Code for the rehabilitation of existing buildings and structures.

13 VAC 5-63-420. Section 103 Application of code.

A. Section 103.1 General. The provisions of this code shall control the rehabilitation, alteration, repair, addition and

change of occupancy of existing buildings and structures when this code is chosen as an alternative to compliance with the Virginia Construction Code. All administrative provisions of the Virginia Construction Code, including but not limited to, requirements for permits, inspections and approvals by the local building department, provisions for appeals from decisions of the local building department and the issuance of modifications, are applicable to the use of this code, except where this code sets out differing requirements.

B. Section 103.2 Requirements relating to maintenance. Any requirements of the IEBC requiring the maintenance of existing buildings or structures are invalid.

Note: Requirements for the maintenance of existing buildings and structures and for unsafe conditions are contained in Part III of the Virginia Uniform Statewide Building Code, also known as the "Virginia Maintenance Code."

C. Section 103.3 Use of Appendix A. Appendix A of the IEBC provides guidelines for the seismic retrofit of existing buildings. The use of this appendix is not mandatory but shall be permitted to be utilized at the option of an owner, the owner's agent or the RDP involved in a rehabilitation project. However, in no case shall the use of Appendix A be construed to authorize the lowering of existing levels of health or safety in buildings or structures being rehabilitated.

D. Section 103.4 Use of Appendix B. Appendix B of the IEBC provides supplementary accessibility requirements for existing buildings and facilities. All applicable requirements of Appendix B shall be met in buildings and structures being rehabilitated.

E. Section 103.5 Use of Resource A. Resource A of the IEBC provides guidelines for the evaluation of fire resistance ratings of archaic materials and may be used in conjunction with rehabilitation projects.

13 VAC 5-63-430. Chapter 2 Definitions.

Change Section 201.3 of the IEBC to read:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the other International Codes, such terms shall have the meanings ascribed to them in those codes, except that terms defined in the Virginia Construction Code shall be used for this code and shall take precedence over other definitions.

13 VAC 5-63-440. Chapter 12 Compliance alternatives.

Change Section 1201.2 of the IEBC to read:

1201.2 Applicability. Work involving rehabilitation, additions, alterations or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 4 through 10. The provisions in Sections 1201.2.1 through 1201.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, S and U. These provisions shall not apply to buildings with occupancies in Group H or I.

Proposed Regulations

PART III.
MAINTENANCE.

13 VAC 5-63-450. Chapter 1 Administration; Section 101 General.

A. Section 101.1 Short title. The Virginia Uniform Statewide Building Code, Part III, Maintenance, may be cited as the Virginia Maintenance Code.

B. Section 101.2 Incorporation by reference. Chapters 2 – 8 of the 2003 International Property Maintenance Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the Virginia Maintenance Code. The term "IPMC" means the 2003 International Property Maintenance Code, published by the International Code Council, Inc. Any codes and standards referenced in the IPMC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference.

C. Section 101.3 Numbering system. A dual numbering system is used in the Virginia Maintenance Code to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IPMC. IPMC numbering system designations are provided in the catch-lines of the Virginia Administrative Code sections and cross references between sections or chapters of the Virginia Maintenance Code use only the IPMC numbering system designations. The term "chapter" is used in the context of the numbering system of the IPMC and may mean a chapter in the Virginia Maintenance Code, a chapter in the IPMC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

D. Section 101.4 Arrangement of code provisions. The Virginia Maintenance Code is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 – 8 of the IPMC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IPMC which are specifically identified. The terminology "changes to the text of the incorporated chapters of the IPMC which are specifically identified" shall also be referred to as the "state amendments to the IPMC." Such state amendments to the IPMC are set out using corresponding chapter and section numbers of the IPMC numbering system. In addition, since Chapter 1 of the IPMC is not incorporated as part of the Virginia Maintenance Code, any reference to a provision of Chapter 1 of the IPMC in the provisions of Chapters 2 - 8 of the IPMC is generally invalid. However, where the purpose of such a reference would clearly correspond to a provision of Chapter 1 established herein, then the reference may be construed to be a valid reference to such corresponding Chapter 1 provision.

E. Section 101.5 Use of terminology and notes. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 – 8 of the IPMC or in the state amendments to the IPMC means the Virginia Maintenance Code, unless the context clearly indicates otherwise. The term "this code," or

"the code," where used in a code or standard referenced in the IPMC means that code or standard, unless the context clearly indicates otherwise. The term "USBC" where used in this code means Part I of the Virginia Uniform Statewide Building Code, also known as the "Virginia Construction Code," unless the context clearly indicates otherwise. In addition, the use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision. Notes in the IPMC, in the codes and standards referenced in the IPMC and in the state amendments to the IPMC may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

F. Section 101.6 Order of precedence. The provisions of Chapter 1 of this code supercede any conflicting provisions of Chapters 2 – 8 of the IPMC and any conflicting provisions of the codes and standards referenced in the IPMC. In addition, the state amendments to the IPMC supersede any conflicting provisions of Chapters 2 – 8 of the IPMC and any conflicting provisions of the codes and standards referenced in the IPMC. Further, the provisions of Chapters 2 – 8 of the IPMC supersede any conflicting provisions of the codes and standards referenced in the IPMC.

G. Section 101.7 Administrative provisions. The provisions of Chapter 1 establish administrative requirements, which include but are not limited to provisions relating to the scope of the code, enforcement, fees, permits, inspections and disputes. Any provisions of Chapters 2 – 8 of the IPMC or any provisions of the codes and standards referenced in the IPMC which address the same subject matter to a lesser or greater extent are deleted and replaced by the provisions of Chapter 1. Further, any administrative requirements contained in the state amendments to the IPMC shall be given the same precedence as the provisions of Chapter 1. Notwithstanding the above, where administrative requirements of Chapters 2 – 8 of the IPMC or of the codes and standards referenced in the IPMC are specifically identified as valid administrative requirements in Chapter 1 of this code or in the state amendments to the IPMC, then such requirements are not deleted and replaced.

Note: The purpose of this provision is to eliminate overlap, conflicts and duplication by providing a single standard for administrative, procedural and enforcement requirements of this code.

H. Section 101.8 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

Note: The order of precedence outlined in Section 101.6 may be determinative in establishing how to apply the definitions in the IPMC and in the referenced codes and standards.

13 VAC 5-63-460. Section 102 Purpose and scope.

A. Section 102.1 Purpose. In accordance with § 36-103 of the Code of Virginia, the Virginia Board of Housing and Community Development may adopt and promulgate as part of the Virginia Uniform Statewide Building Code, building regulations that facilitate the maintenance, rehabilitation,

development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Further, in accordance with § 36-99 of the Code of Virginia, the purpose of this code is to protect the health, safety and welfare of the residents of the Commonwealth of Virginia, provided that buildings and structures should be permitted to be maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged.

B. Section 102.2 Scope. In accordance with § 36-98 of the Code of Virginia, the Virginia Maintenance Code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

C. Section 102.3 Exemptions. This code shall not regulate those buildings and structures specifically exempt from the Virginia Construction Code, except that existing industrialized buildings and manufactured homes shall not be exempt from this code.

13 VAC 5-63-470. Section 103 Application of code.

A. Section 103.1 General. This code prescribes regulations for the maintenance of all existing buildings and structures and associated equipment, including regulations for unsafe buildings and structures.

B. Section 103.2 Maintenance requirements. The equipment, systems, devices and safeguards which were required, provided and approved when an existing building or structure was constructed shall be maintained and kept in good repair in accordance with the requirements of this code. Buildings and structures subject to any edition of the USBC when constructed shall also be maintained and kept in good repair in accordance with the USBC under which such building or structure was constructed. No provision of this code shall require alterations to be made to an existing building, structure or equipment unless conditions are present which meet the definition of an unsafe structure or a structure unfit for human occupancy.

C. Section 103.3 Continued approval. Notwithstanding any provision of this code to the contrary, alterations shall not be required to be made to existing buildings or structures which are occupied in accordance with a certificate of occupancy issued under any edition of the USBC.

13 VAC 5-63-480. Section 104 Enforcement, generally.

A. Section 104.1 Scope of enforcement. In accordance with § 36-105 of the Code of Virginia, the local governing body may also inspect and enforce the provisions of the USBC for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

Note: Generally, official action must be taken by the local government to enforce the Virginia Maintenance Code. Consultation with the legal counsel of the jurisdiction when initiating or changing such action is advised.

B. Section 104.2 Fees. In accordance with § 36-105 of the Code of Virginia, fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

C. Section 104.3 State buildings. In accordance with § 36-98.1 of the Code of Virginia, this code shall be applicable to state-owned buildings and structures. Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings.

D. Section 104.4 Local enforcing agency. In jurisdictions enforcing this code, the local governing body shall designate the agency within the local government responsible for such enforcement and appoint a code official. The local governing body may also employ, appoint or contract with technical assistants to assist the code official in the enforcement of this code. A permanently appointed code official shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. DHCD shall be notified by the appointing authority within 30 days of the appointment or release of a permanent or acting code official and within 60 days after retaining or terminating a technical assistant.

Note: Code officials and technical assistants are subject to sanctions in accordance with the VCS.

E. Section 104.4.1 Qualifications of code official. The code official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor, housing inspector or superintendent of building construction, with at least three years in responsible charge of work. Any combination of education and experience, that would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The code official shall have general knowledge of sound engineering practice in respect to the design and construction of structures, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

F. Section 104.4.2 Certification of code official and technical assistants. An acting or permanent code official shall be certified as a code official in accordance with the VCS within one year after being appointed as acting or permanent code official. A technical assistant shall be certified in the appropriate subject area within three years after being retained. When required by a locality to have two or more certifications, a technical assistant shall obtain the additional certifications within three years from the date of such requirement.

Exception: A code official or technical assistant in place prior to April 1, 1995, shall not be required to meet the certification requirements in this section while continuing to serve in the same capacity in the same locality.

G. Section 104.4.3 Noncertified code official. Except for a code official exempt from certification under the exception to Section 104.4.2, any acting or permanent code official who is

Proposed Regulations

not certified as a code official in accordance with the VCS shall complete an orientation course provided by DHCD within 60 days of appointment and shall attend the core module of the Virginia Building Code Academy or an equivalent course in an individual or regional code academy accredited by DHCD within 180 days of appointment. This requirement is in addition to meeting the certification requirement in Section 104.4.2.

H. Section 104.4.4 Continuing education requirements. Code officials and technical assistants shall attend periodic training courses designated by DHCD.

I. Section 104.4.5 Conflict of interest. The minimum standards of conduct for code officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

J. Section 104.4.6 Records. The local enforcing agency shall retain a record of applications received, permits, certificates, notices and orders issued, fees collected and reports of inspections in accordance with The Library of Virginia's General Schedule Number Ten.

K. Section 104.5 Powers and duties, generally. The code official shall enforce this code as set out herein and as interpreted by the State Review Board and shall issue all necessary notices or orders to ensure compliance with the code.

L. Section 104.5.1 Delegation of authority. The code official may delegate powers and duties except where such authority is limited by the local government. When such delegations are made, the code official shall be responsible for assuring that they are carried out in accordance with the provisions of this code.

M. Section 104.5.2 Issuance of modifications. Upon written application by an owner or an owner's agent, the code official may approve a modification of any provision of this code provided the spirit and intent of the code are observed and public health, welfare and safety are assured. The decision of the code official concerning a modification shall be made in writing and the application for a modification and the decision of the code official concerning such modification shall be retained in the permanent records of the local enforcing agency.

N. Section 104.5.2.1 Substantiation of modification. The code official may require or may consider a statement from a professional engineer, architect or other person competent in the subject area of the application as to the equivalency of the proposed modification.

O. Section 104.5.3 Inspections. The code official may inspect buildings or structures to determine compliance with this code and shall carry proper credentials when performing such inspections.

P. Section 104.5.4 Notice of violation. If the code official determines there are violations of this code other than those for unsafe structures, unsafe equipment or structures unfit for human occupancy under Section 105, the code official shall issue a notice of violation to be communicated promptly in writing to the owner or the person responsible for the

maintenance or use of the building or structure. Upon request of the owner of the building or structure to which the notice of violation pertains, if such notice does not contain reference to the section numbers of this code serving as the basis for the violations, then the code official shall provide the section numbers to the owner. The notice shall require correction of the violations within a reasonable time and the code official shall be responsible for any re-inspections to assure the violations have been corrected. In addition, the notice of violation shall indicate the right of appeal by referencing the appeals section.

Note: Work done to correct violations of this code is generally subject to the permit, inspection and approval provisions of the Virginia Construction Code.

Q. Section 104.5.5 Coordination of inspections. The code official shall coordinate inspections and administrative orders with any other state or local agencies having related inspection authority and shall coordinate those inspections required by the Virginia Statewide Fire Prevention Code (13 VAC 5-51) for maintenance of fire protection devices, equipment and assemblies so that the owners and occupants will not be subjected to numerous inspections or conflicting orders.

Note: The Fire Prevention Code requires the fire official to coordinate such inspections with the code official.

R. Section 104.5.6 Further action when violation not corrected. If the responsible party has not complied with the notice of violation, the code official shall submit a written request to the legal counsel of the locality to institute the appropriate legal proceedings to restrain, correct or abate the violation or to require the removal or termination of the use of the building or structure involved. In cases where the locality so authorizes, the code official may issue or obtain a summons or warrant.

S. Section 104.5.7 Penalties and abatement. Penalties for violations of this code shall be as set out in § 36-106 of the Code of Virginia. The successful prosecution of a violation of the code shall not preclude the institution of appropriate legal action to require correction or abatement of a violation.

13 VAC 5-63-490. Section 105 Unsafe structures or structures unfit for human occupancy.

A. Section 105.1 General. This section shall apply to existing buildings or structures which are classified as unsafe or unfit for human occupancy. All such structures shall be made safe through compliance with this code or shall be vacated and secured against public entry; however, such vacant and secured structures shall still be subject to other applicable requirements of this code. Notwithstanding the above, when the code official determines that an unsafe structure or a structure unfit for human occupancy is of such a potential for collapse that it should be razed or removed, then the code official shall be permitted to order the demolition of such structures in accordance with applicable requirements of this code.

Note: Buildings or structures which become unsafe during construction are regulated under the Virginia Construction Code.

B. Section 105.2 Inspection of unsafe or unfit structures. The code official shall inspect any structure reported as unsafe or unfit for human habitation and shall prepare a report to be filed in the records of the local enforcing agency and a copy issued to the owner. The report shall include the use of the structure and a description of the nature and extent of any conditions found.

C. Section 105.3 Unsafe conditions not related to maintenance. When the code official finds a condition that constitutes a serious and dangerous hazard to life or health in a building or structure constructed prior to the initial edition of the USBC and when that condition is of a cause other than improper maintenance or failure to comply with state or local building codes that were in effect when the building or structure was constructed, then the code official shall be permitted to order those minimum changes to the design or construction of the building or structure to remedy the condition.

D. Section 105.3.1 Limitation to requirements for retrofitting. In accordance with Section 103.2, this code does not generally provide for requiring the retrofitting of any building or structure. However, conditions may exist in older buildings or structures because of faulty design or equipment that constitute a danger to life or health or a serious hazard. Any changes to the design or construction required by the code official under this section shall be only to remedy the serious hazard or danger to life or health and such changes shall not be required to fully comply with the requirements of the Virginia Construction Code applicable to newly constructed buildings or structures.

E. Section 105.4 Notice of unsafe structure or structure unfit for human occupancy. When a building or structure is determined to be unsafe or unfit for human occupancy by the code official, a written notice of unsafe structure or structure unfit for human occupancy shall be issued in person to the owner, the owner's agent or the person in control of such structure. The notice shall specify the corrections necessary to comply with this code, or if the structure is required to be demolished, the notice shall specify the time period within which the demolition must occur. Requirements in Section 104.5.4 for notices of violation are also applicable to notices issued under this section to the extent that any such requirements are not in conflict with the requirements of this section. In addition, the notice shall contain a statement requiring the person receiving to notice to either accept or reject the terms of the notice.

Note: Whenever possible, the notice should also be given to any tenants of the affected building.

F. Section 105.5 Posting of notice. If the notice is unable to be issued in person as required by Section 105.4, then the notice shall be sent by registered or certified mail to the last known address of the responsible party and a copy of the notice shall be posted in a conspicuous place on the premises.

G. Section 105.6 Posting of placard. In the case of a structure unfit for human habitation, at the time the notice is issued, a placard with the following wording shall be posted at the entrance to the building: "THIS STRUCTURE IS UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL." In the case of an

unsafe structure, if the notice is not complied with, a placard with the above wording shall be posted at the entrance to the building. After a building is placarded, entering the building shall be prohibited except as authorized by the code official to make inspections, to perform required repairs or to demolish the building. In addition, the placard shall not be removed until the building is determined by the code official to be safe to occupy, nor shall the placard be defaced.

H. Section 105.7 Revocation of certificate of occupancy. If a notice of unsafe structure or structure unfit for human habitation is not complied with within the time period stipulated on the notice, the code official shall be permitted to request the local building department to revoke the certificate of occupancy issued under the Virginia Construction Code.

I. Section 105.8 Vacant and open structures. When an unsafe structure or a structure unfit for human habitation is open for public entry at the time a placard is issued under Section 105.6, the code official shall be permitted to authorize the necessary work to make such structure secure against public entry whether or not legal action to compel compliance has been instituted.

J. Section 105.9 Temporary safeguards and emergency repairs. To the extent authorized by the locality, when an unsafe structure or a structure unfit for human habitation is in immediate danger of collapse or failure and is endangering life or when violations of this code result in a hazard that is an immediate serious and imminent threat to the life and safety of the occupants, the code official shall be permitted to authorize the necessary work to make the structure temporarily safe whether or not legal action to compel compliance has been instituted. In addition, also to the extent authorized by the locality, the code official shall be permitted to employ the necessary labor and to purchase the necessary materials to perform any necessary emergency repairs as expeditiously as possible. The legal counsel of the locality may be requested to institute appropriate action against the owner to recover the costs associated with any such emergency repairs.

K. Section 105.10 Closing of streets. When necessary for public safety, the code official shall be permitted to order the temporary closing of sidewalks, streets, public ways or premises adjacent to unsafe or unfit structures and prohibit the use of such spaces.

L. Section 105.11 Demolition of unsafe or unfit structures. When the code official has ordered the demolition of an unsafe structure or a structure unfit for human habitation and when the demolition has not occurred in the time period required, or when the notice issued under Section 105.4 has not been complied within the time period stipulated, the code official shall be permitted to proceed with demolition to the extent permitted by the locality. The legal counsel of the locality may be requested to institute appropriate action against the owner to recover the costs associated with such demolition.

Note: A locality may be able to take actions to compel demolition or recover costs, or both, pursuant to §§ 15.2-900, 15.2-906 or § 15.2-1115 of the Code of Virginia.

Proposed Regulations

13 VAC 5-63-500. Section 106 Appeals.

A. Section 106.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the Virginia Construction Code shall be permitted to serve as the appeals board required by this section.

B. Section 106.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

C. Section 106.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

D. Section 106.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

E. Section 106.5 Right of appeal; filing of appeal application. The owner of a building or structure, the owner's agent or any other person involved in the use of a building or structure may appeal a decision of the code official concerning the application of the this code to such building or structure and may also appeal a refusal by the code official to grant a modification to the provisions of this code pertaining to such building or structure. The applicant shall submit a written request for appeal to the LBBCA within 21 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the

building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

F. Section 106.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

G. Section 106.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be by resolution signed by the chairman and retained as part of the record of the appeal. Copies of the resolution shall be given or sent to all parties. In addition, the resolution shall contain the following wording:

"Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days. Application forms are available from the Office of the State Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7150."

H. Section 106.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the resolution of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the

State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

13 VAC 5-63-510. Chapter 2 Definitions.

A. Change Section 201.3 of the IPMC to read:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Building Code, International Fire Code, International Plumbing Code, International Mechanical Code, International Existing Building Code or the ICC Electrical Code, such terms shall have the meanings ascribed to them in those codes, except that terms defined in the Virginia Construction Code shall be used for this code and shall take precedence over other definitions.

B. Add the following definitions to Section 202 of the IPMC to read:

Structure unfit for human occupancy. An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential equipment, or (ii) the required plumbing and sanitary facilities are inoperable.

Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment that is in such disrepair or condition that such equipment is determined by the code official to be dangerous to the health, safety and welfare of the occupants of a structure or the public.

Unsafe structure. An existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

13 VAC 5-63-520. Chapter 3 General requirements.

A. Delete Section 302.1 of the IPMC.

B. Change Section 302.2 of the IPMC to read:

302.2 Grading and drainage. All premises shall be graded and maintained to protect the foundation walls or slab of the structure from the accumulation and drainage of surface or stagnant water in accordance with the Virginia Construction Code.

C. Change Section 302.3 of the IPMC to read:

Sidewalks and driveways. All sidewalks, walkways, stairs, driveways, parking spaces and similar spaces regulated under the Virginia Construction Code shall be kept in a proper state of repair, and maintained free from hazardous conditions. Stairs shall comply with the requirements of Sections 305 and 702.

D. Delete Section 302.4 of the IPMC.

E. Change Section 302.5 of the IPMC to read:

302.5 Rodent harborage. All structures and adjacent premises shall be kept free from rodent harborage and infestation where such harborage or infestation adversely affects the structures.

F. Delete Sections 302.8 and 302.9 of the IPMC.

G. Change Section 304.14 of the IPMC to read:

304.14 Insect screens. During the period from April 1 to December 1, every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every swinging door shall have a self-closing device in good working conditions.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

H. Add Section 305.7 to the IPMC to read:

305.7 Lead-based paint. Interior and exterior painted surfaces of dwellings and child care facilities, including fences and outbuildings, that contain lead levels equal to or greater than 1.0 milligram per square centimeter or in excess of 0.50% lead by weight shall be maintained in a condition free from peeling, chipping and flaking paint or removed or covered in an approved manner. Any surface to be covered shall first be identified by approved warning as to the lead content of such surface.

I. Change Section 307.1 of the IPMC to read as follows and delete the remaining provisions of Section 307:

307.1 Accumulation of rubbish and garbage. The interior of every structure shall be free from excessive accumulation of rubbish or garbage.

J. Delete Section 308 of the IPMC.

13 VAC 5-63-530. Chapter 5 Plumbing facilities and fixture requirements.

A. Add Section 505.5 to the IPMC to read:

505.5 Inspection and testing of backflow prevention assemblies. Inspection and testing shall comply with Sections 505.5.1 and 505.5.2.

B. Add Section 505.5.1 to the IPMC to read:

505.5.1 Inspections. Inspections shall be made of all backflow prevention assemblies and air gaps to determine whether they are operable.

Proposed Regulations

C. Add Section 505.5.2 to the IMPC to read:

505.5.2 *Testing. Reduced pressure principle backflow preventer assemblies, double check-valve assemblies, double-detector check valve assemblies and pressure vacuum breaker assemblies shall be tested at the time of installation, immediately after repairs or relocation and at least annually. The testing procedure shall be performed in accordance with one of the following standards: ASSE 5010-1013-1, Sections 1 and 2; ASSE 5010-1015-1, Sections 1 and 2; ASSE 5010-1015-2; ASSE 5010-1015-3, Sections 1 and 2; ASSE 5010-1015-4, Sections 1 and 2; ASSE 5010-1020-1, Sections 1 and 2; ASSE 5010-1047-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-1, Sections 1, 2, 3 and 4; ASSE 5010-1048-2; ASSE 5010-1048-3, Sections 1, 2, 3 and 4; ASSE 5010-1048-4, Sections 1, 2, 3 and 4; or CAN/CSA B64.10.*

13 VAC 5-63-540. Chapter 6 Mechanical and electrical requirements.

A. Change Section 602 of the IPMC to read:

Section 602 Heating and Cooling Facilities.

B. Change Section 602.1 of the IPMC to read:

602.1 *Facilities required. Heating and cooling facilities shall be maintained and operated in structures as required by this section.*

C. Change Section 602.2 of the IPMC to read:

602.2 *Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guestroom on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat during the period from October 15 to May 1 to maintain a temperature of not less than 65°F (18°C) in all habitable rooms, bathrooms, and toilet rooms.*

Exception: When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the International Plumbing Code.

D. Change Section 602.3 of the IPMC to read:

602.3 *Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during the period the spaces are occupied.*

Exceptions:

1. *Processing, storage and operation areas that require cooling or special temperature conditions.*
2. *Areas in which persons are primarily engaged in vigorous physical activities.*

E. Change Section 602.4 of the IPMC to read:

602.4 *Cooling supply. Every owner and operator of a Group R-2 apartment building who rents, leases or lets one or more dwelling units, rooming units or guestrooms on terms, either*

expressed or implied, to furnish cooling to the occupants thereof shall supply cooling during the period from May 15 to October 1 to maintain a temperature of not more than 80°F (27°C) in all habitable rooms.

Exception: When the outdoor temperature is higher than the summer design temperature for the locality, maintenance of the room temperature shall not be required provided that the cooling system is operating at its full design capacity. The summer outdoor design temperature for the locality shall be as indicated in the International Energy Conservation Code.

F. Add Section 606.3 to the IPMC to read:

606.3 *Inspection standard. Routine or periodic inspections shall be performed in accordance with Part X of ASME A-17.1-96, Safety Code for Elevators and Escalators, with A17.1a-97 and A17.1b-98 Addenda. The code official may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership or corporation who has met the certification requirements established by the VCS.*

DOCUMENTS INCORPORATED BY REFERENCE

International Building Code – 2003 Edition, International Code Council, Inc., 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401.

International Existing Building Code – 2003 Edition, International Code Council, Inc.

International Property Maintenance Code – 2003 Edition, International Code Council, Inc.

ASTM E329-02, Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction, American Society of Testing Materials International, 100 Barr Harbor Dr., P.O. Box C700, West Conshocken, PA 19428-2959.

ASTM D1557-00, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft² (2,700 kN-m/m²)), ASTM International.

ASTM E90-90, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions, ASTM International.

CAN/CSA-B64.10-01, Manual for the Selection and Installation of Backflow Prevention Devices/Manual for the Maintenance and Field Testing of Backflow Prevention Devices, June 2003, National Standards of Canada.

ASCE 7-02, § 6.5.4, Basic Wind Speed, American Society of Civil Engineers.

ASME A17.1-1996, Routine, Periodic, and Acceptance Inspections and Tests, with A17.1a-1997 and A17.1b-1998 Addenda, American Society of Mechanical Engineers.

ASSE 5010-1013-1, Field Test Procedure for a Reduced Pressure Principle Assembly Using a Differential Pressure Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-1, Field Test Procedure for a Double Check Valve Assembly Using a Duplex Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-2, Field Test Procedure for a Double Check Valve Assembly Using a Differential Pressure Gauge -- High- and Low-Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-3, Field Test Procedure for a Double Check Valve Assembly Using a Differential Pressure Gauge -- High Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-5, Field Test Procedure for a Double Check Valve Assembly Using a Site Tube, 1991, American Society of Sanitary Engineering.

ASSE 5010-1020-1, Field Test Procedures for a Pressure Vacuum Breaker Assembly, 1991, American Society of Sanitary Engineering.

ASSE 5010-1047-1, Field Test Procedure for a Reduced Pressure Detector Assembly Using a Differential Pressure Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1048-1, Field Test Procedure for a Double Check Detector Assembly Using a Duplex Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1047-1, Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge -- High- and Low-Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1048-3, Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge -- High-Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1048-4, Field Test Procedure for a Double Check Detector Assembly Using a Site Tube, 1991, American Society of Sanitary Engineering.

VA.R. Doc. No. R04-170; Filed January 13, 2005, 11:12 a.m.

Title of Regulation: 13 VAC 5-91. Virginia Industrialized Building Safety Regulations (amending 13 VAC 5-91-10, 13 VAC 5-91-20, 13 VAC 5-91-40, 13 VAC 5-91-50, 13 VAC 5-91-70, 13 VAC 5-91-80, 13 VAC 5-91-90, 13 VAC 5-91-110 through 13 VAC 5-91-220, and 13 VAC 5-91-245 through 13 VAC 5-91-270).

Statutory Authority: § 36-73 of the Code of Virginia.

Public Hearing Date: March 17, 2005 - 10 a.m.

Public comments may be submitted until April 11, 2005.

(See Calendar of Events section for additional information)

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or e-mail steve.calhoun@dohcd.virginia.gov.

Basis: Section 36-73 of the Code of Virginia provides the board with the authority to promulgate rules and regulations prescribing standards to be complied with in industrialized buildings for protection against the hazards thereof to safety of life, health and property and prescribing procedures for the administration, enforcement and maintenance of such rules and regulations.

Purpose: The reason this regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth is that without the building and fire regulations of the Board of Housing and Community Development being kept up to date by using the latest editions of the nationally recognized model codes and standards and without the correlation of this regulation with the other building and fire regulations of the board, the protection of the health, safety and welfare of Virginia's citizens is not assured since conditions that need to be regulated are not. In addition, where a condition that was previously determined in the nationally recognized codes and standards to need to be regulated is addressed less restrictively in the newest model codes and standards, there would be the risk of exposing Virginia's citizens to unnecessary regulations.

The goals of this regulatory action and general problems this regulatory action will solve are the same as the general reason the regulatory action is essential to protect the health, safety and welfare of the citizens of the Commonwealth. Without keeping the codes up to date, there is the potential for not regulating necessary conditions, or over-regulating conditions determined to be less necessary of regulation.

Substance: Since this regulation is a companion regulation to the other building and fire regulations promulgated by the board and needs to be coordinated with those regulations, and since the other building and fire regulations of the board are concurrently undergoing regulatory actions to reference the newest available nationally recognized model codes and standards, the board is therefore accepting comment on all provisions of this regulation.

The new substantive provisions that have been identified are the major differences between the 2000 edition of the I-Codes, which were incorporated in the existing regulation, and the 2003 editions of the I-Codes, which are being incorporated in this regulatory action. The identified changes are: (i) garage construction requirements under the IRC have changed to require greater fire safety methods of construction when the garage is located beneath a habitable room, (ii) the use of fire-retardant-treated wood in roof construction of buildings of noncombustible type construction is now permitted with certain limitations, (iii) drains in both residential and commercial swimming pools are now required to have entrapment avoidance features, (iv) provisions for exterior walls adjacent to courtyards in commercial buildings have been deleted, which will permit window and door openings in such walls, (v) inclusion of provisions that permit the use of a "putty pad" protection system for electrical outlets in walls required to be of fire resistant construction methods, (vi) the use of platform lifts in lieu of ramps to provide an accessible route for persons with disabilities is now permitted in courtroom areas and exterior routes where site constraints make the use of ramps infeasible, and (vii) a prohibition

Proposed Regulations

against the use of wired glass and a requirement for the use of tempered glass in its place was added.

Issues: The primary advantage to the public of this action is that the regulation will provide the least possible necessary regulations for assuring safety in the use of industrialized buildings.

There are no advantages to the Department of Housing and Community Development or to the Commonwealth resulting from this action.

There are no disadvantages to the public or to the Commonwealth resulting from this action.

Department of Planning and Budget's Economic Impact

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

Summary of the proposed regulation. The General Assembly mandates in § 36-73 of the Code of Virginia that the Virginia Board of Housing and Community Development promulgate rules and regulations prescribing standards for industrialized buildings.

The proposed regulation updates building codes and standards developed by the International Code Council (ICC) and incorporated by reference in to the Virginia Industrialized Building Safety Regulations (IBSR) from the 2000 edition to the 2003 edition. The codes being updated include the International Building Code (IBC), the International Residential Code, and the International Property Maintenance Code. The International Plumbing Code, the International Mechanical Code, the ICC Electrical Code, the International Fuel Gas Code, and the International Energy Conservation Code, which are referenced by the IBC, have also been updated from the 2000 edition to the 2003 edition.

There are several substantive differences between the 2000 edition and the 2003 edition of the ICC codes. Updating from the 2000 edition to the 2003 edition (i) requires greater fire safety methods of garage construction in residential buildings when a garage is located below a habitable room, (ii) allows the limited use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings, (iii) requires installation of entrapment avoidance devices in the drains of all commercial and residential swimming pools, (iv) eliminates several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings, (v) allows a putty pad protection system to be used for electrical outlets on fire-rated walls, (vi) permits the use of platform lifts instead of ramps in certain areas to accommodate people with disabilities, and (vii) prohibits the

use of wired glass in Group E (educational) occupancies and requires the use of tempered glass in its place. However, some changes are likely to be more significant than others. The magnitude of each change will depend on the prevalence and use of industrialized buildings in the facet of construction subject to the change.

The proposed regulation also updates the American Society of Testing and Materials (ASTM) standards relating to system analysis and compliance assurance for manufactured buildings, incorporated by reference into the IBSR, from the 1984 edition to the 2001 edition. A review by the Department of Housing and Community Development (DHCD) determined that there are no substantive differences between the two editions.

Apart from updating documents incorporated by reference to the latest edition, the proposed regulation makes several other changes. All unregistered buildings offered for sale now have to be inspected and approved by a building official and marked by a warning sign indicating that the building is not registered. The size, form, and placement of the sign have to be approved by DHCD. The remaining changes are intended to improve the understanding and implementation of the regulation. Existing language is modified, clarifying language is added, and redundant language is deleted.

Estimated economic impact. The IBSR govern the construction of industrialized or modular buildings. These include any building(s) that are manufactured off site and transported to a site for installation and erection. Industrialized buildings can be used in the construction of most buildings, including various types of residential and commercial buildings.

Substantive Changes Between the 2000 ICC Codes and the 2003 ICC Codes: The proposed regulation updates building codes and standards developed by the ICC and incorporated by reference into the IBSR from the 2000 edition to the 2003 edition. The following are identified by DHCD as the substantive changes between the 2000 edition and the 2003 edition of the ICC codes. Discussion of the costs and benefits associated with each change is similar to the economic impact analysis of the proposed Uniform Statewide Building Code. However, the magnitude of the costs and benefits, and hence net economic impact, associated with each change to manufacturers and the consumers of industrialized buildings will depend on the prevalence and use of such structures in the facet of construction subject to the change. For example, swimming pool construction has little to do with the manufacture of industrialized buildings. Thus, requiring entrapment avoidance devices to be installed in swimming pools is likely to have little economic impact in the context of the IBSR.

(1) The proposed regulation requires greater fire safety methods of garage construction in residential buildings when a garage is located below a habitable room. Specifically, if a residential building is constructed with a habitable room above the garage, the ceiling of the garage must be covered with a N-inch Type X (fire resistant) gypsum board or equivalent that provides a one-hour fire rating. The existing requirement is for the ceiling to be covered with a 1/2-inch gypsum board or equivalent that provides a 20-minute fire rating. According to

DHCD, a 4' X 8' board of N-inch Type X gypsum is likely to cost approximately \$10 more than a 1/2-inch gypsum board of similar dimensions. Thus, for a standard 12' X 22' single garage, it is likely to cost an additional \$80-\$90 to meet the requirements of the regulation.¹ The additional cost will only be incurred on new residential construction in which the garage is constructed with a habitable room above it. New construction of garages with habitable rooms adjacent to them and existing residential construction are unaffected by the proposed change.

The proposed change is also likely to produce some economic benefits. Use of more fire resistant material on the ceiling of garages with habitable rooms above them could reduce the risk of damage to life and property from fires originating in a garage. The ICC code writing body determined that fires could spread more easily through the ceiling of a garage than through its walls. The use of fire resistant material on the ceiling increases the time it takes for the fire to spread to the house and, thus, allows more time for people to be rescued and property to be salvaged from the residence. The proposed requirement has been in the commercial building code for many years. Given the increased prevalence of residential construction with habitable rooms above garages, the ICC determined that the additional protection against fire was also required in the residential building code. According to DHCD, construction of habitable rooms above garages is on an increasing trend, especially in high-end developments.

The net economic impact of the proposed change will depend on the extent to which industrialized buildings are used in residential garage construction and on whether the additional cost of protecting against the risk of damage to life and property from fire is greater than or less than the benefits of doing so. It is not possible to make a precise determination of the net economic impact at this time. Such an estimate would require data on the use of modular buildings in residential garage construction, the number of fires that originate in a garage below a habitable room, and the damage to life and property from such fires. It would also require calculating the reduction in the risk to life and property by the use of more fire resistant material. However, the additional costs of complying with the requirements of the regulation are not very large. Moreover, the ICC code writing body determined the risk to be significant enough to recommend the use of more fire resistant material on the ceiling of garages below habitable rooms. Thus, to the extent that the proposed change reduces the risk of damage to life and property from fire without imposing any sizeable additional costs, it is likely to produce a net positive economic impact. The overall magnitude of the costs and benefits, and hence the net economic impact, will depend on the prevalence of industrialized buildings in residential garage construction.

(2) The proposed regulation allows the limited use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings. Under existing regulations, wood treated with fire retardant can only be used in roof construction of buildings less than three stories in height. The proposed regulation will allow fire retardant-treated wood to

also be used in Type I construction (larger noncombustible buildings) where the vertical distance from the upper floor to the roof is 20 feet or more and all Type II construction (smaller noncombustible buildings).

The proposed change is likely to produce some economic benefits. Rather than using noncombustible framing (steel and concrete), the proposed change will allow another method of construction for Type II and certain types of Type I buildings, thus providing a greater diversity in construction methods. According to DHCD, the proposed change is in response to fire retardant-treated wood becoming available under new standards to assure its quality. Allowing this type of wood to be used in roof construction of Type II and certain Type I buildings will increase the range of design options available for the construction of these types of buildings. The proposed change could also provide some cost savings. Use of wood treated with fire retardant requires a different method of construction than roof construction with steel and concrete, making it difficult to precisely estimate the cost savings associated with the proposed change. According to DHCD, steel construction averages \$130 per square foot and concrete construction averages \$177 per square foot for commercial buildings. While the average cost of wood construction for commercial buildings is not readily available, it averages between \$45 and \$150 per square foot for residential buildings. Wood construction costs for commercial buildings are likely to be similar to the wood construction costs for residential buildings. Thus, the proposed change could result in some cost savings.

The proposed change could also impose additional economic costs by increasing the risk of damage to life and property from fire. Commercial buildings using fire retardant treated wood in roof construction could pose more of a fire hazard than a commercial building using steel and concrete in its roof construction. However, according to DHCD, there have been no serious problems and no known failures of the type of wood being allowed for use in roof construction. Moreover, the ICC code writing body recognized the safety record of fire retardant treated wood and determined that its use would provide a safe and low cost alternative to using steel and concrete in the roof construction of certain types of buildings. Thus, it is not likely that the limited use of this type of wood in roof construction permitted under the proposed regulation will significantly increase the risk of damage to life and property from fire.

The net economic impact of the proposed change will depend on the magnitude of the costs and benefits accruing from it. To the extent that the proposed change provides a greater range of construction and design options and reduces the cost of construction for certain types of building without significantly increasing the risk to life and property, it is likely to produce a net positive economic impact. The significance of the proposed change will depend on the extent to which industrialized buildings are used in the construction of Type I and Type II buildings. As buildings less than three stories in height are already allowed under the existing regulations to use fire retardant treated wood in roof construction, the proposed change provides greater design and construction options for some Type I and all Type II buildings three stories or more in height. Both the costs and the benefits of the

¹ A standard 18' x 22' double garage is likely to require an additional \$120-\$130 to protect the ceiling in accordance with the requirements of the regulation.

Proposed Regulations

proposed change will depend on the extent to which industrialized buildings are used in the construction of these types of structures.

(3) The proposed regulation requires installation of entrapment avoidance devices in the drains of all new commercial and residential swimming pools. The commercial and residential building codes now require the use of anti-vortex drain covers or the use of other approved methods for preventing entrapment by swimming pool drains. There have been several instances of death and injury (especially among children) due to body part entrapment in the drain of a swimming pool, wading pool, or spa. In a 2003 draft report, the Consumer Products Safety Commission (CPSC) reports that it is aware of 73 cases of body entrapment, including 12 confirmed deaths, between January 1990 and October 2003.² Of these, 31 incidents occurred at swimming pools (commercial and residential). The deaths occurred after the body or limb was held against the swimming pool drain by the suction of the circulation pump. In addition, the report states that two instances of evisceration and disembowelment were reported to the CPSC over the same period. Specifically, with respect to children, the CPSC knows of 18 incidents, including five deaths, involving body part entrapment of children between the ages of two and 14. DHCD is not aware of any such injuries or fatalities in Virginia. However, this could be in part due to the lack of a reporting and recording mechanism for such incidents. The use of anti-vortex drain covers or other entrapment avoidance devices is likely to reduce the occurrence of such incidents.

The minimum cost of installing an anti-vortex drain cover meeting the requirements of the regulation ranges from \$10 to \$30. According to DHCD, insurance and liability concerns ensure that most swimming pools currently manufactured in the United States are already fitted with anti-entrapment devices. Thus, the proposed change is likely to affect the construction of those pools that do not always include entrapment avoidance devices, such as homemade pools and pools imported from other countries.

While there are costs and benefits associated with the proposed change, neither is likely to be significant. According to DHCD, swimming pool construction has little to do with the manufacture of industrialized buildings. DHCD believes that most swimming pool construction falls under the Uniform Statewide Building Code, not the IBSR. Consequently, requiring swimming pools to have entrapment avoidance devices is likely to have little economic impact in the context of the IBSR.

(4) The proposed regulation eliminates several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings. In determining whether the walls facing a courtyard are permitted to have window and door openings, the existing regulation assumes a property line between the opposite walls of the courtyard. In general, only if the walls are more than ten feet apart are window and door openings permitted. Exceptions to this rule are allowed when not more than two levels of the building

open into the courtyard, the aggregate area of the building (including the courtyard) is within the allowable area, and the building is not a Group I (institutional) classification. In the case of these exceptions, courtyard walls do not have to be ten feet apart in order to have window and door openings. The proposed regulation eliminates these requirements for commercial buildings containing courtyards. Courtyard walls will now have no restrictions regarding the number of window and door openings permitted. The exterior wall of the building itself will not have any limits on window and door openings unless it is within ten feet of another building on the same lot or within ten feet of the property line.

The proposed change could produce costs and benefits. Increased costs could manifest themselves in the form of an increased risk of fire spreading within a building and from one building to another due to the lifting of restrictions on the number of window and door openings allowed in courtyard walls. By restricting the number of window and door openings, the existing regulation could reduce the risk of a fire spreading from a building to its courtyard and hence, to other parts of the building and to neighboring buildings. The benefits are likely to manifest themselves in the form of greater flexibility in designing commercial buildings with courtyards. Window and door openings can now be incorporated into courtyard walls where previously they had not been allowed.

The net economic impact of the proposed change will depend on whether the costs of removing restrictions on window and door openings in courtyard walls are greater than or less than the benefits of doing so. According to DHCD, there are very few existing commercial buildings that (i) contain a courtyard less than ten feet wide or (ii) cannot avail themselves of the exceptions provided for under the existing regulation. This could be either because it is unusual to construct courtyards that are less than ten feet wide and do not fall under any of the exceptions or because existing restrictions on window and door openings discourage the construction of such courtyards. In the former case, the proposed change is not likely to produce significant costs or benefits. In the latter case, lifting the restrictions could result in more buildings being constructed with courtyards that have window and door openings that previously would not have been allowed, potentially increasing the risk of a fire spreading within a building and from one building to another. Under these circumstances, the net economic impact of the proposed change will depend on whether the increased risk of fire is greater than or less than the benefits of allowing window and door openings in courtyard walls. There is not enough information available at this time to make a precise determination of the net economic impact of the proposed change. Such a calculation would require being able to estimate the impact of the proposed change on the construction of commercial buildings containing courtyards and on the increased risk of a fire spreading. It would also require being able to estimate the benefits of providing additional flexibility in the construction of commercial building with courtyards.

However, neither the costs nor the benefits associated with the proposed change are likely to be very large. According to DHCD, removing existing restrictions on window and door

² U.S. Consumer Product Safety Commission, Washington, D.C., 2003. *Draft Guidelines for Entrapment Hazards: Making Pools and Spas Safer.*

openings in courtyard walls is not likely to have a significant effect on the spread of fire within a building or to neighboring buildings³. Moreover, the agency does not believe that the proposed change will lead to significant changes in current design and construction practices for commercial buildings. The significance of the proposed change will depend on the use of modular buildings in the construction of commercial buildings with courtyards. For example, the proposed change would affect buildings that have more than two levels opening onto the courtyard (buildings with no more than two levels opening onto the courtyard are exempt from these restrictions). In this case, the overall costs and benefits, and hence the net economic impact, associated with the proposed change will depend on the extent to which modular buildings are used to construct commercial buildings more than two stories in height.

(5) The proposed regulation allows a putty pad protection system to be used for electrical outlets on fire-rated walls. Under the existing regulation, electrical boxes in fire-rated walls are required to be separated by at least 24 inches horizontally. The proposed regulation will allow electrical boxes to be side by side or on both sides of a fire-rated wall without a horizontal separation distance as long as a putty-pad type fire resistant pad is wrapped around the boxes. Thus, the proposed change provides more flexibility in the placement of electrical outlets on fire-rated walls.

The proposed change is likely to have costs and benefits associated with it. The costs could manifest themselves in the form of an increased risk of fire from electrical outlets and boxes. However, according to DHCD, the proposed change is not likely to have a significant effect on the risk of fire. Putty pad-type fire resistant pads have been tested and shown to protect outlets from the spread of fire. The benefits of the proposed change could manifest themselves in the form of increased flexibility in the placement of electrical boxes on fire-rated walls. However, these benefits are likely to be limited. According to DHCD, putty pads are permitted under the 2000 IBC as long as they meet the specified ASTM standard and can be used as an alternative to existing requirements. The proposed change will now allow putty pads to be used with less documentation than required under the existing regulation. A 7.25" X 7.25" X 0.19" putty pad meeting the requirements of the regulation costs approximately \$6.

The net economic impact of the proposed change will depend on the magnitude of the costs and benefits accruing from it. Neither the costs nor the benefits associated with the proposed change appear to be very large. Thus, while it is not possible to precisely estimate the net economic impact of the proposed change, it is not likely to be very large.

(6) The proposed regulation permits the use of platform lifts instead of ramps in certain areas to accommodate people with disabilities. The existing regulation allows platform (or wheelchair) lifts to be used instead of ramps or elevators only

under certain limited circumstances. The proposed change expands the instances when platform lifts may be used instead of a ramp or elevator to include providing access to raised areas in courtrooms. In addition, the proposed regulation allows the use of platform lifts for exterior accessible routes where site constraints make the use of ramps infeasible. Platform lifts can currently be used on exterior accessible routes where ramp use is infeasible, but only after its use has been approved as a modification under the existing USBC. Under the proposed regulation, platform lifts can be used as an alternative to ramps without having to obtain approval. The proposed change will apply to industrialized buildings that come installed with ramps, platform lifts, and other devices that provide access to people with disabilities.

The proposed change increases the options available to industrialized building manufacturers for providing access to people with disabilities. By providing an additional space saving alternative to ramps and elevators in courtrooms and by allowing platform lifts to be used when ramp use for exterior accessible routes is infeasible, the proposed regulation is likely to produce economic benefits. At the same time, it is not likely to impose any significant costs. Platform lifts meeting the requirements of the regulation are a safe alternative to ramps and elevators. The increased use of platform lifts could result in more instances when people with disabilities are required to use a different access route than people without disabilities. However, the increase in such instances is likely to be limited as ramps are generally cheaper to install than platform lifts⁴. Thus, platform lifts are likely to be installed only when the installation of ramps is problematic. The proposed change was recommended by the Architectural and Transportation Compliance Board and based on the new Americans with Disabilities Act accessibility guidelines. Thus, the proposed change is likely to have a net positive economic impact, improving access for people with disabilities without imposing any significant economic costs.

(7) The proposed regulation prohibits the use of wired glass in Group E (educational) occupancies and requires the use of tempered glass in its place. Under the existing regulation, wired glass products are permitted for use as safety glazing in fire-rated doors in all types of occupancies. Under the proposed regulation, tempered glass will have to be used in place of wired glass in fire-rated doors of all new educational buildings, gymnasiums, and play areas. At the time that wired glass was first permitted for use in fire-rated doors, it was the only glazing product to offer a significant degree of fire protection. Most other types of glass could not endure the thermal shock test⁵ or the high temperatures in the fire test furnace. However, wired glass has low impact resistance and tends to shatter more easily than other types of glass. In addition, the wire mesh within the glass can cause additional injuries when the glass does break. Due to its fire resistant qualities, wired glass has been exempt from CPSC's mandatory high impact test standards for over two decades. However, today there are many alternatives to wired glass

³ According to DHCD, as a courtyard is defined as an open, uncovered space and as the heat of a fire moves perpendicular to the opening in a building, lifting restrictions on the number of door openings in courtyard walls is not likely to have a significant effect on the spread of a fire to neighboring buildings. Moreover, a fire is more likely to spread within a building through interior walls rather than across a courtyard.

⁴ According to DHCD, platform lifts can cost anywhere between \$4,000 and \$15,000.

⁵ The thermal shock test determines how hot glass will react when hit by water from a fire hose or sprinkler.

Proposed Regulations

that provide an equivalent level of fire protection and better impact resistance.

Thus, the proposed change is likely to have costs and benefits associated with it. The costs could manifest themselves either in the form of reduced fire protection or in the form of higher costs to maintain the existing level of fire protection. A 100 square inch sheet of wired glass to be used in a fire-rated door typically has a 90-minute fire rating. Tempered glass meeting the same fire rating could cost as much as 20 times more. According to DHCD, there are many new products available that would meet the proposed requirement, ranging in price from being comparable to wired glass to being 20 times more expensive. However, the proposed change only applies to new school construction. The fraction of glazing requiring safety or impact resistant glazing in new school construction is minimal. According to DHCD, a 100,000 square foot school construction project would require approximately ten square feet of safety or impact resistant glazing. Thus, even if tempered glass were to cost 20 times as much wired glass, the increase in cost would still account for a very small fraction of total construction costs.⁶

The proposed change is also likely to produce some economic benefits. As tempered glass has better impact resistance than wired glass, the proposed change is likely to reduce the risk to public health and safety from breaking glass. There is some uncertainty regarding the number of injuries caused by wired glass. CPSC reports only nine wired glass related injuries between 1982 and 2002 that required emergency room treatment. However, other sources indicate that the figure is much higher. According to the Center for Injury Control at the Rollins School of Public Health, Emory University, 90% of the 2,500 glass door injuries seen each year in the CPSC system involve wired glass. Switching from wired glass to tempered glass is likely to reduce the occurrence of such injuries. DHCD is not aware of any serious injuries in Virginia from the breaking of wired glass.

The net economic impact of the proposed change will depend on the extent to which industrialized buildings are used in new school construction and on whether the additional cost of replacing wired glass with tempered glass in fire-rated doors at educational facilities is greater than or less than its benefits. In order to make a precise determination of the net economic impact we would have to weigh the increased fire risk (or the increased cost of providing the existing level of fire protection) against the reduced risk of injuries from breaking glass. In addition, we would require data on the use of industrialized buildings in school construction. There is not enough data on either the costs, the benefits, or the use of industrialized buildings in school construction to make such a determination at this time.

Other Changes: All unregistered buildings offered for sale now have to be inspected and approved by a building official and marked by a warning sign indicating that the building is not registered. The size, form, and placement of the sign have to be approved by DHCD. Under the existing regulation,

the inspection and signposting requirements applied specifically to unregistered industrialized buildings offered for sale by dealers. According to DHCD, there is no such thing as an industrialized building dealer. The language was left in accidentally when these regulations were combined with the manufactured home (trailer) regulations. There are retail businesses that sell manufactured homes and industrialized buildings. DHCD believes that these businesses are likely to be aware of the inspection and signposting requirements and are likely to be complying with them. Thus, the proposed change will only have an impact on sales of unregistered industrialized buildings between private parties.

Private parties selling unregistered industrialized buildings are likely to incur some additional costs in meeting the requirements of the regulation. According to DHCD, having the building inspected is not likely to impose any additional costs. Local inspectors have the authority to charge for the enforcement of the Uniform Statewide Building Code, but not the IBSR. Thus, the only additional cost is likely to be the cost of affixing warning signs in accordance with DHCD requirements. The proposed change is also likely to produce some economic benefits. It will ensure that anyone purchasing the building is aware that it is unregistered. It will also ensure that the building is constructed in accordance with and meets the requirements of the IBSR. However, as building code officials are required to inspect the building prior to its installation at a new location, the public safety benefits of the inspection requirement are not likely to be very large.

The net economic impact of the proposed change is not likely to be very large. The costs and the benefits accruing from it appear to be small. In addition, the number of businesses and individuals affected by the proposed change is not large. According to DHCD, the number of private party transactions relating to the sale of unregistered industrialized buildings is limited. Thus, the proposed change is not likely to produce large costs or benefits and thus is not likely to have a significant economic impact.

The proposed regulation could improve understanding and implementation of the IBSR. It includes a number of changes intended to clarify various aspects of the regulation. In addition, DHCD believes that the 2003 ICC codes are easier to understand and implement than previous editions. Thus, to the extent that the proposed regulation improves understanding and implementation of the IBSR, it is likely to produce some additional economic benefits.

The proposed regulation also updates the ASTM standards relating to system analysis and compliance assurance for manufactured buildings, incorporated by reference into the IBSR, from the 1984 edition to the 2001 edition. However, a review of the existing and proposed standards by DHCD determined that there are no substantive differences between the two editions.

Possible Additional Changes: DHCD states in its agency document that it anticipates receiving requests during the public comment period for substantive changes to this regulation. Depending on the nature of the comments received, the agency may choose to repropose the regulation with additional changes. DHCD has a number of technical advisory committees looking at various issues and developing

⁶ At a cost of \$10 per square foot for wired glass, even a 20-fold increase in the price of safety or impact resistant glazing would increase costs from a little under 0.001% of total construction costs to less than 0.02% of total construction costs.

proposals for change. Some of the committees have been established to look into implementing changes to the Code of Virginia. For example, the 2004 General Assembly amended the Code of Virginia to require that the Board of Housing and Community Development promulgate regulations establishing (i) standards of design and construction for commercial, industrial, and multi-family buildings such that they contain the appropriate equipment and can be used by emergency public safety personnel to send and receive emergency communications and (ii) standards for smoke detectors and other fire detection and suppression systems such that the safety of facilities marketed to senior citizens is improved. DHCD also has a number of committees reviewing issues relating to the rehabilitation code, the propane gas industry, the design and construction of elevators, the expanded use of platform lifts, and the training and certification of building and fire officials. The agency has already received a number of proposals for change from these committees. In addition, it has also received a number of proposals from various individuals and interest groups. Following an evaluation of the various proposals for change, DHCD will decide whether to repropose the regulation or not. However, the agency notes that there have been no substantive proposals or comments against updating from the 2000 ICC codes to the 2003 ICC codes. But it is possible that some of the changes to the regulation at the repropose stage will affect the costs and benefits discussed in this analysis.

Businesses and entities affected. The proposed regulation affects the manufacturers and consumers of industrialized buildings. Some of the proposed changes could increase the cost of construction for industrialized buildings. These include requiring greater fire safety methods of garage construction in residential construction when a garage is located below a habitable room, requiring the installation of entrapment avoidance devices in the drains of all commercial and residential swimming pools, and substituting tempered glass for wired glass in fire-rated doors of Group E (educational) occupancies. Other changes increase the available construction and design options for industrialized buildings and could provide economic benefits. Such changes include allowing the use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings, eliminating several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings, allowing the use of a putty pad protection system for electrical outlets on fire-rated walls, and permitting the use of platform lifts instead of ramps under certain circumstances to accommodate people with disabilities.

Thus, while some of the changes could impose additional costs, others could provide economic benefits for businesses and entities involved in the design and construction of industrialized buildings. It is not possible at this time to determine the net impact of all the changes on these entities. Moreover, regardless of whether the changes result in an overall cost or an overall benefit to industrialized building design and construction businesses, neither all the costs nor all the benefits is likely to be borne by the manufacturers of industrialized buildings. Some or all of the additional costs or benefits may be passed on to consumers. The extent to which the costs or benefits are shared between manufacturers

and buyers of industrialized buildings will depend on the nature of the market for industrialized buildings and the elasticity of demand for such buildings in Virginia.

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. Some of the changes are likely to add to construction costs while others are likely to reduce costs by providing additional flexibility in construction and design. However, the net impact of all the changes on the number of people employed in the manufacture and design of industrialized buildings is not likely to be significant.

Effects on the use and value of private property. The proposed regulation is not likely to have significant effect on the use and value of private property. Some of the proposed changes are likely to increase the costs of construction for industrialized buildings. However, other changes are likely to reduce construction costs by increasing flexibility in construction and design of these buildings. It is not possible at this time to determine the overall economic impact of all the changes. However, the overall impact of the proposed changes on the use and value of private property is not likely to be significant.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact statement conducted by the Department of Planning and Budget for this proposed regulation.

Summary:

The proposed amendments update building codes and standards developed by the International Code Council (ICC) and incorporated by reference into the Virginia Industrialized Building Safety Regulations (IBSR) from the 2000 edition to the 2003 edition. The codes being updated include the International Building Code (IBC), the International Residential Code, and the International Property Maintenance Code. The International Plumbing Code, the International Mechanical Code, the ICC Electrical Code, the International Fuel Gas Code, and the International Energy Conservation Code, which are referenced by the IBC, have also been updated from the 2000 edition to the 2003 edition.

There are several substantive differences between the 2000 edition and the 2003 edition of the ICC codes. Updating from the 2000 edition to the 2003 edition (i) requires greater fire safety methods of garage construction in residential buildings when a garage is located below a habitable room; (ii) allows the limited use of wood treated with fire retardant in roof construction of certain types of noncombustible buildings; (iii) requires installation of entrapment avoidance devices in the drains of all commercial and residential swimming pools; (iv) eliminates several provisions relating to the number of window and door openings allowed in courtyard walls of commercial buildings; (v) allows a putty pad protection system to be used for electrical outlets on fire-rated walls; (vi) permits the use of platform lifts instead of ramps in certain areas to accommodate people with

Proposed Regulations

disabilities; and (vii) prohibits the use of wired glass in Group E (educational) occupancies and requires the use of tempered glass in its place. Proposed amendments also update the American Society of Testing and Materials (ASTM) standards relating to system analysis and compliance assurance for manufactured buildings, incorporated by reference into the IBSR, from the 1984 edition to the 2001 edition.

Other proposed amendments provide that all unregistered buildings offered for sale now have to be inspected and approved by a building official and marked by a warning sign indicating that the building is not registered. The size, form, and placement of the sign have to be approved by DHCD.

13 VAC 5-91-10. Definitions.

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

"Administrator" means the Director of DHCD or his designee.

"Approved" as applied to a material, device, method of construction, registered building, or as otherwise used in this chapter means approved by the administrator.

~~"BHCD" means the Virginia Board of Housing and Community Development.~~

~~"BOCA" means the Building Officials and Code Administrators International, Inc.~~

"Building official" means the officer or other designated authority charged with the administration and enforcement of the USBC, or duly authorized representative.

~~"CABO" means the Council of America Building Officials.~~

"Compliance assurance agency" means an architect or professional engineer registered in Virginia, or an organization, determined by the department DHCD to be specially qualified by reason of facilities, personnel, experience, and demonstrated reliability, to investigate, test and evaluate industrialized buildings; to list such buildings complying with standards at least equal to those promulgated by the board ~~this chapter~~; to provide adequate follow-up services at the point of manufacture to ensure that production units are in full compliance; and to provide a label as evidence of compliance on each registered industrialized building.

"DHCD" means the Virginia Department of Housing and Community Development.

"ICC" means the International Code Council, Inc.

"Industrialized building" means a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating, and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in § 36-85.3 of the Code of Virginia and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act

(42 USC § 5401 et seq.) shall not be considered industrialized buildings for the purpose of this law.

~~"Model" means a specific design, as designated by the producer, of an industrialized building. designated by the producer of the building including production buildings of any model may include with variations and options that do not affect compliance with the standards governing structural, plumbing, mechanical, or electrical systems or any other items governed by this chapter.~~

~~"NFPA" means the National Fire Protection Association.~~

"Registered" means an industrialized building which displays a registration seal issued by DHCD in accordance with this chapter.

~~"Regulation" or "regulations" means 13 VAC 5-91.~~

~~"State Building Code Administrative Office" or "SBCAO" means the office of State Building Code Administrative Office within DHCD that has been designated to carry out the enforcement of the Virginia Industrialized Building Safety Regulations.~~

~~"State Review Board" means the Virginia State Building Code Technical Review Board as established by § 36-108 of the Code of Virginia.~~

~~"The law" or "This law" means the Virginia Industrialized Building Safety Law as embraced in Chapter 4 (§ 36-70 et seq.) of Title 36 of the Code of Virginia.~~

~~"TRB" means the State Building Code Technical Review Board as established by § 36-108 of the Code of Virginia.~~

"USBC" means the Virginia Uniform Statewide Building Code, 13 VAC 5-64 (13 VAC 5-63).

13 VAC 5-91-20. Application and compliance.

A. This chapter shall apply to industrialized building, ~~as defined in 13 VAC 5-91-10 buildings.~~

B. No person, firm or corporation shall offer for sale or rental, or sell or rent, any industrialized building produced after the effective date of any provision of ~~these regulations this chapter~~ unless it conforms with such provision of ~~the regulations.~~

C. Industrialized buildings subject to any edition of ~~these regulations this chapter~~ when constructed shall be maintained in compliance with the applicable edition by the owners or occupants, or both.

D. Industrialized buildings constructed prior to ~~the effective date of the first edition of these regulations (January 1, 1972) when relocated January 1, 1972,~~ shall be subject to the pertinent provisions of the USBC ~~when relocated.~~

13 VAC 5-91-40. Inspection and enforcement.

A. The SBCAO is designated as the administrator's representative for the enforcement of this chapter ~~and shall act as the building official for registered industrialized buildings.~~ It shall have authority to make such inspections and to take such other actions as are required to enforce ~~the regulations this chapter.~~

~~NOTE: The SBCAO shall act as the code official for registered industrialized buildings.~~

B. The SBCAO will maintain a list of approved compliance assurance agencies. Each manufacturer producing registered industrialized buildings will contract with one or more compliance assurance agencies for required evaluation, monitoring and inspection services. The contract will delineate the services to be provided by the compliance assurance agency. The compliance assurance agency will notify the SBCAO within 30 days of signing a new contract or terminating an existing contract with any manufacturer.

13 VAC 5-91-50. Factory and field inspections.

A. The SBCAO shall, ~~during reasonable hours, make~~ *conduct* such inspections of factories producing industrialized buildings as may be necessary *during reasonable hours* to determine whether the *designated* compliance assurance agency ~~having jurisdiction~~ is performing its evaluation and compliance assurance functions in a satisfactory manner.

B. The SBCAO may, ~~during reasonable hours, also~~ make inspections *during reasonable hours* to determine whether *unoccupied* industrialized buildings ~~not at the time occupied~~ are in compliance with this chapter. Such inspections may include, but are not limited to, industrialized buildings on dealer lots or industrialized buildings that are otherwise offered for sale to the public. *Occupied* industrialized buildings ~~that are occupied~~ may be inspected *by the SBCAO* at the request of the owners or occupants.

13 VAC 5-91-70. Appeals.

A. Appeals from ~~local code building~~ officials, compliance assurance agencies or manufacturers of industrialized buildings concerning DHCD's application of this chapter ~~will be heard by~~ *shall be submitted to* the TRB ~~upon application by the aggrieved party. The application shall be submitted to the office of the TRB State Review Board~~ within 21 calendar days of receipt of ~~the DHCD's decision by DHCD.~~ A copy of the decision of DHCD to be appealed shall be submitted with the application for appeal. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of DHCD's decision.

B. Procedures of the ~~TRB State Review Board~~ are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the ~~TRB State Review Board~~ shall be final if no appeal is made therefrom.

13 VAC 5-91-80. Limitation of manufacturer's liability.

The manufacturer of ~~the a~~ *registered industrialized* building shall not be required to remedy violations caused by on-site work by others not under his control or violations involving components and materials furnished by others and not included with the registered industrialized building.

13 VAC 5-91-90. Penalty for violation.

In accordance with § 36-83 of the Code of Virginia, any person, firm or corporation violating any provisions of this chapter shall be considered guilty of a Class 1 misdemeanor and, upon conviction, shall be fined not more than \$1,000 ~~(§ 36-83 of the Code of Virginia).~~

13 VAC 5-91-110. Registered industrialized buildings.

Industrialized buildings that are registered shall be accepted in all localities as meeting the requirements of this law. Notwithstanding this provision, building officials are authorized to carry out the following functions that apply to registered industrialized buildings provided such functions do not involve disassembly of the registered building or a change ~~of~~ *in its* design; or result in the imposition of more stringent conditions than those required by the compliance assurance agency or by this chapter.

1. Building officials shall verify that the registered industrialized building has not been damaged in transit to a degree that would render it unsafe. Where indicated, this may include tests for tightness of plumbing systems and gas piping and tests for damaged or loose wires, or both, in the electrical system.

2. Building officials shall verify that supplemental components required by the label or by this chapter are properly provided.

3. Building officials shall verify that the instructions of the label for installation and erection are observed.

4. Building officials shall verify that any special conditions or limitations of use that are stipulated by the label ~~in accordance with and authorized by~~ this chapter are observed.

5. Building officials may require submission and approval of plans and specifications for items not included or specified in the manufacturer's installation instructions such as the supporting structures, foundations ~~including and~~ anchorage, and all other components necessary to form the completed building. They may require such architectural and engineering services as may be specifically authorized by this chapter to assure that the supporting structures, foundations ~~including and~~ anchorage, and other components necessary to form the completed building are designed in accordance with this chapter.

6. Building officials shall enforce applicable requirements of this chapter and the USBC for alterations and additions to the units or to the buildings. As an aid, they may require submission of plans and specifications of the model of the unit. Such plans and specifications may be furnished on approved microfilm.

7. Building officials shall enforce the requirements of the USBC applicable to utility connections, site preparation, building permits, certificates of use and occupancy, and all other applicable requirements of the USBC, except those governing the design and construction of the registered building.

8. Building officials shall verify that the building displays the required state registration seal and the proper label of the compliance assurance agency.

13 VAC 5-91-120. Unregistered industrialized buildings.

A. The building official shall determine whether any unregistered industrialized building complies with this chapter and shall require any noncomplying unregistered building to

Proposed Regulations

be brought into compliance with this chapter. The building official shall enforce all applicable requirements of this chapter including those relating to the sale, rental and disposition of noncomplying buildings. The building official may require submission of full plans and specifications for each building. Concealed parts of the building may be exposed to the extent necessary to permit inspection to determine compliance with the applicable requirements. The building official may also accept reports of inspections and tests from individuals or agencies deemed acceptable to the building official.

B. Unregistered industrialized buildings offered for sale by ~~dealers~~ in this Commonwealth shall be marked by a warning sign to prospective purchasers that the building is not registered in accordance with this chapter and must be inspected and approved by the ~~local code official having jurisdiction~~ building official. The sign shall be of a size and form approved by the administrator and shall be conspicuously posted on the exterior of the unit near the main entrance door.

13 VAC 5-91-130. Disposition of noncomplying building.

When a building is found to be in violation of this chapter, the ~~local code building~~ official may require the violations to be corrected before occupancy of the building is permitted.

13 VAC 5-91-140. Report to the SBCAO.

If the building is moved from the jurisdiction before the violations have been corrected, the building official shall make a prompt report of the circumstances to the SBCAO. The report shall include *all of* the following:

1. A list of the uncorrected violations;
2. All information contained on the label pertinent to the identification of the building, the manufacturer and the compliance assurance agency;
3. The number of the Virginia registration seal;
4. The new destination of the building, if known; ~~and~~ .
5. The party responsible for moving the building.

13 VAC 5-91-150. When modification may be granted.

A. The administrator shall have the power upon request in specific cases to authorize modification of ~~the regulations in this chapter~~ so as to permit certain specified alternatives where the objectives of this law can still be fulfilled. Such request shall be in writing and shall be accompanied by the plans, specifications and other information necessary for an adequate evaluation of the modification requested.

B. Before a modification is authorized, the ~~local code building~~ official ~~having jurisdiction~~ may be afforded an opportunity to present his views and recommendations.

13 VAC 5-91-160. Use of model codes and standards.

A. Industrialized buildings produced after ~~October 1, 2003~~, (*effective date of final regulation to be inserted*) shall be reasonably safe for the users and shall provide reasonable protection to the public against hazards to life, health and property. Compliance with all applicable requirements of the following codes and standards, subject to the specified time

limitations, shall be acceptable evidence of compliance with this provision:

The following codes and standards may be used until ~~January 1, 2004~~ (*date three months after above date to be inserted*):

1. ~~BOCA National Building Code 1996 Edition~~ ICC International Building Code - 2000 Edition
2. ICC International Plumbing Code 1995 - 2000 Edition with 1996 Supplement
3. ICC International Mechanical Code 1996 - 2000 Edition
4. ~~National Electrical Code NFPA National Fire Protection Association Standard Number 70 (National Electrical Code) 1996 - 1999 Edition~~
5. ~~CABO One and Two Family Dwelling Code 1995~~ ICC International Residential Code - 2000 Edition

B. The following documents are adopted and incorporated by reference to be an enforceable part of ~~these regulations~~ *this chapter*:

1. ICC International Building Code-2000 - 2003 Edition
2. ICC International Plumbing Code-2000 - 2003 Edition
3. ICC International Mechanical Code-2000 - 2003 Edition
4. NFPA 70 National Electrical Code-1999 - 2002 Edition
5. ICC International Residential Code-2000 - 2003 Edition

NOTE: The codes and standards (~~BOCA, CABO, ICC and NFPA~~) referenced above may be procured from:

International Code Council, Inc.
5203 Leesburg Pike, Suite 708 600
Falls Church, VA 22041-3404

13 VAC 5-91-170. Amendments to codes and standards.

A. All requirements of the referenced model codes and standards that relate to fees, permits, certificates of use and occupancy, approval of plans and specifications, and other procedural, administrative and enforcement matters are deleted and replaced by the procedural, administrative and enforcement provisions of this chapter and the applicable provisions of Chapter 1 of the USBC.

B. The referenced codes and standards are amended as ~~per~~ *set forth in the USBC*.

13 VAC 5-91-180. Compliance assurance agencies.

Application may be made to the SBCAO for acceptance as a compliance assurance agency ~~as defined in 13 VAC 5-91-10~~. Application shall be made under oath and shall be accompanied by information and evidence that is adequate for the SBCAO to determine whether the applicant is specially qualified by reason of facilities, personnel, experience and demonstrated reliability to investigate, test and evaluate industrialized buildings for compliance with this chapter, and to provide adequate follow-up and compliance assurance services at the point of manufacture.

13 VAC 5-91-190. Freedom from conflict of interest.

A compliance assurance agency shall not be affiliated with, nor influenced or controlled by, producers, suppliers, or vendors of products in any manner which might affect its capacity to render reports of findings objectively and without bias. A compliance assurance agency is judged to be free of such affiliation, influence, and control if it complies with all of the following conditions:

1. The agency has no managerial affiliation with producers, suppliers or vendors and is not engaged in the sale or promotion of any product or material.
2. The results of the agency's work accrue no financial benefits to the agency through stock ownership ~~and the like of, or other similar affiliation to,~~ any producer, supplier or vendor of the product involved.
3. The agency's directors and other management personnel, in ~~such their job capacities,~~ receive no stock option, or other financial benefit from any producer, supplier, or vendor of the product involved.
4. The agency has sufficient interest or activity that the loss or award of a specific contract to determine compliance of a producer's, supplier's or vendor's product with this chapter would not be a determining factor in its financial well-being.
5. The employment security status of the agency's personnel is free of influence or control by producers, suppliers, or vendors.

13 VAC 5-91-200. Information required by the administrator.

All of the following information and criteria will be considered by the administrator in designating compliance assurance agencies:

1. Names of officers and location of offices;
2. Specification and description of services proposed to be furnished under this chapter;
3. Description of qualifications of personnel and their responsibilities. ~~Personnel, including an assurance that personnel involved in system analysis, design and plans review, compliance assurance inspections, and their supervisors shall meet comply with the requirements of the American Society for Testing and Material (ASTM) Standards E-541-84, Criteria Standard Number E541-01 - Standard Specification for Agencies Engaged in System Analysis and Compliance Assurance for Manufactured Buildings; Building.~~
4. Summary of experience within the organization;
5. General description of procedures and facilities to be used in proposed services, including evaluation of the model, factory follow-up, quality assurance, labeling of production buildings, and specific information to be furnished on or with labels;
6. Procedures to deal with any defective buildings resulting from oversight;

7. Acceptance of these services by independent accrediting organizations and by other jurisdictions; ~~and.~~

8. Proof of independence and absence of conflict of interest.

Note: The ASTM Standard ~~E-541-84~~ *Number E541-01* may be procured from:

American Society for Testing and Materials
100 Barr Harbor Drive
West Conshohocken, PA 19428-2959

13 VAC 5-91-210. Compliance assurance agency certification label.

Every registered industrialized building shall be marked with a label supplied by the compliance assurance agency that includes the ~~following information:~~ 1. name and address of the compliance assurance agency; and 2. the certification label number.

13 VAC 5-91-220. Mounting of label.

To the extent practicable, the label shall be ~~so~~ installed so that it cannot be removed without destroying it. ~~#~~ *The label* shall be applied in the vicinity of the electrical distribution panel or ~~either in another~~ location that is readily accessible for inspection. When a building is comprised of more than one section or module, the required label may be furnished as a single label for the entire building, provided each section or module is marked by the compliance assurance agency in a clearly identifiable manner ~~that is listed~~ provided with or on the label.

13 VAC 5-91-245. Manufacturer's data plate.

A. All of the following information shall be placed on a permanent manufacturer's data plate in the vicinity of the electrical distribution panel or in some other location that is readily accessible for inspection. The compliance assurance agency shall approve the form, ~~completeness~~ and location of the data plate ~~to include the following information and shall ensure that the data plate is complete:~~

1. Manufacturer's name and address;
2. Compliance assurance agency certification number;
3. Serial number of each module of the building;
4. Serial number of the Virginia registration seal;
5. Date of manufacture of the building;
6. List of codes and standards ~~for under~~ which the building ~~has been~~ was evaluated, ~~inspected and found in compliance by the compliance assurance agency and constructed~~ and the type of construction and ~~the use and occupancy classification under those codes and standards;~~
7. Design loads: roof ~~and load,~~ design floor live load and design wind load;
8. Seismic design zone number;
9. Thermal transmittance values or "R" *thermal resistance* ("R") values;
10. Special conditions or limitations ~~of concerning the~~ use of the building under the ~~codes and standards for which~~

Proposed Regulations

applicable to the building ~~has been evaluated, or~~; however, a list of such conditions ~~and~~ or limitations that are furnished separately with the building; shall satisfy this requirement.

11. Special instructions for handling, installation and erection *of the building, or*; however, a list of such instructions that are furnished separately with the building; *shall satisfy this requirement.*

12. Designation of electrical service ratings, directions for water and drain connections and, where applicable, identification of permissible type of gas for appliances; ~~and~~.

13. Name of manufacturer and model designation of major factory installed appliances.

B. The manufacturer shall maintain copies of the data plate and reports of inspection, tests and any corrective ~~action(s)~~ action taken for a minimum period of 10 years from the date of manufacture of the building.

13 VAC 5-91-250. Industrialized buildings eligible for registration.

Any industrialized building must meet *all of* the following requirements to be registered and eligible for a Virginia registration seal:

1. The design of the building has been found by a compliance assurance agency to be in full compliance with this chapter. Approved designs shall be evidenced by the stamp and date of approval on each *design* sheet by the compliance assurance agency;.

2. The compliance assurance agency has conducted any necessary testing and evaluation of the building and its component parts;.

3. The compliance assurance agency has provided the required inspections and other quality assurance follow-up services at the point of manufacture to assure the building complies with this chapter; ~~and~~ .

4. The building ~~has been provided with~~ contains the appropriate evidence of such compliance ~~with~~ through a label permanently affixed by the compliance assurance agency.

13 VAC 5-91-260. Registration seal for industrialized buildings.

A. Registered industrialized buildings shall be marked with an approved registration seal issued by *the* SBCAO. The seal shall be applied by the manufacturer to a registered industrialized building intended for sale or use in Virginia prior to the shipment of the building from the place of manufacture.

B. Registered industrialized buildings shall bear a registration seal for each dwelling unit in residential occupancies. For nonresidential occupancies, a registration seal is required for each registered building.

C. Approved registration seals may be purchased from *the* SBCAO in advance of use. The fee for each registration seal shall be \$75. Checks shall be made payable to "Treasurer of Virginia." Payment for the seals must be received by the SBCAO before the seals can be sent to the user.

D. To the extent practicable, the registration seal shall be installed so that it cannot be removed without destroying it. It shall be installed near the label applied by the compliance assurance agency.

E. The compliance assurance agency or the manufacturer under the supervision of the compliance assurance agency shall maintain permanent records of the disposition of all Virginia registration seals obtained by the compliance assurance agency or manufacturer.

13 VAC 5-91-270. Manufacturer's installation instructions.

A. The manufacturer of each industrialized building shall provide *specifications or instructions, or both*, with each building, ~~specifications or instructions, or both~~, for handling, installing or erecting the building. Such instructions may be included as part of the label from the compliance assurance agency or may be furnished separately by the manufacturer of the building. The manufacturer shall not be required to provide the foundation and anchoring equipment for the industrialized building.

B. Persons or firms installing or erecting registered industrialized buildings shall install or erect the building in accordance with the manufacturer's instructions.

DOCUMENTS INCORPORATED BY REFERENCE

~~BOCA National Building Code - 1996 Edition.~~

~~ICC International Plumbing Code - 1995 Edition with 1996 Supplement - 2000 and 2003 Editions, International Code Council.~~

~~ICC International Mechanical Code - 1996 Edition - 2000 and 2003 Editions.~~

~~National Electrical Code NFPA National Fire Protection Association Standard Number 70-1996 and (National Electrical Code) - 1999 Edition and 2002 Editions, International Code Council.~~

~~CABO One and Two Family Dwelling Code - 1995 Edition.~~

~~ICC International Building Code-- - 2000 Edition and 2003 Editions, International Code Council.~~

~~ICC International Plumbing Code - 2000 Edition.~~

~~ICC International Mechanical Code - 2000 Edition.~~

~~ICC International Residential Code-- - 2000 Edition and 2003 Editions, International Code Council.~~

~~ASTM E541-84, Standard Criteria Standard Number E541-01 - Standard Specification for Agencies Engaged in System Analysis and Compliance Assurance for Manufactured Buildings Building, American Society for Testing and Materials.~~

VA.R. Doc. No. R04-172; Filed January 13, 2005, 11:06 a.m.



**TITLE 18. PROFESSIONAL AND
OCCUPATIONAL LICENSING**

BOARD OF ACCOUNTANCY

Title of Regulation: 18 VAC 5-21. Board of Accountancy Regulations (amending 18 VAC 5-21-10 through 18 VAC 5-21-40 and 18 VAC 5-21-170).

Statutory Authority: §§ 54.1-4402 and 54.1-4410 of the Code of Virginia.

**Public Hearing Date: April 22, 2005 - 9 a.m.
Public comments may be submitted until May 8, 2005.
(See Calendar of Events section
for additional information)**

Agency Contact: Mark D'Amato, Regulatory Coordinator, Board of Accountancy, 3600 West Broad Street, Suite 378, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174, or e-mail mark.damato@boa.virginia.gov.

Basis: Section 54.1-4402 of the Code of Virginia provides the board with the authority to establish regulations for the implementation of Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia.

Section 54.1-4410 of the Code of Virginia requires the board to establish by regulation a requirement for continuing professional education in ethics for CPAs.

Purpose: To fulfill its statutory mandate, the board seeks to propose amendments to its existing regulations to revise and clarify the following: (i) qualifications for licensure including new language about the current computer-based CPA exam and (ii) continuing professional education (CPE) requirements for initial applicants and regulants in ethics. Such amendments are being proposed to replace the emergency regulations.

The proposed regulations are essential to protect the health, safety and welfare of the citizens of the Commonwealth because the board is mandated by statute to certify and issue CPA certificates to persons to practice public accountancy, and restrict the practice of public accountancy to only those persons who are so certified and may call themselves CPAs. Further, the board can take such actions as may be authorized to ensure the continued competence of such licensed CPAs and to aid the public in determining the qualifications of such persons who give assurances on financial statements. The board has the responsibility to enforce and implement such actions through the promulgation of regulations.

Finally, this action should not be construed as preventing any person from stating that he has prepared, compiled, assembled or drafted a financial statement, provided he does not use any additional language that comprises an assurance, make any claims or representations, or use any of the language prohibited by this statute.

Substance: The new computerized CPA exam. The only provisions of the current regulations that will be changed are to (i) add new definitions in 18 VAC 5-21-10 about the

computerized CPA exam for clarity; (ii) revise the name of "Initial examination application fee" to "Initial CPA exam application fee," and to clarify that this fee shall not exceed \$1,000 in 18 VAC 5-21-20; and (iii) add new language about the computerized CPA exam in 18 VAC 5-21-30. In addition, "CPA exam" is substituted for "examination" only where necessary in the text for clarification.

The new requirement for ethics CPE. The only provisions of the current regulations that will be changed are (i) to add new definitions about CPE for clarity in 18 VAC 5-21-10; (ii) to revise current licensing requirements to call for the applicant who applies for licensure three or more years after successfully completing the CPA exam to complete the most recent ethics CPE course in 18 VAC 5-21-40; and (iii) 18 VAC 5-21-170, to add new language about the constitution of the new ethics CPE course, and to insert the revised dates for the beginning of the CPE reporting cycles for CPAs who practice public accountancy for an employer and not for the public, or who serve as an educator in the field of accounting in 18 VAC 5-21-40.

Issues: The new computerized CPA exam. The board finds that new regulations regarding the uniform CPA exam are required since the computer-based CPA exam was implemented in April 2004. Not making these changes will create a negative impact on both the "Big Four" CPA firms and the small- and medium-sized CPA firms in Virginia that will result from approximately 1,200 new CPAs being prevented from entering the labor market. Each year, this many potential employees enter the labor market in Virginia as a result of passing the uniform CPA exam. This in turn will affect the competent practice of public accounting in Virginia that directly impacts the public - both businesses and individuals.

This situation will occur because in April 2004 the American Institute of Certified Public Accountants (AICPA) ended its paper-and-pencil CPA exam and replaced it nationwide with a computerized CPA exam. This means that the board's provisions for exam requirements that are specifically meant for the paper-and-pencil CPA exam will not be applicable to the current computerized CPA exam should the changes put into place by emergency regulation not be promulgated.

In 2002, Virginia had a total of 4,470 candidates take the CPA exam; in 2003, well over 5,000 took the CPA exam in the Commonwealth. Should the board's proposed changes about the conduct of the CPA exam fail to be promulgated as proposed regulations, approximately 4,000 candidates will not be allowed to take the exam in Virginia annually. Further, Virginia is one of the last states to implement the 150-hour education requirement. Therefore, the majority of these exam candidates in Virginia will not qualify to take the CPA exam in most other states.

The new requirement for ethics CPE. With thousands of audits being properly and competently performed each year by CPAs committed to rigorously following the letter and the spirit of the profession's accounting and auditing standards and standards of conduct, the board is extremely concerned about the implications of the well-publicized instances of alleged fraudulent accounting and financial reporting, and the apparent failure of audit firms to prevent this fraudulent accounting or financial reporting.

Proposed Regulations

In the fall of 2002, the board entered into an Executive Agreement with the Governor to implement regulations about continuing professional education (CPE) in ethics. The board is currently meeting the Governor's priority by requiring initial applicants and regulants to obtain two CPE credits in ethics each year. This requirement was implemented by emergency regulation that became effective on December 15, 2003, as a result of Chapter 291 of the 2003 Acts of the General Assembly.

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 Chapter 291 of the 2003 Acts of the General Assembly, the Board of Accountancy (board) proposes to require continuing professional education (CPE) in ethics. The board also proposes to introduce language concerning the qualifications for, and implementation of the new computerized CPA exam.

Estimated Economic Impact. Ethics CPE. CPAs who perform services for the public are required to "... obtain 120 hours of CPE during each CPE reporting cycle with a minimum of 20 hours per CPE reporting year. The CPA certificate holder may choose the areas of study and courses." The reporting cycle is three years. CPAs who perform services for only nonpublic clients or who are employed as an educator in the field of accounting are required to:

meet the following CPE requirements as a condition of renewal of the person's CPA certificate: (i) for the three-year reporting period beginning January 1, 2003, a minimum of 45 CPE credits with a minimum of 10 CPE credits per year, (ii) for the three-year reporting period beginning January 1, 2006, a minimum of 90 CPE credits with a minimum of 15 CPE credits per year, and (iii) for the three-year reporting periods beginning on or after January 1, 2009, a minimum of 120 CPE credits with a minimum of 20 CPE credits per year. The CPA certificate holder may choose the areas of study and courses.¹

The board proposes to require that licensees obtain at least two CPE credits on ethics each year in order to maintain licensure. These six credits² will apply to the required total hours of CPE per three-year reporting cycle.

The proposed regulations state that "An outline of the required content for the course will be provided by the Board to CPE providers who must state in their ethics CPE course material and related catalog summaries whether the content of the course includes the material required by the Board for the calendar year the course is provided." The 2004 Outline for Ethics CPE (outline) is currently available on the board's website.³ In practice it appears that the board interprets ethics to mean understanding and obeying current law and industry standards. Specifically, the outline states that in order to learn ethical behavior one must read, study and ask questions about the following:

1. Statutes (laws) and regulations established by the Board of Accountancy;
2. The Code of Professional Conduct promulgated by the American Institute of Certified Public Accountants (AICPA);
3. Auditing and Independence Standards issued by the Comptroller General of the United States; and
4. Auditor Independence Standards issued by the SEC for SEC engagements; or successors thereto, and effective at the time of the services.

Most of the outline consists of descriptions of significant changes to the above-mentioned codes and standards.

The required ethics course largely consists of information on the latest significant changes to the relevant codes and standards. For someone who was violating codes or standards due to ignorance, the required ethics course may reduce the probability that he will continue to commit such violations in the future. For someone who has been knowingly violating codes or standards, the ethics course will be unlikely to alter that behavior, unless he interprets the required course to be a signal that the provisions will be more strictly enforced.

The proposed ethics CPE requirement does not add to the total required number of CPE credits, but it does produce some cost for CPAs in that their flexibility in choosing how to meet their required 120 credits⁴ within the three-year reporting cycle is reduced. Some or many CPAs may believe that the time and dollars associated with obtaining the six CPE credits on ethics could be more productively spent in other pursuits. This would be particularly true for CPAs who consistently keep current on significant changes to codes and standards without ethics courses. These individuals will be forced to spend time and dollars on courses that will very likely have no significant effect on their knowledge or behavior. Rather than require CPAs to take courses that consist of information on significant changes to codes and standards, the board might wish to consider requiring CPAs to attest to their having read and understood the significant changes. These changes could be provided online at the board's website. The board could also offer to send this information to CPAs without Internet access.

Testing v. CPE. Requiring CPE is costly for CPAs in time and fees, and it does not provide any true assurance that CPAs continue to have sufficient knowledge to practice competently

¹ Individuals under other circumstances have different CPE credit minimums.

² Two credits each year results in six credits over the three-year reporting cycle.

³ <http://www.boa.state.va.us/>

⁴ As described above, prior to the 2009 reporting period some CPAs are required to complete less than 120 CPE credits.

in their profession, particularly when the courses need not be on subjects related to enhancing or updating their professional competence. The public is informed via the Virginia Board of Accountancy Regulations (18 VAC 5-21) that CPE is defined as "an integral part of the lifelong learning required to provide competent service to the public; the formal set of activities that enables accounting professionals to maintain and increase their professional competence." Upon hearing that CPAs are required to complete CPE in order to retain their CPA certificates and that CPE is defined this way, the public may be misled into believing that holders of CPA-certificates have demonstrated up-to-date knowledge in subjects directly related to CPA services such as, for example, the latest changes to tax law. This potential misapprehension by the public is costly in that clients may pay for a CPA's services believing that he has skills and knowledge that he does not actually possess. Potential clients may forego searching for another CPA who does have the desired skills and knowledge because of the misapprehension.

CPAs can in practice meet their CPE requirement without taking courses that enable them to maintain and increase their professional competence. The board conducts 30 to 40 audits every month of CPA-certificate holders to check whether they are in compliance with their CPE requirements.⁵ The board accepts as evidence of CPE credit hours documents from sponsors that include any of the following designations: CE (continuing education), CPE (continuing professional education), CLE (continuing legal education), CME (continuing medical education), or QAS (quality assurance service).⁶ The board does not require that the sponsor be licensed, registered, certified, or evaluated in any way by any outside organization. The course can potentially be on any topic; the subject matter does not need to be related to accounting.⁷ For example, the course could be on how to meet and obtain new clients. The CPA-certificate holder does not need to demonstrate that he has gained any knowledge or acquired any new skill.

CPAs would be more likely to stay current in applicable knowledge and skills if the approvable CPE credits were restricted to courses on subjects strictly relevant to performing CPA services. Eliminating CPE credit requirements altogether and replacing them with continued competency testing would most likely be significantly more effective and efficient in providing accurate assurance of continued competency of CPAs than do CPE requirements.⁸ Passing a continued competency exam provides significantly more information to the public concerning a CPA's knowledge and skills than do CPE requirements. This would reduce the likelihood that potential clients would misallocate their resources by hiring an individual whose skill and knowledge set were not what the client expected. Under competency testing, CPAs who are able to obtain the knowledge and skills needed to remain competent with less than 120 credit-hours of CPE over three years could potentially use their time and dollars more productively on other endeavors. However, they would

remain free to take as many CPE courses as they wish. Hence, continued competency testing is more efficient. CPAs who fail to obtain the knowledge and skills needed to remain competent will be more accurately identified as such with continued competency testing than with CPE requirements. Being thus identified, many of these individuals would likely be compelled to make the extra effort necessary to remain competent.

CPA Examination. In April 2004 the AICPA ended its paper-and-pencil CPA exam and replaced it nationwide with a computerized CPA exam. The examination requirements in the current regulations were designed for the paper-and-pencil CPA exam. The board proposes to amend the regulations so that the exam requirements will be applicable to the new computerized exam. Without the proposed amendments, candidates could not take the AICPA exam for certification in Virginia. Thus, the proposed amendments are beneficial in that they enable CPA candidates to become certified in Virginia.

Appendix A displays a table that shows some of the differences concerning examination under the proposed regulations (electronic AICPA exam) versus examination under the current regulations (paper-and-pencil AICPA exam).

Businesses and entities affected. The proposed amendments affect the 16,606 licensed CPAs and the 1,463 licensed CPA firms in Virginia, as well as their clients and the 4,000 CPA-license candidates who annually take the CPA examination.⁹

Localities particularly affected. The proposed amendments affect all localities in the Commonwealth.

Projected impact on employment. The proposal to require CPE credits on ethics will increase demand for courses from sponsors that offer ethics CPE. Since it is likely that many CPAs do not voluntarily take more than the minimum required 120 credits¹⁰ of CPE over the reporting period, demand for CPE from sponsors who do not offer ethics CPE will be reduced as CPAs switch from nonethics CPE to ethics CPE. This may result in a small transfer in employment from sponsors who do not offer ethics CPE to those that do offer ethics CPE.

The proposal to amend the regulations so that the exam requirements will be applicable to the new computerized exam helps ensure that there will not be a disruption in the supply of new CPAs.

Effects on the use and value of private property. The proposed ethics CPE requirement does not add to the total required number of CPE credits, but it does produce some cost for CPAs in that their flexibility in choosing how to meet their required 120 credits¹¹ within the three-year reporting cycle is reduced. The value of CPA practices may decrease slightly in that the time and dollars associated with obtaining the six CPE credits on ethics could potentially be more profitably spent on other CPE training.

⁵ Source: Board of Accounting

⁶ Ibid

⁷ Ibid

⁸ This is not an option currently available to the board and would require legislative action.

⁹ Source: Board of Accounting

¹⁰ As described above, prior to the 2009 reporting period some CPAs are required to complete less than 120 CPE credits.

¹¹ Ibid

Proposed Regulations

The proposal to amend the regulations so that the exam requirements will be applicable to the new computerized exam increases the value of the accounting practices of individuals who will now be able to obtain CPA certification in Virginia due to the amendment.

Appendix A

Paper CPA Exam	Computer-Based CPA Exam
If at a given sitting of the exam a candidate passes two or more but not all sections, then the candidate shall be given credit for those sections that the candidate has passed and need not sit for reexamination in those sections provided the following conditions are met:	Candidates allowed to sit for each section individually and in any order.
a. At that sitting, the candidate wrote all sections of the exam for which the candidate did not have credit;	Candidates will retain credit for any section(s) passed for 18 months, without having to attain a minimum score on failed sections and without regard to whether they have taken other sections.
b. The candidate attained a minimum grade of 50 on each section taken at that sitting when the first two sections were passed and in each subsequent sitting attains a minimum grade of 50 on all sections taken at that sitting;	Candidates will not be allowed to retake a failed section(s) within the same CPA exam window (3 months).
c. The candidate passes the remaining sections of the exam within six consecutive exams (irrespective of the date on which the credit was earned) given after the one at which the first sections were passed; and	Candidates must pass all four sections of the CPA exam within a "rolling" 18-month period, which begins on the date that the first section(s) passed is taken. In the event all four sections of the CPA exam are not passed within the rolling 18-month period, credit for any section(s) passed outside that 18-month period will expire and that section(s) must be retaken.
d. At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections for which the candidate does not have credit.	

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Accountancy (board) is in agreement with the Economic Impact Analysis prepared by DPB except as follows:

DPB recommends the board require "CPAs to attest to their having read and understood the significant changes." The board requires attestation each year at time of license renewal, as follows:

"Under the penalties of perjury, I certify that (i) I have read, understand, and complied with the requirements for renewal including Regulation 18 VAC 5-21-80 F, paragraph 1, set forth below; and (ii) I have not suppressed any information that might affect the Board of Accountancy's decision to renew my CPA license."

Specifically, each regulant shall certify full compliance with the board's standards of conduct and applicable standards of practice including newly promulgated regulations. Affirmation alone does not help the regulant gain a better understanding of the complex statutes and regulations governing practice by Certified Public Accountants (CPA) and CPA firms. A better understanding may be gained by realizing, on one's own, there is a question or when questions are raised during a training session. During training a variety of topics are reviewed with the opportunity for a variety of questions to be answered and issues to surface.

During 2004, under the emergency regulations, regulants were required to complete the two hours of ethics Continuing Professional Education (CPE). The board has received many inquiries, stemming from information presented in ethics CPE workshops and online courses, requesting clarification of licensing requirements. The board suspected this would occur and after one year of training, there is strong evidence to support the need for and value of the ethics CPE.

Continuing Professional Education (CPE) is defined in regulation, to mean:

"an integral part of the lifelong learning required to provide competent services to the public; the formal set of activities that enables accounting professionals to maintain and increase their professional competence."

Virginia CPAs and CPA firms spend thousands of dollars every year on CPE. CPE is globally accepted as the standard indicator for continued competence among professionals in the accounting and auditing fields. In 2006, the board will require 150-semester hours of coursework to be allowed to take the CPA examination. Education at the entry point into the profession and on a continuing basis is integral to the service excellence accorded to clients. Submissions by CPAs during the CPE audits (30-40 per month) since 2001 indicate wise subject matters choices, relevant to accounting career fields.

The public is aware that CPAs are highly educated and there have been no requests to the board to eliminate the CPE requirements including the newly promulgated requirements for ethics CPE.

DPB recommends competency testing over CPE. That is an alternative considered and rejected by the board. There is no evidence to support the theory that a test is more reliable than CPE. Competency testing would require a change in the Uniform Accountancy Act or Virginia's regulants would be out of step in the profession, nationally and internationally.

Summary:

The proposed amendments (i) establish the qualifications for, and implementation of, the current computerized CPA exam and (ii) set forth the requirements for continuing professional education (CPE) in ethics.

18 VAC 5-21-10. Definitions.

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

"Accredited institution" means any degree-granting college or university accredited at the time of the applicant's degree or attendance by any of the following: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.

"Assurance" means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

"Audit" means expressing an opinion about the fairness of presentation of financial statements in accordance with prescribed criteria.

"Board" means the Board of Accountancy.

"Certify," "audit," "examine," "review," or "express or disclaim an opinion," when referenced to financial information or the practice of public accountancy, are terms which, when used in connection with the issuance of reports, state or imply assurance of conformity with generally accepted accounting principles, generally accepted auditing standards, and review standards. The terms include forms of language disclaiming an opinion concerning the reliability of the financial information referred to or relating to the expertise of the issuer.

"Client" means a person or entity that contracts with or retains a firm for performance of services by a CPA certificate holder or registration certificate holder subject to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

"Commission" means compensation generated from the purchase or sale of a product or service and which would not be generated but for the purchase or sale of the product or service.

"Conditional CPA exam credit" means credit for successfully passing a section of the CPA exam.

"Contact hour" means 50 minutes of participation in a group program or 50 minutes of average completion time in a self-study program.

"Contingent fee" means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is obtained, or in which the amount of the fee is dependent upon the finding or result obtained. Fees shall not be considered contingent if fixed by courts or other public authorities, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies. A CPA certificate holder's fees may vary depending on the complexity of services rendered, and such variation shall not be considered a contingent fee.

"Continuing Professional Education (CPE)" means an integral part of the lifelong learning required to provide competent service to the public; the formal set of activities that enables accounting professionals to maintain and increase their professional competence.

"CPA certificate" means a certificate as a certified public accountant (CPA) issued by the board pursuant to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter, which shall function as a license, or a corresponding certificate as a certified public accountant issued after meeting ~~examination~~ *the CPA exam* and other requirements under the laws of any other state.

"CPA exam" means the National Uniform CPA exam approved and administered by the Board of Accountancy to candidates for a CPA certificate.

"CPA wall certificate" means the symbolic document suitable for wall display that is issued by the board to an individual meeting the requirements for a CPA certificate set forth in 18 VAC 5-21-30.

"CPE" means continuing professional education.

"CPE credit" means 50 minutes of participation in a group, independent study or self-study program.

"CPE reporting cycle" means the three CPE reporting years immediately preceding the year the CPA certificate is renewed pursuant to 18 VAC 5-21-80.

"CPE reporting year" means for the purposes of this chapter a calendar year.

~~"Credit hour" means successful completion of a course of study measured in a contact hour.~~

"Ethics CPE" means subjects relating to standards of conduct, Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia, and regulations of the board.

"Examination" means, when used in the context of services provided by CPAs, expressing an opinion about the fairness of presentation of financial information in accordance with prescribed criteria.

"Financial statement" means writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

"Firm" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Good character" means a lack of a history of dishonest or felonious acts.

"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants.

"Interactive self-study program" means a program using interactive learning methodologies simulating a classroom learning process by employing software, other courseware, or administrative systems and providing significant ongoing, interactive feedback to the learner regarding his learning process. Substantial written or electronic evidence of satisfactory completion of each program segment by the learner is required. Interactive self-study programs must clearly define lesson objectives and manage students through the learning process by requiring frequent student response to

Proposed Regulations

questions that test for understanding of the material presented, providing evaluative feedback to incorrectly answered questions, and providing reinforcement feedback to correctly answered questions. Capabilities must, based on student response, provide appropriate ongoing written or electronic format feedback to the student regarding his learning progress through the program.

"Noninteractive self-study program" means any self-study program that does not meet the criteria for interactive self-study programs.

"Original CPA certificate" means a CPA certificate issued by the board other than a CPA certificate by endorsement.

"Peer review" means a study, appraisal, or review, by a CPA certificate holder who is not affiliated with the firm being reviewed, of one or more aspects of the professional work of a firm that engages in the practice of public accounting or compiles financial statements in accordance with the American Institute of Certified Public Accountants' Statements on Standards for Accounting and Review Services (SSARS).

"Practice of public accountancy" or "public accounting" means the giving of an assurance, in a report or otherwise, whether expressly or implicitly, unless this assurance is given by an employee to his employer.

"Practice of taxation" means the providing of tax compliance and tax advice services.

"Registration" means the process through which a firm obtains a registration certificate from the board.

"Registration certificate" means a certificate issued to a firm that has met all of the requirements for registration under this chapter.

"Regulant" means any CPA certificate holder or registration certificate holder who is subject to Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

"Renewal month" means the month of the calendar year in which a firm is required to renew its registration certificate.

"Report" or "reports," when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation that states or implies any form of assurance or denial of assurance.

"Self-study program" means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs do not include informal learning.

"SSARS" means Statements on Standards for Accounting and Review Services established by the American Institute of Certified Public Accountants.

"Standards of conduct" means the standards set forth in 18 VAC 5-21-120.

"Standards of practice for CPA certificate holders" means the standards set forth in 18 VAC 5-21-130, 18 VAC 5-21-140 and 18 VAC 5-21-150.

"State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam.

"Substantial equivalency" means a determination by the board or its designee that the education, ~~examination CPA exam~~ and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed, the education, ~~examination CPA exam~~ and experience requirements contained in this chapter, or that an individual CPA from another jurisdiction has met education, ~~examination CPA exam~~ and experience requirements that are comparable to, or exceed, the education, ~~examination CPA exam~~, and experience requirements contained in Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

"Window" means the four times (each being a three-month period) in a year that a CPA candidate may take the computer-based CPA exam.

"Year" means a calendar year unless otherwise indicated.

18 VAC 5-21-20. Fees.

A. All fees are nonrefundable and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. The following fees shall apply:

Initial examination CPA exam application fee	\$25
Original CPA certificate application	\$24
CPA certificate by endorsement application	\$24
Registration certificate application	\$24
CPA certificate renewal	\$24
Registration certificate renewal	\$24
CPA certificate late renewal	\$25
Registration certificate late renewal	\$25
CPA certificate reinstatement	\$250
Registration certificate reinstatement	\$250
Noninteractive processing fee	\$5

If the renewal fee is not received by the board within 30 days after the expiration date printed on the CPA certificate or the registration certificate, the regulant shall pay the renewal and the late renewal fees. Regulants applying for reinstatement shall pay all unpaid renewal fees in addition to the late renewal and the reinstatement fees.

C. The late filing fee for CPA certificate holders who fail to complete or report their CPE as required by this chapter shall be:

1. If received by the board up to four months late, \$25.
2. If received by the board more than four months late but not more than six months late, \$50.
3. If received by the board more than six months late, \$75.

D. The fee for a replacement wall certificate shall be \$25.

E. A fee of \$25 will be charged in addition to the fees established in this section for submitting a check to the board which is dishonored by the institution upon which it is drawn.

F. A noninteractive processing fee will be assessed when the online payment option is not chosen by the applicant or regulant.

G. The fee for the ~~examination~~ CPA exam provided for in 18 VAC 5-21-30 C shall consist of the CPA exam contract charges—~~An administrative fee incurred by the board plus the initial CPA exam application fee of \$25 that~~ will be assessed at the time of initial application for ~~examination~~ the CPA exam but not for reexamination. ~~No administrative fee will be assessed for re-examination.~~ Examination CPA exam service contracts shall be established through competitive negotiation in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The ~~examination~~ CPA exam fee shall not exceed \$1,000.

18 VAC 5-21-30. Qualifications for CPA certificate.

A. Each applicant must be a person of good character as defined in 18 VAC 5-21-10.

B. Education prior to taking the ~~examination~~ CPA exam.

1. Each ~~applicant~~ candidate whose application to sit for ~~an examination~~ a CPA exam administered prior to July 1, 2006, shall have received a baccalaureate degree or its equivalent conferred by an accredited college or university as required by § 54.1-4409 B 1 of the Code of Virginia and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of § 54.1-4409 B 1 of the Code of Virginia:

- a. At least 24 semester hours of accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and
- b. At least 18 semester hours in business courses (other than the courses described in subdivision 1 a of this subsection).

~~An applicant~~ A candidate whose application is received under the requirements of this subdivision may take the ~~examination~~ CPA exam so long as the requirements of subsection C of this section are met.

2. Each ~~applicant~~ candidate whose application to sit for ~~an examination~~ a CPA exam administered on or after July 1, 2006, shall meet the requirements of § 54.1-4409 B 2 of the Code of Virginia and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of § 54.1-4409 B 2 of the Code of Virginia:

- a. At least 30 semester hours of accounting, including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and
- b. At least 24 semester hours in business courses (other than the courses described in subdivision 2 a of this subsection).

3. A quarter hour of coursework shall be considered the equivalent of two-thirds of a semester hour of coursework.

4. Each ~~applicant~~ candidate with a degree or coursework earned at a nonaccredited college or university shall, if credit for such degree or coursework is to be considered by the board, (i) have his educational credentials evaluated by an academic credentials service approved by the board or

an accredited institution, as defined in 18 VAC 5-21-10, to determine the extent to which such credentials are equivalent to the education requirements set forth in subdivisions 1 and 2 of this subsection and (ii) submit such evaluations to the board, which may accept or reject the evaluator's recommendations in whole or in part.

5. Evidence of having obtained the required education shall be submitted in the form of official transcripts transmitted in a manner determined by the board. In unusual circumstances, the board may accept other evidence it deems to be substantially equivalent.

C. ~~Examination~~ CPA exam.

1. Each ~~applicant~~ candidate shall pass (i) a national uniform ~~examination~~ CPA exam, as approved by the board, in auditing and attestation, regulation, business environment and concepts, business law and professional responsibilities, accounting and reporting (taxation, managerial, governmental and not-for-profit organizations), financial accounting and reporting, and other such related subject areas as deemed appropriate by the board and (ii) an ethics ~~examination~~ exam approved by the board. Each part of the ~~examination~~ CPA exam must be passed with a minimum by attaining a uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the board based upon the recommendation of a psychometrician who has determined the valid passing grade by conducting a scientific analysis of the examination.

2. The following rules for granting CPA exam credits are applicable until the computer-based CPA exam becomes effective.

If at a given sitting of the ~~examination~~ an applicant CPA exam a candidate passes two or more but not all sections, then the ~~applicant~~ candidate shall be given credit for those sections that the ~~applicant~~ candidate has passed and need not sit for reexamination in those sections provided the following conditions are met:

- a. At that sitting, the ~~applicant~~ candidate wrote all sections of the ~~examination~~ CPA exam for which the ~~applicant~~ candidate did not have credit;
- b. The ~~applicant~~ candidate attained a minimum grade of 50 on each section taken at that sitting when the first two sections were passed and in each subsequent sitting attains a minimum grade of 50 on all sections taken at that sitting;
- c. The ~~applicant~~ candidate passes the remaining sections of the ~~examination~~ CPA exam within six consecutive ~~examinations~~ CPA exams (irrespective of the date on which the ~~examination~~ CPA exam credit was earned) given after the one at which the first sections were passed; and
- d. At each subsequent sitting at which the ~~applicant~~ candidate seeks to pass any additional sections, the ~~applicant~~ candidate writes all sections for which the ~~applicant~~ candidate does not have credit.

Proposed Regulations

3. The following rules for granting CPA exam credits will take effect beginning with the first computer-based CPA exam:

a. Granting of credit.

(1) Candidates will be allowed to sit for each section of the CPA exam individually and in any order.

(2) Candidates will retain credit for any section(s) passed for 18 months, without having to attain a minimum score on failed sections and without regard to whether they have taken other sections. Candidates will not be allowed to retake a failed section(s) within the same CPA exam window.

(3) Candidates must pass all four sections of the CPA exam within a "rolling" 18-month period, which begins on the date that the first section(s) passed is taken.

(4) In the event all four sections of the CPA exam are not passed within the rolling 18-month period, credit for any section(s) passed outside that 18-month period will expire and that section(s) must be retaken.

b. Conditional CPA exam credits.

(1) Candidates who have earned conditional credits on the noncomputer-based CPA exam as of the date of the first computer-based CPA exam will be given credits for the corresponding sections of the computer-based CPA exam as follows:

Noncomputer-Based CPA Exam	Computer-Based CPA Exam
Auditing	Auditing and Attestation
Financial Accounting and Reporting (FARE)	Financial Accounting and Reporting
Accounting and Reporting (ARE)	Regulation
Business Law and Professional Responsibilities (LPR)	Business Environment and Concepts

(2) Candidates who have attained conditional status as of the launch date of the first computer-based CPA exam will be allowed a transition period to complete any remaining test sections of the CPA exam. The transition is the maximum number of opportunities that a candidate who has conditioned under the noncomputer-based CPA exam has remaining, at the launch of the computer-based CPA exam, to complete all remaining test sections, or the number of remaining opportunities under the noncomputer-based CPA exam, multiplied by six months, which is first exhausted.

3- 4. The board may, at its discretion, waive any of the above requirements for carryover ~~examination~~ CPA exam credits, if such waiver is in the public interest.

4- 5. Each ~~applicant~~ candidate shall follow all rules and regulations established by the board with regard to conduct at the ~~examination~~ CPA exam. Such rules shall include instructions communicated prior to the ~~examination~~ CPA exam date and instructions communicated at the

~~examination~~ CPA exam site on the date of the ~~examination~~ CPA exam.

5- 6. Failure to comply with the rules and regulations governing conduct in the ~~examination~~ CPA exam may result in the loss of established eligibility to sit for the ~~examination~~ CPA exam or credit for ~~examination~~ CPA exam parts passed.

6- 7. An ~~applicant~~ A candidate to sit for the ~~examination~~ CPA exam shall obtain an application form from the board or its designee, complete the application in accordance with the instructions on the application, and submit the application together with all required documents to the board or its designee by the date determined by the board or its designee.

7- 8. An ~~applicant~~ A candidate who fails to appear for the ~~examination~~ CPA exam or reexamination shall forfeit the fees charged for that ~~examination~~ CPA exam or reexamination unless excused by the board.

8- 9. The fee to sit for the ~~examination~~ CPA exam is established in 18 VAC 5-21-20 F G, whether paid directly to the board or to a designee under contract to the board.

10. The board or its designee will forward notification of eligibility for the computer-based CPA exam to NASBA's National Candidate Database.

11. Cheating by a candidate in applying for, taking or subsequent to the CPA exam will be deemed to invalidate any grade otherwise earned by a candidate on any test section of the CPA exam, and may warrant summary expulsion from the CPA exam site and disqualification from taking the CPA exam for a specified period of time.

12. Notwithstanding any other provisions under these rules, the board may postpone scheduled CPA exams, the release of grades, or the issuance of certificates due to a breach of CPA exam security; unauthorized acquisition or disclosure of the contents of a CPA exam; suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA exam; or for any other reasonable cause or unforeseen circumstances.

D. Experience.

1. Each applicant for initial issuance of a CPA certificate under this section shall provide documentation of having met the experience requirements established by § 54.1-4409 C of the Code of Virginia, which requires at least one year of acceptable experience in accounting or a related field. The experience may include providing any type of service or advice involving the use of accounting, management, financial, tax, or consulting advisory skills or services. Acceptable experience shall include employment in government, industry, academia or public accounting or related services. The applicant's experience may be supervised by a non-CPA certificate holder, although, when completing the application for the CPA certificate, the experience must be verified by a CPA certificate holder.

2. One year of experience shall consist of full- or part-time employment that extends over a period of no less than a year and no more than three years and includes no fewer

than 2,000 hours of performance of services described in subdivision 1 of this subsection.

18 VAC 5-21-40. Issuance of original CPA certificate; CPA certificate by endorsement; and substantial equivalency.

A. Practicing as a CPA in the Commonwealth of Virginia. Only an individual who (i) holds a valid CPA certificate or (ii) meets the substantial equivalency requirements in this section may practice as a CPA in the Commonwealth of Virginia.

B. Original CPA certificate.

1. Each individual who desires to use the CPA designation shall first obtain a CPA certificate.

2. Each applicant for an original CPA certificate shall submit an application, on a form provided by the board, which shall document that the requirements of 18 VAC 5-21-30 have been met. If the application is received by the board three or more years after the successful completion of the CPA ~~examination~~ exam by the applicant, the applicant shall, in addition, submit evidence of having met the CPE requirements set forth in 18 VAC 5-21-170 A 3 or B 3, *and completed the most recent ethics CPE course*. Each applicant shall agree to comply with the statutes and regulations of any other state in which he is authorized to practice.

3. Each application for an original CPA certificate shall be accompanied by the fee established in 18 VAC 5-21-20.

C. CPA certificate by endorsement.

1. Each individual who holds a CPA certificate in a state other than Virginia and either (i) has moved his principal place of business to Virginia or (ii) does not meet the substantial equivalency provision outlined in subsection G of this section must obtain a CPA certificate by endorsement prior to practicing as a CPA in Virginia.

2. Each applicant for a CPA certificate by endorsement shall submit an application, on a form provided by the board, which shall document that the applicant holds a corresponding CPA certificate as a certified public accountant issued after meeting ~~examination~~ CPA exam and other requirements under laws of the state(s) from which the applicant is seeking a CPA certificate by endorsement. The application shall include the following:

a. From each state from which the applicant has received a CPA certificate (or from the applicant directly if the state is unable to provide the information), a written statement from the board of each state confirming that the applicant (i) is in good standing in that state; (ii) has not been found guilty of violating that state's standards of conduct or practice; (iii) has no pending actions alleging violations of that state's standards of conduct or practice; (iv) has met the education requirements in effect in that state when the applicant passed the national uniform ~~examination~~ CPA exam described in 18 VAC 5-21-30 C; and (v) has met the experience requirement for a CPA certificate in effect in Virginia when the CPA certificate by endorsement application is received by the board. An applicant who holds a CPA certificate from a state that the board has determined meets the substantial

equivalency provision set forth in § 54.1-4411 of the Code of Virginia shall be considered to have met the requirements of clauses (iv) and (v) of this paragraph.

b. A written statement from the applicant affirming that the applicant has (i) not violated the board's standards of conduct or standards of practice and (ii) met the board's continuing education requirements.

The board may deny the application for a CPA certificate by endorsement if the applicant is not in good standing in the other states which have issued CPA certificates to the applicant or if any information from the applicant indicates a failure to comply with the aforementioned standards.

3. Each application for a CPA certificate by endorsement shall be accompanied by the fee established in 18 VAC 5-21-20.

D. Each CPA certificate holder shall have the privilege of using the CPA designation provided the CPA certificate holder complies with the (i) standards of conduct, (ii) standards of practice, and (iii) the renewal requirements established by the board. Upon expiration of the CPA certificate, the CPA certificate holder shall cease displaying the CPA certificate and the wall certificate, and shall cease affixing and using the CPA designation in any manner.

E. All CPA certificate holders who supervise services involving the practice of public accountancy and who sign or authorize another to sign the report on the financial statements on behalf of the firm shall meet the experience requirement established in 18 VAC 5-21-50.

F. CPA certificates issued under the provisions of this chapter shall expire one year from the last day of the month wherein the initial CPA certificate was issued and shall be renewed in compliance with 18 VAC 5-21-80.

G. Privilege to practice without a CPA certificate by endorsement, substantial equivalency.

1. A holder of a CPA certificate from a state other than Virginia and with a principal place of business in a state other than Virginia shall either obtain a CPA certificate by endorsement as outlined in subsection C of this section or meet the substantial equivalency requirements of this subsection before beginning CPA practice in Virginia.

2. To implement the provisions of § 54.1-4411 A of the Code of Virginia, the privilege to practice under substantial equivalency shall be evidenced by the following:

a. If the individual's CPA certificate is issued by a state that the board has determined is substantially equivalent, the CPA certificate issued by that state shall constitute evidence of the privilege to practice.

b. If the individual's CPA certificate is issued by a state that the board has determined is not substantially equivalent, the CPA certificate holder shall notify the board in writing that he intends to practice in the Commonwealth and shall provide documentation acceptable to the board that he has personally satisfied the requirements for substantial equivalency. An

Proposed Regulations

approval letter from the board shall constitute evidence of the privilege to practice.

c. A CPA certificate by endorsement shall be obtained if the CPA exercising the privilege to practice under substantial equivalency moves his principal place of business to Virginia or ceases to have an office in any other state.

3. For the purposes of implementing § 54.1-4411 B 2 of the Code of Virginia relating to the privilege of practicing public accounting extended to nonresident CPA certificate holders, the board shall determine the state to be served based on whose statutes and regulations most closely correspond to those of the Commonwealth of Virginia.

4. The board shall determine whether a state meets the substantial equivalency provisions for nonresident CPA certificate holders by periodically obtaining, reviewing and approving a list of states, which in the opinion of the board, meet the substantial equivalency provisions for nonresident CPA certificate holders.

18 VAC 5-21-170. Continuing professional education requirements for CPA certificate applicants and for CPA certificate holders.

A. Use of CPA designation and performing services for the public.

1. As provided in § 54.1-4410 B of the Code of Virginia, any person referring to himself as a Certified Public Accountant or "CPA," including the use of the "CPA" title on individual business cards, letterhead and all other documents and devices except the CPA wall certificate, and who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for the public, shall obtain ~~120 hours~~ of CPE credits during each CPE reporting cycle with a minimum of ~~20 hours~~ CPE credits per CPE reporting year. The CPA certificate holder may choose the areas of study and courses.

2. Any person covered by this provision who, prior to implementation of § 54.1-4410 B of the Code of Virginia on October 4, 1999, provided one or more of the services described in subdivision 1 of this subsection, but was not required to obtain CPE, shall obtain at least ~~20 hours~~ of CPE credits in each of the CPE reporting years 2000, 2001 and 2002 and meet the ~~120-hour~~ CPE-credit requirement for the CPE reporting cycle ending December 31, 2002.

3. Any person applying for a CPA certificate pursuant to 18 VAC 5-21-40 three or more years after his successful completion of the CPA ~~examination~~ exam who intends to provide the services described in subdivision 1 of this subsection shall, in addition, submit evidence of having met the ~~120-hour~~ CPE-credit requirement in subdivision 1 of this subsection as though subdivision 1 of this subsection had been applicable to the applicant during the three ~~calendar~~ years prior to the date of his application.

4. Any CPA certificate holder whose original CPA certification application was received by the board fewer than three years after his successful completion of the CPA

~~examination~~ exam who commences the services described in subdivision 1 of this subsection after December 31, 2000, shall have obtained ~~40 hours~~ of CPE credits within the 12 months preceding the date such services are first offered to the public and obtain the remaining ~~80 hours~~ of CPE credits by the end of the second CPE reporting year following the date of commencing such services with no less than ~~20 hours~~ CPE credits in each of these two CPE reporting years. *In addition, such CPE shall include the most recent ethics CPE course.*

B. Use of CPA designation and performing services other than for the public.

1. As provided in § 54.1-4410 C of the Code of Virginia, effective July 1, 2002, any person referring to himself as a Certified Public Accountant or "CPA," including the use of the "CPA" title on individual business cards, letterhead and all other documents and devices except the CPA wall certificate, who is performing or offering to perform any services involving accounting skills or auditing skills, issuing reports on financial advisory or consulting services, preparing tax returns, or furnishing advice on tax matters, for an employer or other organization and not for the public, or who is employed as an educator in the field of accounting, shall meet the following CPE requirements as a condition of renewal of the person's CPA certificate: (i) for the three-year reporting period beginning ~~July 1, 2002~~ January 1, 2003, a minimum of ~~45 credit hours~~ CPE credits with a minimum of ~~10 hours~~ CPE credits per year, (ii) for the three-year reporting period beginning ~~July 1, 2005~~ January 1, 2006, a minimum of ~~90 credit hours~~ CPE credits with a minimum of ~~15 hours~~ CPE credits per year, and (iii) for the three-year reporting periods beginning on or after ~~July 1, 2008~~ January 1, 2009, a minimum of ~~120 credit hours~~ CPE credits with a minimum of ~~20 hours~~ CPE credits per year. The CPA certificate holder may choose the areas of study and courses.

2. Individuals failing to meet the CPE requirements may be subject to requalification, including possible reexamination and submission of experience qualifications. The board may, at its discretion, waive or defer CPE requirements so long as such waiver or deferral is in the public interest.

3. Any person applying for a CPA certificate pursuant to 18 VAC 5-21-40 three or more years after his successful completion of the CPA ~~examination~~ exam who intends to provide the services described in subdivision 1 of this subsection shall, in addition, submit evidence of having met the CPE requirement of subdivision 1 of this subsection as though subdivision 1 of this subsection had been applicable to the applicant during the three ~~calendar~~ years prior to the date of his application. Furthermore, if such person obtained his CPA certificate at a time when he did not intend to provide services for the public and subsequently decides to provide for the public the services described in subdivision A 1 of this section, then such regulant shall, prior to performing such services, meet the ~~120-hour~~ CPE credit requirement of subdivision A 1 of this section.

C. Use of CPA designation and not performing services

1. Any CPA certificate holder who is not performing or offering to perform any of the services described in subdivision A 1 or B 1 of this section is not required to meet CPE requirements.

2. Any CPA certificate holder who ceases to perform services for the public shall meet the CPE requirements described in subdivision A 1 of this section for any reporting year in which he performed those services. Any CPA certificate holder who performs services for the public for less than a complete reporting cycle shall complete at least 20 ~~hours~~ CPE credits in each reporting year that he did perform services for the public during the reporting cycle.

D. CPE in standards of conduct, Code of Virginia statutes relating to public accountancy, and board's regulations. Beginning with the CPE reporting year ending immediately subsequent to the year in which these regulations become effective, each CPA to which the CPE requirements in subsections A and B of this section apply will obtain annually two CPE credits relating to standards of conduct, Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia, and regulations of the board. The course will be a self-contained course presented in not more than two CPE credit parts and may be presented in conjunction with other CPE programs. The course may be a self-study course so long as the self-study requirements of 18 VAC 5-21-170 F 3 are met. An outline of the required content for the course will be provided by the board to CPE providers who must state in their ethics CPE course material and related catalog summaries whether the content of the course includes the material required by the board for the calendar year the course is provided.

~~D.~~ E. Requirements for retaining records.

1. It is the responsibility of the CPA certificate holder to retain evidence of satisfactory completion of CPE ~~credit hours~~ credits for a period of three years from the anniversary date of renewal. Such documentation shall be in the form of the certificate of completion provided by the sponsor, verification from the institution offering the course, written statement from the course provider verifying the regulant's attendance, or any other documentation deemed agreeable by the board.

2. The CPA certificate holder shall provide such documentation to the board or its authorized agent upon request.

~~E.~~ F. Continuing professional education credit.

1. One credit hour shall be given for each 50-minute period of instruction. One semester hour of college credit is 15 CPE ~~credit hours~~ credits and one quarter hour of college credit is 10 CPE ~~credit hours~~ credits.

2. A CPA certificate holder who instructs courses that qualify for CPE credit for participants will be awarded two additional ~~hours of~~ CPE credits for each CPE credit ~~hour~~ of instruction. The instructor shall retain evidence to support the request for CPE credit. The instructor shall be given no CPE credit for subsequent sessions involving substantially identical subject matter. The CPE credit given for instructing shall not exceed 30 ~~credit hours~~ CPE credits per CPE reporting cycle.

3. CPE ~~credit hours~~ credits for successful completion of a self-study course shall be established by the sponsor according to the type of CPE self-study program and pre-tests to determine average completion time. Interactive self-study programs shall receive CPE credit equal to the average completion time. Noninteractive self-study programs shall receive CPE credit equal to one-half of the average completion time. For example, an interactive self-study program that takes an average of two contact hours to complete shall receive two CPE ~~credit hours~~ credits, and a noninteractive self-study program that takes an average of two contact hours to complete shall receive one CPE credit ~~hour~~.

VA.R. Doc. No. R04-76; Filed January 19, 2005, 11:32 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

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

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Titles of Regulations: **Consumer Products (Rev. G03).**

9 VAC 5-20. General Provisions (amending 9 VAC 5-20-21).

9 VAC 5-40. Existing Stationary Sources (adding 9 VAC 5-40-7240 through 9 VAC 5-40-7360).

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

Effective Date: March 9, 2005.

Agency 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.

Summary:

This action adds a new rule (Article 50) to Chapter 40 of Regulations for the Control and Abatement of Air Pollution. The regulation applies only to sources in the Northern Virginia volatile organic compounds emissions control area designated in 9 VAC 5-20-206. The regulation limits VOC emissions from consumer products such as adhesives, adhesive removers, aerosol products (like cooking and dusting sprays), air freshener, antiperspirants and deodorants, facial toners and astringents, waxes and polishes (for cars, floors, etc.), tile cleaners, tar removers, bug sprays, rug cleaners, charcoal lighter fluid, disinfectants, cosmetics and soaps.

Several changes are made to the proposed regulation as the result of review and public comment. Internal transfers of consumer products within a business or governmental entity are removed from applicability. The compliance date for the regulation is pushed back to July 1, 2005. The information required on applications for a waiver is revised and the review period for waiver applications is shortened. The definition of "adhesive" is limited to exclude package sizes larger than those that consumers would be expected to use. A "sell-through" provision allows products that were manufactured before the compliance date to be sold after the compliance date. Finally, the compliance date for displaying date code information on consumer products is pushed back and explanations for date codes now only have to be submitted upon request.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

9 VAC 5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR [~~(2002)~~ (2004)] in effect July 1, [~~2002~~ 2004]. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.
 - a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.
 - (1) 40 CFR Part 50-National Primary and Secondary Ambient Air Quality Standards.
 - (a) Appendix A--Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).
 - (b) Appendix B--Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(c) Appendix C--Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D--Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E--Reference Method for Determination of Hydrocarbons Corrected for Methane.

(f) Appendix F--Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G--Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H--Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I--Reserved.

(j) Appendix J--Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(k) Appendix K--Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(2) 40 CFR Part 51--Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Appendix M--Recommended Test Methods for State Implementation Plans.

Appendix S--Emission Offset Interpretive Ruling.

Appendix W--Guideline on Air Quality Models (Revised).

(3) 40 CFR Part 58--Ambient Air Quality Surveillance.

Appendix B--Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(4) 40 CFR Part 60--Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9 VAC 5-50-400 et seq.) of Part II of Chapter 50, Rule 5-5, Environmental Protection Agency Standards of Performance for New Stationary Sources.

(5) 40 CFR Part 61--National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9 VAC 5-60-60 et seq.) of Part II of Chapter 60, Rule 6-1, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants.

(6) 40 CFR Part 63--National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9 VAC 5-60-90 et seq.) of Part II of Chapter 60, Rule 6-2, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories.

(7) 40 CFR Part 59, Subpart D-National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A--"Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings."

(8) 40 CFR Part 64, Compliance Assurance Monitoring.

(9) 40 CFR Part 72, Permits Regulation.

(10) 40 CFR Part 73, Sulfur Dioxide Allowance System.

(11) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

(12) 40 CFR Part 75, Continuous Emission Monitoring.

(13) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.

(14) 40 CFR Part 77, Excess Emissions.

(15) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.

(16) 40 CFR Part 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

b. Copies of Volume I and Supplements A through C may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/chief/ap42/index.html>.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

Final Regulations

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-01, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2001).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: [1991-1992] Threshold Limit Values for Chemical Substances [~~1991-1992~~] and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

- b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.
9. American Hospital Association (AHA).
- a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.
- b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.
10. Bay Area Air Quality Management District (BAAQMD).
- a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:
- (1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).
- (2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).
- b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.
11. South Coast Air Quality Management District (SCAQMD).
- a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:
- (1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).
- (3) *Rule 1174 Ignition Method Compliance Certification Protocol* (February 28, 1991).
- b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.
12. California Air Resources Board (CARB).
- a. The following documents from the California Air Resources Board are incorporated herein by reference:
- (1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (3) Test Method 512, "Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).
- (4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).
- (5) *Test Method 310 (including Appendices A and B), "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products"* (July 18, 2001).
- (6) *California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5* (2003).
- (7) *California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511* (2003).
- (8) *California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555* (2003).
- b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.
13. American Architectural Manufacturers Association.
- a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:
- (1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).
- (2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).
- b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.
14. American Furniture Manufacturers Association.
- a. *The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines* (January 2001).
- b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

Final Regulations

Article 50.

Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4-50).

9 VAC 5-40-7240. Applicability.

A. Except as provided in 9 VAC 5-40-7250, the provisions of this article apply to those persons who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds (VOCs) as defined in 9 VAC 5-10-20.

B. The provisions of this article apply throughout the Northern Virginia volatile organic compound emissions control area designated in 9 VAC 5-20-206.

[C. For purposes of this article, the term "supply" or "supplied" does not include internal transactions within a business or governmental entity. The term only applies to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.]

9 VAC 5-40-7250. Exemptions.

A. This article shall not apply to any consumer product manufactured in the Northern Virginia volatile organic compound emissions control area for shipment and use outside of this area.

B. The provisions of this article shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards specified in 9 VAC 5-40-7270 A, as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the Northern Virginia volatile organic compound emissions control area, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the Northern Virginia volatile organic compound emissions control area. This subsection does not apply to consumer products that are sold, supplied, or offered for sale by any person to retail outlets in the Northern Virginia volatile organic compound emissions control area.

C. The medium volatility organic compound (MVOC) content standards specified in 9 VAC 5-40-7270 A for antiperspirants or deodorants shall not apply to ethanol.

D. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to fragrances up to a combined level of 2.0% by weight contained in any consumer product and shall not apply to colorants up to a combined level of 2.0% by weight contained in any antiperspirant or deodorant.

E. The requirements of 9 VAC 5-40-7270 A for antiperspirants or deodorants shall not apply to those volatile organic compounds that contain more than 10 carbon atoms per molecule and for which the vapor pressure is unknown, or that have a vapor pressure of 2 mm Hg or less at 20 degrees Centigrade.

F. The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to any LVP-VOC.

[~~G. The requirements of 9 VAC 5-40-7300 A shall not apply to consumer products registered under FIFRA.~~

~~H. G.]~~ The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to air fresheners that are composed entirely of fragrance, less compounds not defined as VOCs or exempted under subsection F of this section.

[~~I. H.]~~ The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to air fresheners and insecticides containing at least 98% paradichlorobenzene.

[~~J. I.]~~ The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to adhesives sold in containers of one fluid ounce or less.

[~~K. J.]~~ The VOC limits specified in 9 VAC 5-40-7270 A shall not apply to bait station insecticides. For the purpose of this section, bait station insecticides are containers enclosing an insecticidal bait that is not more than 0.5 ounce by weight, where the bait is designed to be ingested by insects and is composed of solid material feeding stimulants with less than 5.0% active ingredients.

[~~L. K.]~~ A person who cannot comply with the requirements set forth in 9 VAC 5-40-7270 because of extraordinary reasons beyond the person's reasonable control may apply in writing to the board for a waiver.

1. The application shall set forth:

- a. The specific grounds upon which the waiver is sought [, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control];
- b. The proposed dates by which compliance with the provisions of 9 VAC 5-40-7270 will be achieved; and
- c. A compliance report reasonably detailing the methods by which compliance will be achieved.

2. Upon receipt of an application containing the information required in subdivision 1 of this subsection, the board will hold a public hearing to determine whether, under what conditions, and to what extent, a waiver from the requirements in 9 VAC 5-40-7270 is necessary and will be permitted. A hearing shall be initiated no later than [~~420~~ 75] days after receipt of a waiver application. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 30 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the Virginia Register. At least 30 days prior to the hearing, the waiver application shall be made available to the public for inspection. Information submitted to the board by a waiver applicant may be claimed as confidential, and such information will be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60. The board may consider such confidential information in reaching a decision on an exemption application. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

3. No waiver shall be granted unless all of the following findings are made:

a. That, because of reasons beyond the reasonable control of the applicant, requiring compliance with 9 VAC 5-40-7270 would result in extraordinary economic hardship;

b. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the waiver; and

c. That the compliance report proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

4. Any waiver may be issued as an order of the board. The waiver order shall specify a final compliance date by which the requirements of 9 VAC 5-40-7270 will be achieved. Any waiver order shall contain a condition that specifies increments of progress necessary to assure timely compliance and such other conditions that the board, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of the Virginia Air Pollution Control Law and the regulations of the board.

5. A waiver shall cease to be effective upon failure of the party to whom the waiver was granted to comply with any term or condition of the waiver order.

6. Upon the application of anyone, the board may review and for good cause modify or revoke a waiver from requirements of 9 VAC 5-40-7270. Modifications and revocations of waivers are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

[L. The requirements of 9 VAC 5-40-7300 A shall not apply to consumer products registered under FIFRA.]

9 VAC 5-40-7260. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), unless otherwise required by context.

C. Terms defined.

["ACP" or "alternative control plan" means any emissions averaging program approved by the board pursuant to the provisions of this article.]

"ACP agreement" means the document signed by the board that includes the conditions and requirements of the board and that allows manufacturers to sell ACP products pursuant to the requirements of this article.

"ACP emissions" means the sum of the VOC emissions from every ACP product subject to an ACP agreement approving an ACP, during the compliance period specified in the ACP

agreement, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Emissions = (Emissions)_1 + (Emissions)_2 + \dots + (Emissions)_N$$

$$Emissions = \frac{(VOC\ Content) \times (Enforceable\ Sales)}{100}$$

where

1,2,...N = each product in an ACP up to the maximum N.

Enforceable sales = (see definition in this section).

VOC content = one of the following:

1. For all products except for charcoal lighter material products:

where

$$VOC\ Content = \frac{((B - C) \times 100)}{A}$$

where

A = total net weight of unit (excluding container and packaging).

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9 VAC 5-40-7250.

2. For charcoal lighter material products only:

$$VOC\ Content = \frac{(Certified\ Emissions \times 100)}{Certified\ Use\ Rate}$$

where

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

"ACP limit" means the maximum allowable ACP emissions during the compliance period specified in an ACP agreement approving an ACP, expressed to the nearest pound of VOC and calculated according to the following equation:

$$ACP\ Limit = (Limit)_1 + (Limit)_2 + \dots + (Limit)_N$$

where

$$Limit = \frac{(ACP\ Standard) \times (Enforceable\ Sales)}{100}$$

[where]

Enforceable sales = (see definition in this section).

ACP standard = (see definition in this section).

1,2,...N = each product in an ACP up to the maximum N.

"ACP product" means any consumer product subject to the VOC standards specified in 9 VAC 5-40-7270 A, except those products that have been exempted as innovative products under 9 VAC 5-40-7290.

"ACP reformulation" or "ACP reformulated" means the process of reducing the VOC content of an ACP product

Final Regulations

within the period that an ACP is in effect to a level that is less than the current VOC content of the product.

"ACP standard" means either the ACP product's pre-ACP VOC content or the applicable VOC standard specified in 9 VAC 5-40-7270 A, whichever is the lesser of the two.

"ACP VOC standard" means the maximum allowable VOC content for an ACP product, determined as follows:

1. The applicable VOC standard specified in 9 VAC 5-40-7270 A for all ACP products except for charcoal lighter material;
2. For charcoal lighter material products only, the VOC standard for the purposes of this article shall be calculated according to the following equation:

$$\left[\text{VOC Standard} = \frac{(0.020 \text{ pound } \text{CH}_2 \text{ per start} \times 100)}{\text{Certified Use Rate}} \right]$$

$$\text{VOC Standard} = \frac{(0.020 \text{ pound VOC per start} \times 100)}{\text{Certified Use Rate}}$$

[where]

0.020 = the certification emissions level for the product, as specified in 9 VAC 5-40-7270 E.

Certified use rate = (see definition in this section).

"Adhesive" means any product that is used to bond one surface to another by attachment. [~~Adhesives do~~ Adhesive does] not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate. For contact adhesive [~~; construction, panel, and floor covering adhesive, and general purpose adhesive~~] only, adhesive also does not include units of product, less packaging, which consist of more than one gallon. [~~This limitation does~~ In addition, for construction, panel, and floor covering adhesive and general purpose adhesive only, adhesive does not include units of product, less packaging, which consist of more than one pound and consist of more than 16 fluid ounces. The package size limitations do] not apply to aerosol adhesives.

"Adhesive remover" means a product designed exclusively for the removal of adhesives, caulk, and other bonding materials from either a specific substrate or a variety of substrates.

"Aerosol adhesive" means an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for hand-held application without the need for ancillary hoses or spray equipment.

"Aerosol cooking spray" means any aerosol product designed either to reduce sticking on cooking and baking surfaces or to be applied on food or both.

"Aerosol product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. Aerosol product does not include pump sprays.

"Agricultural use" means the use of any pesticide or method or device for the control of pests in connection with the commercial production, storage, or processing of any animal

or plant crop. Agricultural use does not include the sale or use of pesticides in properly labeled packages or containers that are intended for home use, use in structural pest control, industrial use, or institutional use. For the purposes of this definition only:

1. "Home use" means use in a household or its immediate environment.
2. "Structural pest control" means a use requiring a license under the applicable state pesticide licensing requirement.
3. "Industrial use" means use for or in a manufacturing, mining, or chemical process or use in the operation of factories, processing plants, and similar sites.
4. "Institutional use" means use within the perimeter of, or on property necessary for the operation of, buildings such as hospitals, schools, libraries, auditoriums, and office complexes.

"Air freshener" means any consumer product including, but not limited to, sprays, wicks, powders, and crystals, designed for the purpose of masking odors or freshening, cleaning, scenting, or deodorizing the air. Air fresheners do not include products that are used on the human body, products that function primarily as cleaning products, disinfectant products claiming to deodorize by killing germs on surfaces, or institutional or industrial disinfectants when offered for sale solely through institutional and industrial channels of distribution. Air fresheners do include spray disinfectants and other products that are expressly represented for use as air fresheners, except institutional and industrial disinfectants when offered for sale through institutional and industrial channels of distribution. To determine whether a product is an air freshener, all verbal and visual representations regarding product use on the label or packaging and in the product's literature and advertising may be considered. The presence of, and representations about, a product's fragrance and ability to deodorize (resulting from surface application) shall not constitute a claim of air freshening.

"All other carbon-containing compounds" means all other compounds that contain at least one carbon atom and are not an "exempt compound" or an "LVP-VOC."

"All other forms" means all consumer product forms for which no form-specific VOC standard is specified. Unless specified otherwise by the applicable VOC standard, all other forms include, but are not limited to, solids, liquids, wicks, powders, crystals, and cloth or paper wipes (towelettes).

"Alternative control plan" or "ACP" means any emissions averaging program approved by the board pursuant to the provisions of this article.

"Antimicrobial hand or body cleaner or soap" means a cleaner or soap which is designed to reduce the level of microorganisms on the skin through germicidal activity. Antimicrobial hand or body cleaner or soap includes, but is not limited to, antimicrobial hand or body washes or cleaners, food handler hand washes, healthcare personnel hand washes, preoperative skin preparations, and surgical scrubs. Antimicrobial hand or body cleaner or soap does not include prescription drug products, antiperspirants, astringent or toner, deodorant, facial cleaner or soap, general-use hand or body

cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, and rubbing alcohol.

"Antiperspirant" means any product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to reduce perspiration in the human axilla by at least 20% in at least 50% of a target population.

"Architectural coating" means a coating applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

"ASTM" means the American Society for Testing and Materials.

"Astringent or toner" means any product not regulated as a drug by the United States Food and Drug Administration [(FDA)] that is applied to the skin for the purpose of cleaning or tightening pores. This category also includes clarifiers and substrate-impregnated products. This category does not include any hand, face, or body cleaner or soap product, medicated astringent or medicated toner, cold cream, lotion, or antiperspirant.

"Automotive brake cleaner" means a cleaning product designed to remove oil, grease, brake fluid, brake pad material, or dirt from motor vehicle brake mechanisms.

"Automotive hard paste wax" means an automotive wax or polish that is:

1. Designed to protect and improve the appearance of automotive paint surfaces;
2. A solid at room temperature; and
3. Contains no water.

"Automotive instant detailer" means a product designed for use in a pump spray that is applied to the painted surface of automobiles and wiped off prior to the product being allowed to dry.

"Automotive rubbing or polishing compound" means a product designed primarily to remove oxidation, old paint, scratches or swirl marks, and other defects from the painted surfaces of motor vehicles without leaving a protective barrier.

"Automotive wax, polish, sealant, or glaze" means a product designed to seal out moisture, increase gloss, or otherwise enhance a motor vehicle's painted surfaces. Automotive wax, polish, sealant, or glaze includes, but is not limited to, products designed for use in auto body repair shops and drive-through car washes, as well as products designed for the general public. Automotive wax, polish, sealant, or glaze does not include automotive rubbing or polishing compounds, automotive wash and wax products, surfactant-containing car wash products, and products designed for use on unpainted surfaces such as bare metal, chrome, glass, or plastic.

"Automotive windshield washer fluid" means any liquid designed for use in a motor vehicle windshield washer system either as an antifreeze or for the purpose of cleaning, washing, or wetting the windshield. Automotive windshield

washer fluid does not include fluids placed by the manufacturer in a new vehicle.

"Bathroom and tile cleaner" means a product designed to clean tile or surfaces in bathrooms. Bathroom and tile cleaners do not include products specifically designed to clean toilet bowls or toilet tanks.

"Bug and tar remover" means a product designed to remove either or both of the following from painted motor vehicle surfaces without causing damage to the finish: (i) biological residues, such as insect carcasses and tree sap and (ii) road grime, such as road tar, roadway paint markings, and asphalt.

"CARB" means the California Air Resources Board.

"Carburetor or fuel-injection air intake cleaners" means a product designed to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. Carburetor or fuel-injection air intake cleaners do not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.

"Carpet and upholstery cleaner" means a cleaning product designed for the purpose of eliminating dirt and stains on rugs, carpeting, and the interior of motor vehicles or on household furniture or objects upholstered or covered with fabrics such as wool, cotton, nylon, or other synthetic fabrics. Carpet and upholstery cleaners include, but are not limited to, products that make fabric protectant claims. Carpet and upholstery cleaners do not include general purpose cleaners, spot removers, vinyl or leather cleaners, dry cleaning fluids, or products designed exclusively for use at industrial facilities engaged in furniture or carpet manufacturing.

"Certified emissions" means the emissions level for products approved under 9 VAC 5-40-7270 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21), expressed to the nearest 0.001 pound [CH₂ VOC] per start.

"Certified use rate" means the usage level for products approved under 9 VAC 5-40-7270 E, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol, expressed to the nearest 0.001 pound certified product used per start.

"Charcoal lighter material" means any combustible material designed to be applied on, incorporated in, added to, or used with charcoal to enhance ignition. Charcoal lighter material does not include any of the following:

1. Electrical starters and probes,
2. Metallic cylinders using paper tinder,
3. Natural gas,
4. Propane, or
5. Fat wood.

"Colorant" means any pigment or coloring material used in a consumer product for an aesthetic effect or to dramatize an ingredient.

Final Regulations

"Compliance period" means the period of time, not to exceed one year, for which the ACP limit and ACP emissions are calculated and for which compliance with the ACP limit is determined, as specified in the ACP agreement approving an ACP.

"Construction, panel, and floor covering adhesive" means any one-component adhesive that is designed exclusively for the installation, remodeling, maintenance, or repair of:

1. Structural and building components that include, but are not limited to, beams, trusses, studs, paneling (drywall or drywall laminates, fiberglass reinforced plastic (FRP), plywood, particle board, insulation board, pre-decorated hardboard or tileboard, etc.), ceiling and acoustical tile, molding, fixtures, countertops or countertop laminates, cove or wall bases, and flooring or subflooring; or

2. Floor or wall coverings that include, but are not limited to, wood or simulated wood covering, carpet, carpet pad or cushion, vinyl-backed carpet, flexible flooring material, nonresilient flooring material, mirror tiles and other types of tiles, and artificial grass.

Construction, panel, and floor covering adhesive does not include floor seam sealer.

"Consumer" means a person who purchases or acquires a consumer product for personal, family, household, or institutional use. Persons acquiring a consumer product for resale are not consumers for that product.

"Consumer product" means a chemically formulated product used by household and institutional consumers including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products, but does not include other paint products, furniture coatings, or architectural coatings.

"Contact adhesive" means an adhesive that:

1. Is designed for application to both surfaces to be bonded together,
2. Is allowed to dry before the two surfaces are placed in contact with each other,
3. Forms an immediate bond that is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and
4. Does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces.

Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates.

"Container or packaging" means the part or parts of the consumer or institutional product that serve only to contain, enclose, incorporate, deliver, dispense, wrap, or store the chemically formulated substance or mixture of substances which is solely responsible for accomplishing the purposes for which the product was designed or intended. Containers or packaging include any article onto or into which the principal

display panel and other accompanying literature or graphics are incorporated, etched, printed, or attached.

"Contact person" means a representative that has been designated by the responsible ACP party for the purpose of reporting or maintaining information specified in the ACP agreement approving an ACP.

"Crawling bug insecticide" means an insecticide product that is designed for use against ants, cockroaches, or other household crawling arthropods, including, but not limited to, mites, silverfish or spiders. Crawling bug insecticide does not include products designed to be used exclusively on humans or animals or a house dust mite product. For the purposes of this definition only:

1. "House dust mite product" means a product whose label, packaging, or accompanying literature states that the product is suitable for use against house dust mites, but does not indicate that the product is suitable for use against ants, cockroaches, or other household crawling arthropods.

2. "House dust mite" means mites that feed primarily on skin cells shed in the home by humans and pets and which belong to the phylum Arthropoda, the subphylum Chelicerata, the class Arachnida, the subclass Acari, the order Astigmata, and the family Pyroglyphidae.

"Date-code" means the day, month, and year on which the consumer product was manufactured, filled, or packaged, or a code indicating such a date.

"Deodorant" means a product including, but not limited to, aerosols, roll-ons, sticks, pumps, pads, creams, and squeeze bottles, that is intended by the manufacturer to be used to minimize odor in the human axilla by retarding the growth of bacteria which cause the decomposition of perspiration.

"Device" means an instrument or contrivance (other than a firearm) that is designed for trapping, destroying, repelling, or mitigating a pest or other form of plant or animal life (other than human and other than bacteria, virus, or other microorganism on or in living human or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"Disinfectant" means a product intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects and whose label is registered under the FIFRA. Disinfectant does not include any of the following:

1. Products designed solely for use on humans or animals,
2. Products designed for agricultural use,
3. Products designed solely for use in swimming pools, therapeutic tubs, or hot tubs, or
4. Products that, as indicated on the principal display panel or label, are designed primarily for use as bathroom and tile cleaners, glass cleaners, general purpose cleaners, toilet bowl cleaners, or metal polishes.

"Distributor" means a person to whom a consumer product is sold or supplied for the purposes of resale or distribution in

commerce, except that manufacturers, retailers, and consumers are not distributors.

"Double phase aerosol air freshener" means an aerosol air freshener with the liquid contents in two or more distinct phases that require the product container to be shaken before use to mix the phases, producing an emulsion.

"Dry cleaning fluid" means a nonaqueous liquid product designed and labeled exclusively for use on:

1. Fabrics that are labeled "for dry clean only," such as clothing or drapery; or
2. S-coded fabrics.

Dry cleaning fluid includes, but is not limited to, those products used by commercial dry cleaners and commercial businesses that clean fabrics such as draperies at the customer's residence or work place. Dry cleaning fluid does not include spot remover or carpet and upholstery cleaner. For the purposes of this definition, "S-coded fabric" means an upholstery fabric designed to be cleaned only with water-free spot cleaning products as specified by the American Furniture Manufacturers Association Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (see 9 VAC 5-20-21).

"Dusting aid" means a product designed to assist in removing dust and other soils from floors and other surfaces without leaving a wax or silicone based coating. Dusting aid does not include products that consist entirely of compressed gases for use in electronic or other specialty areas.

"Electronic cleaner" means a product designed specifically for the removal of dirt, grease, or grime from electrical equipment such as electric motors, circuit boards, electricity panels, and generators.

"Enforceable sales" means the total amount of an ACP product sold for use in the Northern Virginia volatile organic compound emissions control area during the applicable compliance period specified in the ACP agreement approving an ACP, as determined through enforceable sales records (expressed to the nearest pound, excluding product container and packaging).

"Enforceable sales record" means a written, point-of-sale record or another board-approved system of documentation from which the mass, in pounds (less product container and packaging), of an ACP product sold to the end user in the Northern Virginia volatile organic compound emissions control area during the applicable compliance period can be accurately documented. For the purposes of this article, enforceable sales records include, but are not limited to, the following types of records:

1. Accurate records of direct retail or other outlet sales to the end user during the applicable compliance period;
2. Accurate compilations, made by independent market surveying services, of direct retail or other outlet sales to the end users for the applicable compliance period, provided that a detailed method that can be used to verify data composing such summaries is submitted by the responsible ACP party and approved by the board; and

3. Other accurate product sales records acceptable to the board.

"Engine degreaser" means a cleaning product designed to remove grease, grime, oil and other contaminants from the external surfaces of engines and other mechanical parts.

"Exempt compound" means acetone, ethane, methyl acetate, parachlorobenzotrifluoride (1-chloro-4-trifluoromethyl benzene), or perchloroethylene (tetrachloroethylene).

"Fabric protectant" means a product designed to be applied to fabric substrates to protect the surface from soiling from dirt and other impurities or to reduce absorption of liquid into the fabric's fibers. Fabric protectant does not include waterproofers, products designed for use solely on leather, or products designed for use solely on fabrics which are labeled "for dry clean only" and sold in containers of 10 fluid ounces or less.

"Facial cleaner or soap" means a cleaner or soap designed primarily to clean the face. Facial cleaner or soap includes, but is not limited to, facial cleansing creams, gels, liquids, lotions, and substrate-impregnated forms. Facial cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Fat wood" means pieces of wood kindling with high naturally-occurring levels of sap or resin that enhance ignition of the kindling. Fat wood does not include kindling with substances added to enhance flammability, such as wax-covered or wax-impregnated wood-based products.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136-136y).

"Flea and tick insecticide" means an insecticide product that is designed for use against fleas, ticks, their larvae, or their eggs. Flea and tick insecticide does not include products that are designed to be used exclusively on humans or animals and their bedding.

"Flexible flooring material" means asphalt, cork, linoleum, no-wax, rubber, seamless vinyl and vinyl composite flooring.

"Floor polish or wax" means a wax, polish, or other product designed to polish, protect, or enhance floor surfaces by leaving a protective coating that is designed to be periodically replenished. Floor polish or wax does not include spray buff products, products designed solely for the purpose of cleaning floors, floor finish strippers, products designed for unfinished wood floors, and coatings subject to architectural coatings regulations.

"Floor seam sealer" means a product designed and labeled exclusively for bonding, fusing, or sealing (coating) seams between adjoining rolls of installed flexible sheet flooring.

"Floor wax stripper" means a product designed to remove natural or synthetic floor polishes or waxes through breakdown of the polish or wax polymers or by dissolving or emulsifying the polish or wax. Floor wax stripper does not include aerosol floor wax strippers or products designed to remove floor wax solely through abrasion.

Final Regulations

"Flying bug insecticide" means an insecticide product that is designed for use against flying insects or other flying arthropods, including but not limited to flies, mosquitoes, moths, or gnats. Flying bug insecticide does not include wasp and hornet insecticide, products that are designed to be used exclusively on humans or animals, or a moth-proofing product. For the purposes of this definition only, "moth-proofing product" means a product whose label, packaging, or accompanying literature indicates that the product is designed to protect fabrics from damage by moths, but does not indicate that the product is suitable for use against flying insects or other flying arthropods.

"Fragrance" means a substance or complex mixture of aroma chemicals, natural essential oils, and other functional components, the sole purpose of which is to impart an odor or scent, or to counteract a malodor.

"Furniture maintenance product" means a wax, polish, conditioner, or other product designed for the purpose of polishing, protecting or enhancing finished wood surfaces other than floors. Furniture maintenance products do not include dusting aids, products designed solely for the purpose of cleaning, and products designed to leave a permanent finish such as stains, sanding sealers, and lacquers.

"Furniture coating" means a paint designed for application to room furnishings including, but not limited to, cabinets (kitchen, bath and vanity), tables, chairs, beds, and sofas.

"Gel" means a colloid in which the disperse phase has combined with the continuous phase to produce a semisolid material, such as jelly.

"General purpose adhesive" means a nonaerosol adhesive designed for use on a variety of substrates. General purpose adhesive does not include:

1. Contact adhesives,
2. Construction, panel, and floor covering adhesives,
3. Adhesives designed exclusively for application on one specific category of substrates (i.e., substrates that are composed of similar materials, such as different types of metals, paper products, ceramics, plastics, rubbers, or vinyls), or
4. Adhesives designed exclusively for use on one specific category of articles (i.e., articles that may be composed of different materials but perform a specific function, such as gaskets, automotive trim, weather-stripping, or carpets).

"General purpose cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. General purpose cleaner includes products designed for general floor cleaning, kitchen or countertop cleaning, and cleaners designed to be used on a variety of hard surfaces and does not include general purpose degreasers and electronic cleaners.

"General purpose degreaser" means a product designed to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of substrates, including automotive or miscellaneous metallic parts. General purpose

degreaser does not include engine degreaser, general purpose cleaner, adhesive remover, electronic cleaner, metal polish or cleanser, products used exclusively in solvent cleaning tanks or related equipment, or products that are (i) sold exclusively to establishments which manufacture or construct goods or commodities; and (ii) labeled "not for retail sale." Solvent cleaning tanks or related equipment includes, but is not limited to, cold cleaners, vapor degreasers, conveyorized degreasers, film cleaning machines, or products designed to clean miscellaneous metallic parts by immersion in a container.

"General-use hand or body cleaner or soap" means a cleaner or soap designed to be used routinely on the skin to clean or remove typical or common dirt and soils. General-use hand or body cleaner or soap includes, but is not limited to, hand or body washes, dual-purpose shampoo-body cleaners, shower or bath gels, and moisturizing cleaners or soaps. General-use hand or body cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, hand dishwashing detergent (including antimicrobial), heavy-duty hand cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Glass cleaner" means a cleaning product designed primarily for cleaning surfaces made of glass. Glass cleaner does not include products designed solely for the purpose of cleaning optical materials used in eyeglasses, photographic equipment, scientific equipment, and photocopying machines.

"Gross sales" means the estimated total sales of an ACP product in the Northern Virginia volatile organic compound emissions control area during a specific compliance period (expressed to the nearest pound), based on either of the following methods, whichever the responsible ACP party demonstrates to the satisfaction of the board will provide an accurate sales estimate:

1. Apportionment of national or regional sales of the ACP product to sales, determined by multiplying the average national or regional sales of the product by the fraction of the national or regional population, respectively, that is represented by the Northern Virginia volatile organic compound emissions control area's current population; or
2. Another documented method that provides an accurate estimate of the total current sales of the ACP product.

"Hair mousse" means a hairstyling foam designed to facilitate styling of a coiffure and provide limited holding power.

"Hair shine" means a product designed for the primary purpose of creating a shine when applied to the hair. Hair shine includes, but is not limited to, dual-use products designed primarily to impart a sheen to the hair. Hair shine does not include hair spray, hair mousse, hair styling gel or spray gel, or products whose primary purpose is to condition or hold the hair.

"Hair styling gel" means a high viscosity, often gelatinous, product that contains a resin and is designed for the application to hair to aid in styling and sculpting of the hair coiffure.

"Hair spray" means a consumer product designed primarily for the purpose of dispensing droplets of a resin on and into a hair coiffure that will impart sufficient rigidity to the coiffure to establish or retain the style for a period of time.

"Heavy-duty hand cleaner or soap" means a product designed to clean or remove difficult dirt and soils such as oil, grease, grime, tar, shellac, putty, printer's ink, paint, graphite, cement, carbon, asphalt, or adhesives from the hand with or without the use of water. Heavy-duty hand cleaner or soap does not include prescription drug products, antimicrobial hand or body cleaner or soap, astringent or toner, facial cleaner or soap, general-use hand or body cleaner or soap, medicated astringent or medicated toner, or rubbing alcohol.

"Herbicide" means a pesticide product designed to kill or retard a plant's growth, but excludes products that are (i) for agricultural use, or (ii) restricted materials that require a permit for use and possession.

"High volatility organic compound" or "HVOC" means a volatile organic compound that exerts a vapor pressure greater than 80 millimeters of mercury (mm Hg) when measured at 20 degrees Centigrade.

"Household product" means a consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by people, including the immediate surroundings.

"Insecticide" means a pesticide product that is designed for use against insects or other arthropods, but excluding products that are:

1. For agricultural use;
2. For a use which requires a structural pest control license under applicable state laws or regulations; or
3. Restricted materials that require a permit for use and possession.

"Insecticide fogger" means an insecticide product designed to release all or most of its content as a fog or mist into indoor areas during a single application.

"Institutional product" or "industrial and institutional (I&I) product" means a consumer product that is designed for use in the maintenance or operation of an establishment that:

1. Manufactures, transports, or sells goods or commodities, or provides services for profit; or
2. Is engaged in the nonprofit promotion of a particular public, educational, or charitable cause.

Establishments include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. Institutional product does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

"Label" means written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon a consumer product or

consumer product package, for purposes of branding, identifying, or giving information with respect to the product or to the contents of the package.

"Laundry prewash" means a product that is designed for application to a fabric prior to laundering and that supplements and contributes to the effectiveness of laundry detergents or provides specialized performance.

"Laundry starch product" means a product that is designed for application to a fabric, either during or after laundering, to impart and prolong a crisp, fresh look and may also act to help ease ironing of the fabric. Laundry starch product includes, but is not limited to, fabric finish, sizing, and starch.

"Lawn and garden insecticide" means an insecticide product designed primarily to be used in household lawn and garden areas to protect plants from insects or other arthropods.

"Liquid" means a substance or mixture of substances that is capable of a visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9 VAC 5-20-21). Liquid does not include powders or other materials that are composed entirely of solid particles.

"Lubricant" means a product designed to reduce friction, heat, noise, or wear between moving parts, or to loosen rusted or immovable parts or mechanisms. Lubricant does not include automotive power steering fluids; products for use inside power generating motors, engines, and turbines, and their associated power-transfer gearboxes; two-cycle oils or other products designed to be added to fuels; products for use on the human body or animals; or products that are:

1. Sold exclusively to establishments which manufacture or construct goods or commodities, and
2. Labeled "not for retail sale."

"LVP content" means the total weight, in pounds, of LVP-VOC in an ACP product multiplied by 100 and divided by the product's total net weight (in pounds, excluding container and packaging), expressed to the nearest 0.1.

"LVP-VOC" means a chemical compound or mixture that contains at least one carbon atom and meets one of the following:

1. Has a vapor pressure less than 0.1 mm Hg at 20 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21);
2. Is a chemical compound with more than 12 carbon atoms, or a chemical mixture composed solely of compounds with more than 12 carbon atoms, and the vapor pressure is unknown;
3. Is a chemical compound with a boiling point greater than 216 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21); or
4. Is the weight percent of a chemical mixture that boils above 216 degrees Centigrade, as determined by CARB Method 310 (see 9 VAC 5-20-21).

For the purposes of the definition of LVP-VOC, "chemical compound" means a molecule of definite chemical formula

Final Regulations

and isomeric structure, and "chemical mixture" means a substrate composed of two or more chemical compounds.

"Manufacturer" means a person who imports, manufactures, assembles, produces, packages, repackages, or relabels a consumer product.

"Medicated astringent or medicated toner" means a product regulated as a drug by the [FDA United States Food and Drug Administration] that is applied to the skin for the purpose of cleaning or tightening pores. Medicated astringent or medicated toner includes, but is not limited to, clarifiers and substrate-impregnated products. Medicated astringent or medicated toner does not include hand, face, or body cleaner or soap products, astringent or toner, cold cream, lotion, antiperspirants, or products that must be purchased with a doctor's prescription.

"Medium volatility organic compound" or "MVOC" means a volatile organic compound that exerts a vapor pressure greater than 2 mm Hg and less than or equal to 80 mm Hg when measured at 20 degrees Centigrade.

"Metal polish or cleanser" means a product designed primarily to improve the appearance of finished metal, metallic, or metallized surfaces by physical or chemical action. To "improve the appearance" means to remove or reduce stains, impurities, or oxidation from surfaces or to make surfaces smooth and shiny. Metal polish or cleanser includes, but is not limited to, metal polishes used on brass, silver, chrome, copper, stainless steel and other ornamental metals. Metal polish or cleanser does not include automotive wax, polish, sealant, or glaze, wheel cleaner, paint remover or stripper, products designed and labeled exclusively for automotive and marine detailing, or products designed for use in degreasing tanks.

"Missing data days" means the number of days in a compliance period for which the responsible ACP party has failed to provide the required enforceable sales or VOC content data to the board, as specified in the ACP agreement.

"Mist spray adhesive" means an aerosol that is not a special purpose spray adhesive and which delivers a particle or mist spray, resulting in the formation of fine, discrete particles that yield a generally uniform and smooth application of adhesive to the substrate.

"Multi-purpose dry lubricant" means a lubricant that is:

1. Designed and labeled to provide lubricity by depositing a thin film of graphite, molybdenum disulfide ("moly"), or polytetrafluoroethylene or closely related fluoropolymer ("teflon") on surfaces, and
2. Designed for general purpose lubrication, or for use in a wide variety of applications.

"Multi-purpose lubricant" means a lubricant designed for general purpose lubrication, or for use in a wide variety of applications. Multi-purpose lubricant does not include multi-purpose dry lubricants, penetrants, or silicone-based multi-purpose lubricants.

"Multi-purpose solvent" means an organic liquid designed to be used for a variety of purposes, including cleaning or

degreasing of a variety of substrates, or thinning, dispersing, or dissolving other organic materials. Multi-purpose solvent includes solvents used in institutional facilities, except for laboratory reagents used in analytical, educational, research, scientific, or other laboratories. Multi-purpose solvent does not include solvents used in cold cleaners, vapor degreasers, conveyORIZED degreasers or film cleaning machines, or solvents that are incorporated into, or used exclusively in the manufacture or construction of, the goods or commodities at the site of the establishment.

"Nail polish" means a clear or colored coating designed for application to the fingernails or toenails and including but not limited to, lacquers, enamels, acrylics, base coats, and top coats.

"Nail polish remover" means a product designed to remove nail polish and coatings from fingernails or toenails.

"Nonaerosol product" means a consumer product that is not dispensed by a pressurized spray system.

"Noncarbon containing compound" means a compound that does not contain carbon atoms.

"Nonresilient flooring" means flooring of a mineral content that is not flexible. Nonresilient flooring includes but is not limited to terrazzo, marble, slate, granite, brick, stone, ceramic tile, and concrete.

"Nonselective terrestrial herbicide" means a terrestrial herbicide product that is toxic to plants without regard to species.

"One-product business" means a responsible ACP party that sells, supplies, offers for sale, or manufactures for use in the Northern Virginia volatile organic compound emissions control area:

1. Only one distinct ACP product, sold under one product brand name, which is subject to the requirements of 9 VAC 5-40-7270; or
2. Only one distinct ACP product line subject to the requirements of 9 VAC 5-40-7270, in which all the ACP products belong to the same product category and the VOC contents in the products are within 98.0% and 102.0% of the arithmetic mean of the VOC contents over the entire product line.

"Oven cleaner" means a cleaning product designed to clean and to remove dried food deposits from oven walls.

"Paint" means a pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application and is used for protection, decoration or identification, or to serve some functional purpose such as the filling or concealing of surface irregularities or the modification of light and heat radiation characteristics.

"Paint remover or stripper" means a product designed to strip or remove paints or other related coatings, by chemical action, from a substrate without markedly affecting the substrate. Paint remover or stripper does not include multi-purpose solvents, paint brush cleaners, products designed and labeled

exclusively to remove graffiti, and hand cleaner products that claim to remove paints and other related coatings from skin.

"Penetrant" means a lubricant designed and labeled primarily to loosen metal parts that have bonded together due to rusting, oxidation, or other causes. Penetrant does not include multi-purpose lubricants that claim to have penetrating qualities but are not labeled primarily to loosen bonded parts.

"Pesticide" means and includes a substance or mixture of substances labeled, designed, or intended for use in preventing, destroying, repelling, or mitigating a pest, or a substance or mixture of substances labeled, designed, or intended for use as a defoliant, desiccant, or plant regulator, provided that the term "pesticide" will not include a substance, mixture of substances, or device that the U.S. Environmental Protection Agency does not consider to be a pesticide.

"Pre-ACP VOC content" means the lowest VOC content of an ACP product between January 1, 1990, and the date on which the application for a proposed ACP is submitted to the board, based on the data obtained from accurate records available to the board that yields the lowest VOC content for the product.

"Principal display panel" means that part of a label that is so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display or purchase. Whenever a principal display panel appears more than once, all requirements pertaining to the principal display panel shall pertain to all such principal display panels.

"Product brand name" means the name of the product exactly as it appears on the principal display panel of the product.

"Product category" means the applicable category that best describes the product as listed in this section.

"Product line" means a group of products of identical form and function belonging to the same product category.

"Propellant" means a liquefied or compressed gas that is used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Pump spray" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger, or other actuator.

"Reconcile or reconciliation" means to provide sufficient VOC emission reductions to completely offset shortfalls generated under the ACP during an applicable compliance period.

"Reconciliation of shortfalls plan" means the plan to be implemented by the responsible ACP party when shortfalls have occurred, as approved by the board pursuant to 9 VAC 5-40-7280 B 1 g (10).

"Responsible party" means the company, firm, or establishment which is listed on the product's label. If the label lists two companies, firms, or establishments, the responsible party is the party that the product was "manufactured for" or "distributed by," as noted on the label.

"Responsible ACP party" means the company, firm, or establishment which is listed on the ACP product's label. If the

label lists two or more companies, firms, or establishments, the responsible ACP party is the party that the ACP product was "manufactured for" or "distributed by," as noted on the label.

"Restricted materials" means pesticides established as restricted materials under the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia).

"Retailer" means a person who sells, supplies, or offers consumer products for sale directly to consumers.

"Retail outlet" means an establishment at which consumer products are sold, supplied, or offered for sale directly to consumers.

"Roll-on product" means an antiperspirant or deodorant that dispenses active ingredients by rolling a wetted ball or wetted cylinder on the affected area.

"Rubber and vinyl protectant" means a product designed to protect, preserve or renew vinyl, rubber, and plastic on vehicles, tires, luggage, furniture, and household products such as vinyl covers, clothing, and accessories. Rubber and vinyl protectant does not include products primarily designed to clean the wheel rim, such as aluminum or magnesium wheel cleaners, and tire cleaners that do not leave an appearance-enhancing or protective substance on the tire.

"Rubbing alcohol" means a product containing isopropyl alcohol (also called isopropanol) or denatured ethanol and labeled for topical use, usually to decrease germs in minor cuts and scrapes, to relieve minor muscle aches, as a rubefacient, and for massage.

"Sealant and caulking compound" means a product with adhesive properties that is designed to fill, seal, waterproof, or weatherproof gaps or joints between two surfaces. Sealant and caulking compound does not include roof cements and roof sealants; insulating foams; removable caulking compounds; clear or paintable or water resistant caulking compounds; floor seam sealers; products designed exclusively for automotive uses; or sealers that are applied as continuous coatings. Sealant and caulking compound also does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces. For the purposes of this definition only, "removable caulking compounds" means a compound that temporarily seals windows or doors for three- to six-month time intervals; and "clear or paintable or water resistant caulking compounds" means a compound that contains no appreciable level of opaque fillers or pigments, transmits most or all visible light through the caulk when cured, is paintable, and is immediately resistant to precipitation upon application.

"Semisolid" means a product that, at room temperature, will not pour, but will spread or deform easily, including gels, pastes, and greases.

"Shaving cream" means an aerosol product which dispenses a foam lather intended to be used with a blade or cartridge razor or other wet-shaving system, in the removal of facial or other bodily hair.

"Shortfall" means the ACP emissions minus the ACP limit when the ACP emissions were greater than the ACP limit

Final Regulations

during a specified compliance period, expressed to the nearest pound of VOC. Shortfall does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Silicone-based multi-purpose lubricant" means a lubricant [~~which~~ that] is:

1. Designed and labeled to provide lubricity primarily through the use of silicone compounds including, but not limited to, polydimethylsiloxane, and
2. Designed and labeled for general purpose lubrication, or for use in a wide variety of applications.

Silicone-based multi-purpose lubricant does not include products designed and labeled exclusively to release manufactured products from molds.

"Single phase aerosol air freshener" means an aerosol air freshener with the liquid contents in a single homogeneous phase and which does not require that the product container be shaken before use.

"Small business" means any stationary source that: is owned or operated by a person that employs 100 or fewer individuals; is a small business concern as defined in the federal Small Business Act; is not a major stationary source; does not emit 50 tons or more per year of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.

"Solid" means a substance or mixture of substances which, either whole or subdivided (such as the particles composing a powder), is not capable of visually detectable flow as determined under ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9 VAC 5-20-21).

"Special purpose spray adhesive" means an aerosol adhesive that meets any of the following definitions:

1. "Mounting adhesive" means an aerosol adhesive designed to permanently mount photographs, artwork, or other drawn or printed media to a backing (paper, board, cloth, etc.) without causing discoloration to the artwork.
2. "Flexible vinyl adhesive" means an aerosol adhesive designed to bond flexible vinyl to substrates. "Flexible vinyl" means a nonrigid polyvinyl chloride plastic with at least 5%, by weight, of plasticizer content. A plasticizer is a material, such as a high boiling point organic solvent, that is incorporated into a plastic to increase its flexibility, workability, or distensibility, and may be determined using ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9 VAC 5-20-21) or from product formulation data.
3. "Polystyrene foam adhesive" means an aerosol adhesive designed to bond polystyrene foam to substrates.
4. "Automobile headliner adhesive" means an aerosol adhesive designed to bond together layers in motor vehicle headliners.
5. "Polyolefin adhesive" means an aerosol adhesive designed to bond polyolefins to substrates.

6. "Laminate repair or edgebanding adhesive" means an aerosol adhesive designed for:

- a. The touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.); or
- b. The touch-up, repair, or attachment of edgebonding materials, including but not limited to, other laminates, synthetic marble, veneers, wood molding, and decorative metals.

For the purposes of this definition, "high pressure laminate" means sheet materials that consist of paper, fabric, or other core material that have been laminated at temperatures exceeding 265 degrees Fahrenheit and at pressures between 1,000 and 1,400 psi.

7. "Automotive engine compartment adhesive" means an aerosol adhesive designed for use in motor vehicle under-the-hood applications which require oil and plasticizer resistance, as well as high shear strength, at temperatures of 200-275 degrees Fahrenheit.

"Spot remover" means a product designed to clean localized areas or remove localized spots or stains on cloth or fabric, such as drapes, carpets, upholstery, and clothing, that does not require subsequent laundering to achieve stain removal. Spot remover does not include dry cleaning fluid, laundry prewash, carpet and upholstery cleaner, or multi-purpose solvent.

"Spray buff product" means a product designed to restore a worn floor finish in conjunction with a floor buffing machine and special pad.

"Stick product" means an antiperspirant or a deodorant that contains active ingredients in a solid matrix form, and that dispenses the active ingredients by frictional action on the affected area.

"Structural waterproof adhesive" means an adhesive whose bond lines are resistant to conditions of continuous immersion in fresh or salt water and that conforms with the definition in the federal consumer products regulation, 40 CFR Part 59, Subpart C.

"Surplus reduction" means the ACP limit minus the ACP emissions when the ACP limit was greater than the ACP emissions during a given compliance period, expressed to the nearest pound of VOC. Except as provided in 9 VAC 5-40-7280 F 3, surplus reduction does not include emissions occurring prior to the date that the ACP agreement approving an ACP is signed by the board.

"Surplus trading" means the buying, selling, or transfer of surplus reductions between responsible ACP parties.

"Terrestrial" means to live on or grow from land.

"Tire sealant and inflation" means a pressurized product that is designed to temporarily inflate and seal a leaking tire.

"Total maximum historical emissions" or "TMHE" means the total VOC emissions from all ACP products for which the responsible ACP party has failed to submit the required VOC content or enforceable sales records. The TMHE shall be

calculated for each ACP product during each portion of a compliance period for which the responsible ACP party has failed to provide the required VOC content or enforceable sales records. The TMHE shall be expressed to the nearest pound and calculated according to the following calculation:

$$TMHE = (MHE)_1 + (MHE)_2 + \dots + (MHE)_N$$

$$MHE = \left(\frac{\text{Highest VOC Content} \times \text{Highest Sales}}{100 \times 365} \right) \times \text{Missing Data Days}$$

where

Highest VOC content = the maximum VOC content which the ACP product has contained in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting VOC content data (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual VOC content, if the responsible ACP party has provided all required VOC Content data (for the entire compliance period), as specified in the ACP agreement.

Highest sales = the maximum one-year gross sales of the ACP product in the previous five years, if the responsible ACP party has failed to meet the requirements for reporting enforceable sales records (for any portion of the compliance period), as specified in the ACP agreement approving the ACP, or the current actual one-year enforceable sales for the product, if the responsible ACP party has provided all required enforceable sales records (for the entire compliance period), as specified in the ACP agreement approving the ACP.

Missing Data Days = (see definition in this section).

1, 2, ..., N = each product in an ACP, up to the maximum N, for which the responsible ACP party has failed to submit the required enforceable sales or VOC content data as specified in the ACP agreement.

"Type A propellant" means a compressed gas such as CO₂, N₂, N₂O, or compressed air that is used as a propellant and is either incorporated with the product or contained in a separate chamber within the product's packaging.

"Type B propellant" means a halocarbon [which that] is used as a propellant including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), and hydrofluorocarbons (HFCs).

"Type C propellant" means a propellant that is not a Type A or Type B propellant, including propane, isobutane, n-butane, and dimethyl ether (also known as dimethyl oxide).

"Undercoating" means an aerosol product designed to impart a protective, nonpaint layer to the undercarriage, trunk interior, or firewall of motor vehicles to prevent the formation of rust or to deaden sound. Undercoating includes, but is not limited to, rubberized, mastic, or asphaltic products.

"Usage directions" means the text or graphics on the product's principal display panel, label, or accompanying literature which describes to the end user how and in what quantity the product is to be used.

"VOC content" means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to 9 VAC 5-40-7340 B and C.

For charcoal lighter material products only,

$$VOC \text{ Content} = \frac{(\text{Certified Emissions} \times 100)}{\text{Certified Use Rate}}$$

where

Certified emissions = (see definition in this section).

Certified use rate = (see definition in this section).

["Volatile organic compound" or "VOC" means volatile organic compound as defined in 9 VAC 5-10-20.]

"Wasp and hornet insecticide" means an insecticide product that is designed for use against wasps, hornets, yellow jackets or bees by allowing the user to spray from a distance a directed stream or burst at the intended insects or their hiding place.

"Waterproofer" means a product designed and labeled exclusively to repel water from fabric or leather substrates. Waterproofer does not include fabric protectants.

"Wax" means a material or synthetic thermoplastic substance generally of high molecular weight hydrocarbons or high molecular weight esters of fatty acids or alcohols, except glycerol and high polymers (plastics). Wax includes, but is not limited to, substances derived from the secretions of plants and animals such as carnauba wax and beeswax, substances of a mineral origin such as ozocerite and paraffin, and synthetic polymers such as polyethylene.

"Web spray adhesive" means an aerosol adhesive which is not a mist spray or special purpose spray adhesive.

"Wood floor wax" means wax-based products for use solely on wood floors.

"Working day" means a day between Monday through Friday, inclusive, except for federal holidays.

9 VAC 5-40-7270. Standard for volatile organic compounds.

A. Except as provided in 9 VAC 5-40-7250, 9 VAC 5-40-7280, and 9 VAC 5-40-7290, no person shall [(i)] sell, supply, [or] offer for sale [a consumer product manufactured on or after July 1, 2005], or [(ii)] manufacture for sale a consumer product on or after [~~January~~ July] 1, 2005, that contains volatile organic compounds in excess of the limits specified in Table 4-50A.

TABLE 4-50A

Product Category: Percent VOC by Weight

Adhesives	
Aerosol	
Mist spray:	65 [%]
Web spray:	55 [%]
Special purpose spray adhesives	

Final Regulations

- Mounting, automotive engine compartment, and flexible vinyl: 70 [%]
- Polystyrene foam and automotive headliner: 65 [%]
[~~Polyolefin~~ Polyolefin] and laminate repair/Edgebanding: 60 [%]
- Contact: 80 [%]
- Construction, panel, and floor covering: 15 [%]
- General purpose: 10 [%]
- Structural waterproof: 15 [%]
- Air fresheners**
 - Single-phase aerosols: 30 [%]
 - Double-phase aerosols: 25 [%]
 - Liquids/Pump sprays: [~~483~~ 18%]
 - Solids/Gels: [~~483~~ 3%]
- Antiperspirants**
 - Aerosol: 40 [%] HVOC/10 [%] MVOC
 - Nonaerosol: 0 [%] HVOC/10 [%] MVOC
- Automotive brake cleaners: 45 [%]
- Automotive rubbing or polishing compound: 17 [%]
- Automotive wax, polish, sealant, or glaze
 - Hard paste waxes: 45 [%]
 - Instant detailers: 3 [%]
 - All other forms: 15 [%]
- Automotive windshield washer fluids: 35 [%]
- Bathroom and tile cleaners**
 - Aerosols: 7 [%]
 - All other forms: 5 [%]
- Bug and tar remover: 40 [%]
- Carburetor or fuel-injection air intake cleaners: 45 [%]
- Carpet and upholstery cleaners**
 - Aerosols: 7 [%]
 - Nonaerosols (dilutables): 0.1 [%]
 - Nonaerosols (ready-to-use): 3.0 [%]
- Charcoal lighter material: see subsection E of this section.
- Cooking spray, aerosols: 18 [%]
- Deodorants**
 - Aerosol: 0 [%] HVOC/10 [%] MVO
 - Nonaerosol: 0 [%] HVOC/0 [%] [~~HVOC~~ MVOC]
- Dusting aids**
 - Aerosols: 25 [%]
 - All other forms: 7 [%]
- Engine degreasers**
 - Aerosol: 35 [%]
 - Nonaerosol: 5 [%]
- Fabric protectants: 60 [%]
- Floor polishes/Waxes**
 - Products for flexible flooring materials: 7 [%]
 - Products for nonresilient flooring: 10 [%]
 - Wood floor wax: 90 [%]
- Floor wax strippers, nonaerosol: see 9 VAC 5-40-7270 G
- Furniture maintenance products
 - Aerosols: 17 [%]
 - All other forms except solid or paste: 7 [%]
- General purpose cleaners**
 - Aerosols: 10 [%]
 - Nonaerosols: 4 [%]
- General purpose degreasers [7]**
 - Aerosols [~~and~~ : 50%]
 - Nonaerosols: [~~504~~ 4%]
- Glass cleaners**
 - Aerosols: 12 [%]
 - Nonaerosols: 4 [%]
- Hair mousses: 6 [%]
- Hair shines: 55 [%]
- Hair sprays: 55 [%]
- Hair styling gels: 6 [%]
- Heavy-duty hand cleaner or soap: 8 [%]
- Insecticides**
 - Crawling bug (aerosol): 15 [%]
 - Crawling bug (all other forms): 20 [%]
 - Flea and tick: 25 [%]
 - Flying bug (aerosol): 25 [%]
 - Flying bug (all other forms): 35 [%]
 - Foggers: 45 [%]
 - Lawn and garden (all other forms): 20 [%]
 - Lawn and garden (nonaerosol): 3 [%]
 - Wasp and hornet: 40 [%]
- Laundry prewash**
 - Aerosols/Solids: 22 [%]
 - All other forms: 5 [%]
- Laundry starch products: 5 [%]
- Metal polishes and cleansers: 30 [%]
- Multi-purpose lubricant (excluding solid or semi-solid products): 50 [%]
- Nail polish remover: 75 [%]
- Nonselective terrestrial herbicide, nonaerosols: 3 [%]
- Oven cleaners**
 - Aerosols/Pump sprays: 8 [%]
 - Liquids: 5 [%]
- Paint remover or strippers: 50 [%]
- Penetrants: 50 [%]
- Rubber and vinyl protectants**
 - Nonaerosols: 3 [%]
 - Aerosols: 10 [%]
- Sealants and caulking compounds: 4 [%]
- Shaving creams: 5 [%]
- Silicone-based multi-purpose lubricants (excluding solid or semi-solid products): 60 [%]

Spot removers

Aerosols: 25 [%]

Nonaerosols: 8 [%]

Tire sealants and inflators: 20 [%]

Undercoatings, aerosols: 40 [%]

B. No person shall sell, supply, offer for sale, or manufacture for sale an antiperspirant or a deodorant that contains a compound that has been defined as a toxic pollutant in 9 VAC 5-60-210 C.

C. Provisions follow concerning products that are diluted prior to use.

1. For consumer products for which the label, packaging, or accompanying literature specifically states that the product should be diluted with water or non-VOC solvent prior to use, the limits specified in Table 4-50A shall apply to the product only after the minimum recommended dilution has taken place. For purposes of this subsection, "minimum recommended dilution" shall not include recommendations for incidental use of a concentrated product to deal with limited special applications such as hard-to-remove soils or stains.

2. For consumer products for which the label, packaging, or accompanying literature states that the product should be diluted with a VOC solvent prior to use, the limits specified in Table 4-50A shall apply to the product only after the maximum recommended dilution has taken place.

D. For those consumer products that are registered under FIFRA, the effective date of the VOC standards is [~~one year after the date specified in 9 VAC 5-40-7270 A~~ July 1, 2006].

E. The following requirements shall apply to all charcoal lighter material products:

1. [~~Provisions follow concerning regulatory standards. Effective July 1, 2005,] no person shall [(i) sell, supply, or offer for sale [a charcoal lighter material product manufactured on or] after [~~January~~ July] 1, 2005 [; or (ii) manufacture for sale] a charcoal lighter material product unless at the time of the transaction:~~

a. The manufacturer can demonstrate to the board's satisfaction that they have been issued a currently effective certification by CARB under the Consumer Products provisions under Subchapter 8.5, Article 2, § 94509(h), of Title 17 of the California Code of Regulations (see 9 VAC 5-20-21). This certification remains in effect for as long as the CARB certification remains in effect. A manufacturer claiming such a certification on this basis must submit to the board a copy of the certification decision (i.e., the Executive Order), including all conditions established by CARB applicable to the certification.

b. The manufacturer or distributor of the charcoal lighter material has been issued a currently effective certification pursuant to subdivision 2 of this subsection.

c. The charcoal lighter material meets the formulation criteria and other conditions specified in the applicable

ACP agreement issued pursuant to subdivision 2 of this subsection.

d. The product usage directions for the charcoal lighter material are the same as those provided to the board pursuant to subdivision 2 c of this subsection.

2. Provisions follow concerning certification requirements.

a. No charcoal lighter material formulation shall be certified under this subdivision unless the applicant for certification demonstrates to the board's satisfaction that the VOC emissions from the ignition of charcoal with the charcoal lighter material are less than or equal to 0.020 pound of VOC per start, using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21). The provisions relating to LVP-VOC in 9 VAC 5-40-7250 F and 9 VAC 5-40-7260 C shall not apply to a charcoal lighter material subject to the requirements of 9 VAC 5-40-7270 A and E.

b. The board may approve alternative test procedures which are shown to provide equivalent results to those obtained using the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21).

c. A manufacturer or distributor of charcoal lighter material may apply to the board for certification of a charcoal lighter material formulation in accordance with this subdivision. The application shall be in writing and shall include, at a minimum, the following:

(1) The results of testing conducted pursuant to the procedures specified in South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21); and

(2) The exact text or graphics that will appear on the charcoal lighter material's principal display panel, label, or accompanying literature. The provided material shall clearly show the usage directions for the product. These directions shall accurately reflect the quantity of charcoal lighter material per pound of charcoal that was used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) for that product, unless:

(a) The charcoal lighter material is intended to be used in fixed amounts independent of the amount of charcoal used, such as certain paraffin cubes, or

(b) The charcoal lighter material is already incorporated into the charcoal, such as certain "bag light," "instant light" or "match light" products.

(3) For a charcoal lighter material which meets the criteria specified in subdivision 2 c (2) (a) of this subsection, the usage instructions provided to the board will accurately reflect the quantity of charcoal lighter material used in the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) for that product.

Final Regulations

(4) Physical property data, formulation data, or other information required by the board for use in determining when a product modification has occurred and for use in determining compliance with the conditions specified on the ACP agreement issued pursuant to subdivision 2 e of this subsection.

d. Within 30 days of receipt of an application, the board will advise the applicant in writing either that it is complete or that specified additional information is required to make it complete. Within 30 days of receipt of additional information, the board will advise the applicant in writing either that the application is complete, or that specified additional information or testing is still required before it can be deemed complete.

e. If the board finds that an application meets the requirements of subdivision 2 of this subsection, then an ACP agreement shall be issued certifying the charcoal lighter material formulation and specifying such conditions as are necessary to insure that the requirements of this subsection are met. The board will act on a complete application within 90 days after the application is deemed complete.

3. For charcoal lighter material for which certification has been granted pursuant to subdivision 2 of this subsection, the applicant for certification shall notify the board in writing within 30 days of: (i) a change in the usage directions, or (ii) a change in product formulation, test results, or other information submitted pursuant to subdivision 2 of this subsection which may result in VOC emissions greater than 0.020 pound of VOC per start.

4. If the board determines that a certified charcoal lighter material formulation results in VOC emissions from the ignition of charcoal which are greater than 0.020 pound of VOC per start, as determined by the South Coast Air Quality Management District Rule 1174 Testing Protocol (see 9 VAC 5-20-21) and the statistical analysis procedures contained therein, the board will revoke or modify the certification as is necessary to assure that the charcoal lighter material will result in VOC emissions of less than or equal to 0.020 pound of VOC per start. Modifications and revocations of certifications are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

F. Requirements for aerosol adhesives.

1. The standards for aerosol adhesives apply to all uses of aerosol adhesives, including consumer, industrial, and commercial uses. Except as otherwise provided in 9 VAC 5-40-7250 and 9 VAC 5-40-7290, no person shall sell, supply, offer for sale, use or manufacture for sale an aerosol adhesive which, at the time of sale, use, or manufacture, contains VOCs in excess of the specified standard.

2. a. In order to qualify as a "special purpose spray adhesive," the product must meet one or more of the definitions specified in 9 VAC 5-40-7260 C, but if the product label indicates that the product is suitable for use on a substrate or application not listed in 9 VAC 5-40-7260 C,

then the product shall be classified as either a "web spray adhesive" or a "mist spray adhesive."

b. If a product meets more than one of the definitions specified in 9 VAC 5-40-7260 C for "special purpose spray adhesive," and is not classified as a "web spray adhesive" or "mist spray adhesive" under subdivision 2 a of this subsection, then the VOC limit for the product shall be the lowest applicable VOC limit specified in 9 VAC 5-40-7270 A.

3. Effective [~~January~~ July] 1, 2005, no person shall [(i) sell, supply, [or] offer for sale [an aerosol adhesive manufactured on or after July 1, 2005], or [(ii) manufacture for [use sale] an aerosol adhesive [~~which~~ that] contains any of the following compounds: methylene chloride, perchloroethylene, or trichloroethylene.

4. All aerosol adhesives must comply with the labeling requirements specified in 9 VAC 5-40-7300 D.

G. No person shall sell, supply, offer for sale, or manufacture for use a floor wax stripper unless the following requirements are met:

1. The label of each nonaerosol floor wax stripper must specify a dilution ratio for light or medium build-up of polish that results in an as-used VOC concentration of 3.0% by weight or less.

2. If a nonaerosol floor wax stripper is also intended to be used for removal of heavy build-up of polish, the label of that floor wax stripper must specify a dilution ratio for heavy build-up of polish that results in an as-used VOC concentration of 12% by weight or less.

3. The terms "light build-up," "medium build-up" or "heavy build-up" are not specifically required, as long as comparable terminology is used.

H. For a consumer product for which standards are specified under subsection A of this section, no person shall sell, supply, offer for sale, or manufacture for sale a consumer product which contains any of the following ozone-depleting compounds:

CFC-11 (trichlorofluoromethane), CFC-12 (dichlorodifluoromethane);

CFC-113 (1,1,1-trichloro-2,2,2-trifluoroethane);

CFC-114 (1-chloro-1,1-difluoro-2-chloro-2,2-difluoroethane);

CFC-115 (chloropentafluoroethane), halon 1211 (bromochlorodifluoromethane);

halon 1301 (bromotrifluoromethane), halon 2402 (dibromotetrafluoroethane);

HCFC-22 (chlorodifluoromethane), HCFC-123 (2,2-dichloro-1,1,1-trifluoroethane);

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane);

HCFC-141b (1,1-dichloro-1-fluoroethane), HCFC-142b (1-chloro-1,1-difluoroethane);

1,1,1-trichloroethane; or

carbon tetrachloride.

I. The requirements of subsection H of this section shall not apply to an existing product formulation that complies with Table 4-50A or an existing product formulation that is reformulated to meet Table 4-50A, provided the ozone-depleting compound content of the reformulated product does not increase.

J. The requirements of subsection H of this section shall not apply to ozone-depleting compounds that may be present as impurities in a consumer product in an amount equal to or less than 0.01% by weight of the product.

9 VAC 5-40-7280. Alternative control plan (ACP) for consumer products.

A. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

- a. An identification of the contact persons, phone numbers, names and addresses of the responsible ACP party which is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement;
- b. A statement of whether the responsible ACP party is a small business or a one-product business;
- c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP;
- d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall do all of the following:

- (1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;
- (2) Determine the enforceable sales of each product using enforceable sales records;
- (3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;
- (4) Calculate the percentage of the gross sales, which is composed of enforceable sales;

(5) Determine which ACP products have enforceable sales which are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

- (1) Legible copies of the existing labels for each product;
- (2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods, as follows:
 - (a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and
 - (b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

- (1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency;
- (2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection;
- (3) For a small business or a one-product business which will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP;

Final Regulations

(4) For each ACP product, all VOC content levels which will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect;

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9 VAC 5-40-7260 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period;

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article;

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging;

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP;

(10) An operational plan ("reconciliation of shortfalls plan") which commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, which states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection [~~D~~ C] of this section, the board will issue an ACP agreement approving an ACP which meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9 VAC 5-40-7270 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales, as determined in subdivision [~~B~~] 1 d (5) of this [~~section~~ subsection];

(2) A reconciliation of shortfalls plan meeting the requirements of this article;

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will act to approve

or disapprove a complete application within 90 working days after the application is deemed complete.

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

- a. Immediately upon request, during an on-site visit to a responsible ACP party;
- b. Within five working days after receipt of a written request from the board; or
- c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product which exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

- a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;
- b. False reporting of information submitted to the board for determining compliance with the ACP requirements;
- c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement, within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement, within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

- a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period;
- b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows:

(1) For the missing data days, the board will calculate the total maximum historical emissions, as specified in 9 VAC 5-40-7260 C;

(2) For the remaining portion of the compliance period which are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period;

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection;

(4) The board will calculate the ACP limit for the entire compliance period using the ACP Standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero;

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this

Final Regulations

subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP \text{ emissions} - ACP \text{ limit})}{40 \text{ pounds}}$$

where

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates which establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9 VAC 5-40-7270 A may not be used to generate surplus reductions;

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP;

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J [44 2] of this section;

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated;

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party which is selling surplus reductions and the responsible ACP party which is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

(1) The date the transfer is to become effective;

(2) The date the surplus reductions being traded are due to expire;

(3) The amount (in pounds of VOCs) of surplus reductions that are being transferred;

(4) The total purchase price paid by the buyer for the surplus reductions;

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions;

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product which is reformulated to result in a reduction in the product's VOC content, and which is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products which are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product, or below the applicable VOC standard specified in 9 VAC 5-40-7270 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section;

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$[SR = \text{Enforceable Sales} \times \frac{(\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}}}{100}$$

$$SR = \text{Enforceable Sales} \times \frac{(\text{VOC Content})_{\text{initial}} - (\text{VOC Content})_{\text{final}}}{100}]$$

where

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC content_{initial} = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9 VAC 5-40-7270 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

VOC content_{final} = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and shall not be used for another purpose;

(2) Limited use surplus reduction credits shall not be transferred to, or used by, another responsible ACP party;

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading, as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period, as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board [∴]

Final Regulations

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. ~~[For modifications that do not require board pre-approval, the responsible ACP party shall notify the board, in writing, of a change in an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date codes, or (ix) recommended product usage directions, no later than 15 working days from the date such a change occurs. Board preapproval is not required for modifications that are a change to an ACP product's (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes in writing no later than 15 working days from the date such a change occurs.] For each modification, the notification shall fully explain the following:~~

- a. The nature of the modification;
- b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;
- c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and
- d. The effective date and corresponding date-codes for the modification.

2. ~~[For modifications that require board preapproval, the responsible ACP party may propose modifications to the enforceable sales records or reconciliation of shortfalls plan specified in the ACP agreement approving the ACP. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP; however, such modifications require board preapproval.] Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.~~

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible

ACP party which may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, or (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit. Modifications of ACPs are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

2. If any applicable VOC standards specified in 9 VAC 5-40-7270 A are modified by the [CARB board] in a future rule-making, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

- a. The ACP reaches the expiration date specified in the ACP agreement;
- b. The ACP is modified by the responsible ACP party and approved by the board, as provided in subsection H of this section;
- c. The ACP is modified by the board, as provided in subsection I of this section;
- d. The ACP includes a product for which the VOC standard specified in 9 VAC 5-40-7270 A is modified by the board in a future rule-making, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard;
- e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

- a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship;
- b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more);
- c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP which is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9 VAC 5-40-7270 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to [~~subsections~~ subsection] H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. All other information submitted to the board to meet the requirements of this article shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, §§ 94540-94555, of Title 17 of the California Code of Regulations (see 9 VAC 5-20-21) may be exempt from Table 4-50A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products within the CARB ACP agreement are contained in Table 4-

50A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision [for those ACP products in the areas specified in 9 VAC 5-40-7240 B].

9 VAC 5-40-7290. Innovative products.

A. Manufacturers of consumer products may seek an innovative products exemption in accordance with the following criteria:

1. The board will exempt a consumer product from the VOC limits specified in 9 VAC 5-40-7270 A if a manufacturer demonstrates by clear and convincing evidence that, due to some characteristic of the product formulation, design, delivery systems or other factors, the use of the product will result in less VOC emissions as compared to:

a. The VOC emissions from a representative consumer product that complies with the VOC limits specified in 9 VAC 5-40-7270 A, or

b. The calculated VOC emissions from a noncomplying representative product, if the product had been reformulated to comply with the VOC limits specified in 9 VAC 5-40-7270 A. VOC emissions shall be calculated using the following equation:

$$E_R = \frac{E_{NC} \times VOC_{STD}}{VOC_{NC}}$$

where

E_R = The VOC emissions from the noncomplying representative product, had it been reformulated.

E_{NC} = The VOC emissions from the noncomplying representative product in its current formulation.

VOC_{STD} = the VOC limit specified in Table 4-50A.

VOC_{NC} = the VOC content of the noncomplying product in its current formulation.

If a manufacturer demonstrates that this equation yields inaccurate results due to some characteristic of the product formulation or other factors, an alternative method which accurately calculates emissions may be used upon approval of the board.

2. For the purposes of this subsection, "representative consumer product" means a consumer product that meets all of the following criteria:

a. The representative product shall be subject to the same VOC limit in 9 VAC 5-40-7270 A as the innovative product;

b. The representative product shall be of the same product form as the innovative product, unless the innovative product uses a new form which does not exist in the product category at the time the application is made; and

Final Regulations

c. The representative product shall have at least a similar efficacy as other consumer products in the same product category based on tests generally accepted for that product category by the consumer products industry.

3. A manufacturer shall apply in writing to the board for an exemption claimed under subdivision A 1 of this section. The application shall include the supporting documentation that demonstrates the emissions from the innovative product, including the actual physical test methods used to generate the data and, if necessary, the consumer testing undertaken to document product usage. In addition, the applicant must provide the information necessary to enable the board to establish enforceable conditions for granting the exemption, including the VOC content for the innovative product and test methods for determining the VOC content. All information submitted by a manufacturer pursuant to this section shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

4. Within 30 days of receipt of the exemption application, the board will determine whether an application is complete.

5. Within 90 days after an application has been deemed complete, the board will determine whether, under what conditions, and to what extent an exemption from the requirements of 9 VAC 5-40-7270 A will be permitted. The applicant and the board may mutually agree to a longer time period for reaching a decision, and additional supporting documentation may be submitted by the applicant before a decision has been reached. The board will notify the applicant of the decision in writing and specify such terms and conditions as are necessary to insure that emissions from the product will meet the emissions reductions specified in subdivision 1 of this subsection, and that such emissions reductions can be enforced.

6. In granting an exemption for a product, the board will establish enforceable conditions. These conditions shall include the VOC content of the innovative product, dispensing rates, application rates, and other parameters determined by the board to be necessary. The board will also specify the test methods for determining conformance to the conditions established. The test methods shall include criteria for reproducibility, accuracy, sampling, and laboratory procedures.

7. For a product for which an exemption has been granted pursuant to this section, the manufacturer shall notify the board in writing within 30 days of a change in the product formulation or recommended product usage directions and shall also notify the board within 30 days if the manufacturer learns of information which would alter the emissions estimates submitted to the board in support of the exemption application.

8. If the VOC limits specified in 9 VAC 5-40-7270 A are lowered for a product category through a subsequent rulemaking, all innovative product exemptions granted for products in the product category, except as provided in this subdivision, shall have no force and effect as of the effective date of the modified VOC standard. This subdivision shall not apply to those innovative products that

have VOC emissions less than the applicable lowered VOC limit and for which a written notification of the product's emissions status versus the lowered VOC limit has been submitted to and approved by the board at least 60 days before the effective date of such limits.

9. If the board believes that a consumer product for which an exemption has been granted no longer meets the criteria for an innovative product specified in subdivision 1 of this subsection, the board may modify or revoke the exemption as necessary to assure that the product will meet these criteria. Modifications and revocations of exemptions are considered case decisions and will be processed using the procedures prescribed in 9 VAC 5-170 and Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

B. In granting an exemption under this section, the board will take into consideration whether the applicant has been granted an [ACP innovative product exemption] by CARB. A manufacturer of consumer products that has been granted an innovative product exemption by the CARB under the innovative products provisions in Subchapter 8.5, Article 2, § 94511, or Subchapter 8.5, Article 1, § 94503.5 of Title 17 of the California Code of Regulations (see 9 VAC 5-20-21) may be exempt from Table 4-50A for the period of time that the CARB innovative products exemption remains in effect provided that all consumer products within the CARB innovative products exemption are contained in Table 4-50A. A manufacturer claiming such an exemption on this basis must submit to the board a copy of the CARB innovative product exemption decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB [ACP innovative product exemption] decision [for those products in the areas specified in 9 VAC 5-40-7240 B].

9 VAC 5-40-7300. Administrative requirements.

A. Each manufacturer of a consumer product subject to 9 VAC 5-40-7270 shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date. The date or code shall be located on the container or inside the cover or cap so that it is readily observable or obtainable (by simply removing the cap or cover) without disassembling a part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than [twelve months prior to] the effective date of the applicable standard specified in 9 VAC 5-40-7270 A. No person shall erase, alter, deface, or otherwise remove or make illegible a date or code from a regulated product container without the express authorization of the manufacturer. The requirements of this provision shall not apply to products containing no VOCs or containing VOCs at 0.10% by weight or less.

B. If a manufacturer uses a code indicating the date of manufacture for a consumer product subject to 9 VAC 5-40-7270, an explanation of the code must be filed with the board [no later than twelve months prior to the effective date of the applicable standard specified in 9 VAC 5-40-7270 A upon request by the board].

C. Notwithstanding the definition of "product category" in 9 VAC 5-40-7260 C, if anywhere on the principal display panel of a consumer product, a representation is made that the product may be used as or is suitable for use as a consumer product for which a lower VOC limit is specified in 9 VAC 5-40-7270 A, then the lowest VOC limit shall apply. This requirement does not apply to general purpose cleaners and antiperspirant or deodorant products.

D. Provisions follow concerning additional labeling requirements for aerosol adhesives.

1. In addition to the requirements specified in subsections A and C of this section and in 9 VAC 5-40-7360, both the manufacturer and responsible party for each aerosol adhesive product subject to this article shall ensure that all products clearly display the following information on each product container which is manufactured on or after [~~January~~ July] 1, 2005.

a. The aerosol adhesive category as specified in 9 VAC 5-40-7270 A or an abbreviation of the category shall be displayed;

b. (1) The applicable VOC standard for the product that is specified in 9 VAC 5-40-7270 A, expressed as a percentage by weight, shall be displayed unless the product is included in an alternative control plan approved by the board, as provided in 9 VAC 5-40-7280;

(2) If the product is included in an alternative control plan approved by the board, and the product exceeds the applicable VOC standard specified in 9 VAC 5-40-7270 A, the product shall be labeled with the term "ACP" or "ACP product";

(3) If the product is classified as a special purpose spray adhesive, the applicable substrate or application or an abbreviation of the substrate or application that qualifies the product as special purpose shall be displayed;

(4) If the manufacturer or responsible party uses an abbreviation as allowed by this subsection, an explanation of the abbreviation must be filed with the board before the abbreviation is used.

2. The information required in subdivision A 1 of this section shall be displayed on the product container such that it is readily observable without removing or disassembling a portion of the product container or packaging. For the purposes of this subsection, information may be displayed on the bottom of a container as long as it is clearly legible without removing product packaging.

3. No person shall remove, alter, conceal, or deface the information required in subdivision 1 of this subsection prior to final sale of the product.

9 VAC 5-40-7310. Standard for toxic pollutants.

The provisions of Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60 (Emission Standards for Toxic Pollutants from Existing Sources, Rule 6-4) do not apply.

9 VAC 5-40-7320. Compliance.

The provisions of subsections B, D, F, and J of 9 VAC 5-40-20 (Compliance) apply. The other provisions of 9 VAC 5-40-20 do not apply.

9 VAC 5-40-7330. Compliance schedules.

Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than [~~January~~ July] 1, 2005.

9 VAC 5-40-7340. Test methods and procedures.

A. The provisions of 9 VAC 5-40-30 (Emission testing) apply.

B. 1. Testing to determine compliance with the requirements of this article shall be performed using CARB Method 310 (see 9 VAC 5-20-21). Alternative methods that can accurately determine the concentration of VOCs in a subject product or its emissions may be used consistent with the approval requirements of 9 VAC 5-40-20 A 2.

2. In sections 3.5, 3.6, and 3.7 of CARB Method 310 (see 9 VAC 5-20-21), a process is specified for the "Initial Determination of VOC Content" and the "Final Determination of VOC Content." Information submitted to the board may be claimed as confidential; such information will be handled in accordance with the confidentiality procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

C. For VOC content determinations using product formulation and records, testing to determine compliance with the requirements of this article may also be demonstrated through calculation of the VOC content from records of the amounts of constituents used to make the product pursuant to the following criteria:

1. Compliance determinations based on these records may not be used unless the manufacturer of a consumer product keeps accurate records for each day of production of the amount and chemical composition of the individual product constituents. These records must be kept for at least three years.

2. For the purposes of this subsection, the VOC content shall be calculated according to the following equation:

$$VOC\ Content = \frac{(B - C) \times 100}{A}$$

where

A = total net weight of unit (excluding container and packaging).

B = total weight of all VOCs per unit.

C = total weight of all exempted VOCs per unit, as specified in 9 VAC 5-40-7250.

3. If product records appear to demonstrate compliance with the VOC limits, but these records are contradicted by product testing performed using CARB Method 310 (see 9 VAC 5-20-21), the results of CARB Method 310 shall take precedence over the product records and may be used to establish a violation of the requirements of this article.

Final Regulations

D. Testing to determine whether a product is a liquid or solid shall be performed using ASTM "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (see 9 VAC 5-20-21).

E. Testing to determine compliance with the certification requirements for charcoal lighter material shall be performed using the procedures specified in the South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (see 9 VAC 5-20-21).

F. Testing to determine distillation points of petroleum distillate-based charcoal lighter materials shall be performed using ASTM "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (see 9 VAC 5-20-21).

G. No person shall create, alter, falsify, or otherwise modify records in such a way that the records do not accurately reflect the constituents used to manufacture a product, the chemical composition of the individual product, and other tests, processes, or records used in connection with product manufacture.

9 VAC 5-40-7350. Monitoring.

The provisions of 9 VAC 5-40-40 (Monitoring) apply.

9 VAC 5-40-7360. Notification, records and reporting.

A. The provisions of subsections D, E, F, and H of 9 VAC 5-40-50 (Notification, records and reporting) apply. The other provisions of 9 VAC 5-40-50 do not apply.

B. Upon 90 days written notice, the board may require a responsible party to report information for a consumer product the board may specify, including, but not limited to, all or part of the following information:

1. The name of the responsible party and the party's address, telephone number, and designated contact person;
2. A claim of confidentiality made pursuant to applicable state confidentiality requirements;
3. The product brand name for each consumer product subject to registration and, upon request by the board, the product label;
4. The product category to which the consumer product belongs;
5. The applicable product forms listed separately;
6. An identification of each product brand name and form as a "Household Product," "I&I Product," or both;
7. Separate sales in pounds per year, to the nearest pound, and the method used to calculate sales for each product form;
8. For registrations submitted by two companies, an identification of the company which is submitting relevant data separate from that submitted by the responsible party. All registration information from both companies shall be submitted by the date specified in [~~subdivision 7-B-of~~] this [~~section~~ subsection];

9. For each product brand name and form, the net percent by weight of the total product, less container and packaging, composed of the following, rounded to the nearest one-tenth of a percent (0.1%):

- a. Total exempt compounds;
- b. Total LVP-VOCs that are not fragrances;
- c. Total all other carbon-containing compounds that are not fragrances;
- d. Total all noncarbon-containing compounds;
- e. Total fragrance;
- f. For products containing greater than 2.0% by weight fragrance:
 - (1) The percent of fragrances that are LVP-VOCs; and
 - (2) The percent of fragrances that are all other carbon-containing compounds;
- g. Total paradichlorobenzene;

10. For each product brand name and form, the identity, including the specific chemical name and associated Chemical Abstract Services (CAS) number, of the following:

- a. Each exempt compound; and
- b. Each LVP-VOC that is not a fragrance;

11. If applicable, the weight percent composed of propellant for each product;

12. If applicable, an identification of the type of propellant.

C. In addition to the requirements of subdivision B 10 of this section, the responsible party shall report to the board the net percent by weight of each ozone-depleting compound which is:

1. Listed in 9 VAC 5-40-7270 H; and
2. Contained in a product subject to registration under subsection A of this section in an amount greater than 1.0% by weight.

D. All information submitted by responsible parties pursuant to this section shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law and 9 VAC 5-170-60.

E. Provisions follow concerning special reporting requirements for consumer products that contain perchloroethylene or methylene chloride.

1. The requirements of this subsection shall apply to all responsible parties for consumer products that are subject to 9 VAC 5-40-7270 A and contain perchloroethylene or methylene chloride. For the purposes of this subsection, a product contains perchloroethylene or methylene chloride if the product contains 1.0% or more by weight (exclusive of the container or packaging) of either perchloroethylene or methylene chloride.

2. For each consumer product that contains perchloroethylene or methylene chloride, the responsible party shall report the following information for products sold

during each calendar year, beginning with the year 2005, and ending with the year 2010:

- a. The product brand name and a copy of the product label with legible usage instructions;
 - b. The product category to which the consumer product belongs;
 - c. The applicable product form, listed separately;
 - d. For each product form listed in subdivision 2 c of this subsection, the total sales during the calendar year, to the nearest pound (exclusive of the container or packaging), and the method used for calculating sales;
 - e. The weight percent, to the nearest 10%, of perchloroethylene and methylene chloride in the consumer product;
3. The information specified in subdivision 2 of this subsection shall be reported for each calendar year by March 1 of the following year. The first report shall be due on March 1, 2006, for calendar year 2005. A new report is due on March 1 of each year thereafter, until March 1, 2011, when the last report is due.

VA.R. Doc. No. R03-197; Filed July 21, 2004, 9:44 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-260. Water Quality Standards - Bottom Creek (amending 9 VAC 25-260-30).**

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

Effective Date: 30 days after publication of notice of EPA approval.

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Summary:

The proposed amendment designates a segment of Bottom Creek in Montgomery and Roanoke Counties for special protection as an exceptional state water. Since publication of the proposed regulation, the designation boundaries for the creek were revised to include only those portions of the creek that did not receive riparian landowner objections.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

9 VAC 25-260-30. Antidegradation policy.

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the board shall assure water quality adequate to protect existing uses fully. Further, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or existing point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board. After receipt of the notice of the nomination, localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to

Final Regulations

prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Activities causing temporary sources of pollution may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur provided that after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) (Reserved.)

(2) ~~(Reserved.)~~ *Bottom Creek in Montgomery [County] and Roanoke [Counties County] from [its confluence with Big Laurel Creek Route 669 (Patterson Drive)] downstream to [its confluence with Goose Creek to form the South Fork of the Roanoke River the last property boundary of the Nature Conservancy on the southern side of the creek].*

(3) (Reserved.)

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

VA.R. Doc. No. R03-201; Filed January 18, 2005, 3:42 p.m.

Title of Regulation: 9 VAC 25-260. Water Quality Standards - Lake Drummond (amending 9 VAC 25-260-30).

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

Effective Date: 30 days after publication of notice of EPA approval.

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Summary:

The amendments designate Lake Drummond and portions of Brown Mountain Creek, Laurel Fork, North Fork of the Buffalo River, Peddler River, Ramseys Draft, and Whitetop Laurel Creek for special protection as exceptional state waters.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's

response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:22 VA.R. 2320-2323 July 12, 2004, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R03-202; Filed January 18, 2005, 3:42 p.m.

Title of Regulation: 9 VAC 25-260. Water Quality Standards - Little Stony Creek (amending 9 VAC 25-260-30).

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

Effective Date: 30 days after publication of notice of EPA approval.

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Summary:

The amendment designates a segment of Little Stony Creek in Giles County for special protection as an exceptional state water.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:22 VA.R. 2323-2326 July 12, 2004, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R03-53 and R03-200; Filed January 18, 2005, 3:42 p.m.

Title of Regulation: 9 VAC 25-260. Water Quality Standards - Ragged Island (amending 9 VAC 25-260-30).

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

Effective Date: 30 days after publication of notice of EPA approval.

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4522, or e-mail jwgregory@deq.virginia.gov.

Summary:

The amendment designates a portion of the main stem of Ragged Island Creek in Isle of Wight County for special protection as an exceptional state water.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:22 VA.R. 2326-2331 July 12, 2004, without change. Therefore, pursuant to § 2.2-4031 A of the Code of Virginia, the text of the final regulation is not set out.

VA.R. Doc. No. R03-54 and R03-199; Filed January 18, 2005, 3:42 p.m.

◆ ————— ◆
TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-120. Waivered Services: MEDALLION (amending 12 VAC 30-120-260, 12 VAC 30-120-280, 12 VAC 30-120-290, 12 VAC 30-120-310, 12 VAC 30-120-320 and 12 VAC 30-120-350).**

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

Effective Date: March 10, 2005.

Agency Contact: Alissa Nashwinter, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4714, FAX (804) 786-1680 or e-mail alissa.nashwinter@dmas.virginia.gov.

Summary:

The amendments (i) add several enrollee groups to the list of individuals excluded from participation or continued enrollment in MEDALLION; (ii) add federally qualified health centers and rural health clinics, and certain clinics administered by local health departments to the list of MEDALLION providers that may serve as primary care providers; (iii) expand the list of medical services exempted from MEDALLION referral requirements; (iv) reduce the maximum number of MEDALLION clients that an individual primary care provider can serve from 2,000 to 1,500 and provide that no more than 10,000 MEDALLION clients may be served by federally qualified health centers, rural health clinics and local health department clinics enrolled as Medicaid providers; and (v) expand the list of infractions for which a primary care provider may be sanctioned and add certain civil monetary penalties that may be imposed.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

12 VAC 30-120-260. Definitions.

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

"ABD" means aged, blind and disabled recipients of public assistance programs as defined by the Virginia Department of Social Services.

"Action" means a termination, suspension, or reduction of Medicaid eligibility or covered services, *including the type or level of service; the reduction, suspension, or termination of a previously authorized service; or the denial, in whole or in part, of payment for a service.*

"AFDC" means [*the*] Aid to Families with Dependent Children [*program*] ~~, which is a public assistance program administered by the Department of Social Services providing financial assistance to needy citizens ; this program was replaced by the Temporary Assistance to Needy Families (TANF) program. Medicaid utilizes AFDC rules in determining Medicaid eligibility for families and children.~~

"AFDC related" means those recipients eligible for assistance as an extension of the AFDC program, such as pregnant women and indigent children under specific ages. It shall not include foster care or spend-down medically needy clients.

"Ancillary services" means those services accorded to a client that are intended to support the diagnosis and treatment of that client. These services include, but are not necessarily limited to, laboratory, pharmacy, radiology, physical therapy, and occupational therapy.

"Appeal" means a request for review of an action; all enrollee appeals are subject to the regulations set forth in 12 VAC 30-110.

"Area of residence" means *the recipient's address in the Medicaid eligibility file.*

~~["Care Coordination" means the function performed by the MEDALLION primary care provider in controlling and managing assigned clients through appropriate levels of medical care.]~~

"Client" or "clients [;]" [~~"recipient," "enrollee," or "participant"~~] means an individual or individuals having current Medicaid eligibility who [*is enrolled in or who*] shall be authorized to participate as a member or members of MEDALLION.

"Comparison group" means the group of Medicaid recipients whose utilization and costs will be compared against similar groups of MEDALLION clients.

"Covered services" means *Medicaid services as defined in the State Plan for Medical Assistance.*

"Covering provider" means a provider designated by the primary care provider to render health care services in the temporary absence of the primary provider.

"DMAS" means the Department of Medical Assistance Services.

Final Regulations

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are (i) furnished by a provider that is qualified to furnish these services under this title and (ii) needed to evaluate or stabilize an emergency medical condition.

["Enrollee" is a Medicaid recipient who is currently enrolled with a PCP in a given managed care program.]

"Enrollment broker" means an independent contractor that enrolls recipients in MEDALLION and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker shall include, but not be limited to, recipient education, recipient enrollment, and tracking and resolving recipient complaints, and may include recipient marketing and outreach.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment program.

"Exclusion from MEDALLION" means [~~not permitting the denial of~~] a Medicaid recipient [~~to from~~] initially [~~enroll enrolling~~] in MEDALLION or [~~removing the removal of~~] an enrollee from the MEDALLION program on a temporary or permanent basis.

"External Quality Review Organization (EQRO)" is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR-related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

~~"Gatekeeper" means the function performed by the MEDALLION primary care provider in controlling and managing assigned clients through appropriate levels of medical care.~~

"General practitioner" means a licensed physician who provides routine medical treatment, diagnosis, and advice to maintain a client's health and welfare.

"Grievance" is an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section. The term is also used to refer to the overall system that includes grievances and appeals and access to the state fair hearing process. Examples of subjects for grievances

include, but are not limited to, the quality of care or services provided, and aspects of interpersonal relationships, such as rudeness of a provider or employee, or the failure to respect the enrollee's rights.

"Health care professional" means a provider who has appropriate clinical training in treating an enrollee's condition or disease, and as further defined in 42 CFR 438.2.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet assigned to a specific primary care provider.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to those Medicaid recipients assigned to him.

"Primary care provider" or "PCP" means that MEDALLION provider responsible for the coordination of all medical care provided to a MEDALLION client and shall be recognized by DMAS as a Medicaid provider.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, [~~school health assistant,~~] psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12 VAC 30-50-229.1.

"Site" means, for purposes of this part, the geographical areas that best represent the health care delivery systems in the Commonwealth. In certain areas (sites), there may be two or more identifiable health care delivery systems.

"Specialty" or "specialist services" means those services, treatments, or diagnostic tests intended to provide the patient with a higher level of medical care or a more definitive level of diagnosis than that routinely provided by the primary care provider.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

"State" means the Commonwealth of Virginia.

"TANF" means Temporary Assistance to Needy Families and is a public assistance program administered by the Department of Social Services providing financial assistance to needy citizens.

12 VAC 30-120-280. MEDALLION clients.

A. DMAS shall determine enrollment in MEDALLION. Enrollment in MEDALLION is not a guarantee of continuing

eligibility for services and benefits under the Virginia Medical Assistance Services Program. Clients of MEDALLION shall be individuals receiving Medicaid as ABD, AFDC or AFDC-related categorically needy and medically needy (except those becoming eligible through spend-down) and except for foster care children, whether or not receiving cash assistance grants.

B. Exclusions.

1. The following individuals shall be excluded from ~~participating~~ participation in MEDALLION, or excluded from continued enrollment if any of the following apply:

a. Individuals who are inpatients in state mental hospitals and skilled nursing facilities, or reside in an Intermediate Care Facility for the Mentally Retarded (ICF/MR) or a long-stay hospital;

b. Individuals who are receiving personal care services enrolled in § 1915c home and community-based waivers, the family planning waiver, or the Family Access to Medical Insurance Security Plan (FAMIS);

c. Individuals who are participating in foster care or subsidized adoption programs, who are members of spend-down cases, or who are refugees or who receive client medical management services;

d. Individuals receiving Medicare-;

e. Individuals who are enrolled in DMAS-authorized residential treatment or treatment foster care programs; and

f. Individuals whose coverage is retroactive only.

2. A client may be excluded from participating in MEDALLION if any of the following apply:

a. [The] client is not accepted to the caseload of any participating PCP.

b. [Client whose The client's] enrollment in the caseload of assigned PCP has been terminated [,] and other PCPs have declined to enroll the client.

c. [The] individual receives hospice services in accordance with DMAS criteria.

C. Client enrollment process.

1. All ABD, AFDC or AFDC-related recipients excepting those meeting one of the exclusions of subsection B of this section shall be enrolled in MEDALLION.

2. Newly eligible individuals shall not participate in MEDALLION until completion of the Medicaid enrollment process. This shall include initial enrollment in the Medicaid program at the time of eligibility determination by Department of Social Services staff, or any subsequent reenrollment in the Medicaid program that may occur.

3. ~~Clients shall receive an interim Medicaid card from DMAS, and shall be provided authorized medical care in accordance with current procedures, after eligibility requirements are met~~ During the preassignment period and registration as MEDALLION clients, recipients shall be

provided Medicaid-covered services via the fee-for-service delivery mechanism administered by DMAS.

4. Once clients are fully registered as MEDALLION clients, they will receive MEDALLION identification material in addition to the Medicaid card.

D. PCP selection. Clients shall be given the opportunity to select the PCP of their choice.

1. Clients shall notify DMAS of their PCP selection within ~~30~~ 45 days of receiving their MEDALLION enrollment notification letter. If notification is not received by DMAS within that timeframe, DMAS shall select a PCP for the client.

2. The selected PCP shall be a MEDALLION enrolled provider.

3. The PCP will provide 24-hour, seven day/week access, which shall include as a minimum a 24-hour, seven day/week telephone number to be placed on provided to each client's MEDALLION identifier client.

4. DMAS shall review client requests in choosing a specific PCP for appropriateness and to ensure client accessibility to all required medical services.

5. Individuals who lose then regain eligibility for MEDALLION within 60 days will be reassigned to their previous PCP without going through the preassignment and selection process.

E. Mandatory assignment of PCP. ~~Assignments shall be made for those clients not selecting a PCP as described in subsection D of this section. The selection process shall be as follows:~~

1. ~~Clients shall be assigned to MEDALLION providers on a random basis. The age, gender, and any special medical needs shall be considered in assigning a provider with an appropriate specialty. Any prior patient provider relationships shall be maintained if appropriate. Families will be grouped and assigned to the same provider when possible. The MEDALLION program enrolls clients with a primary care provider (PCP) who acts as a [health] care [manager coordinator], provides primary and preventive care, and authorizes most specialty services. The client is required to select a PCP from a list of available PCPs in his service area. If the client does not select a PCP, the client defaults to the department's pre-assignment option. Clients can access any program provider for specialty services if they obtain the necessary authorization from their PCP.~~

2. Each site having two or more separately identifiable provider groups shall be divided into separate regions for client assignment. Clients shall initially be assigned to a PCP according to the region in which they reside. Should insufficient PCPs exist within the client's specific region, clients shall be assigned a PCP in an adjacent region.

3. Each PCP shall be assigned a client, or family group if appropriate, until the maximum number of clients the PCP has elected to serve or the PCP/client limit has been reached, or until there are no more clients suitable for assignment to that PCP, or all clients have been assigned.

Final Regulations

F. Changing PCPs. MEDALLION clients will have the initial 90 calendar days following the effective date of enrollment with a MEDALLION PCP to change PCPs without cause. After the initial 90-day assignment period, the recipient will remain with the PCP for at least 12 months unless cause to change PCPs is shown pursuant to subdivision 1 or 2 of this subsection. After 12 months the recipient will have the option to select another PCP. Recipients will be given at least 60 days notice prior to the end of this enrollment period (and all future enrollment periods) during which time recipients can select another PCP. Open enrollment periods will occur annually.

1. Requests for change of PCP "for cause" are not subject to the ~~six~~ 12-month limitation, but shall be reviewed and approved by DMAS staff on an individual basis. Examples of changing providers "for cause" may include but shall not be necessarily limited to:

- a. Client has a special medical need which cannot be met in his service area or by his PCP.
- b. Client has a pre-existing relationship with a Medicaid provider rendering care for a special medical need.
- c. Mutual decision by both client and provider to sever the relationship.
- d. Provider or client moves to a new residence, causing transportation difficulties for the client.
- e. Provider cannot establish a rapport with the client.
- f. *Performance or nonperformance of service to the recipient by a provider that is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care.*
- g. *Other reasons as determined by DMAS through written policy directives.*

2. The existing PCP shall continue to retain the client in the caseload, and provide services to the client until a new PCP is assigned or selected.

3. PCPs may elect to release MEDALLION clients from their caseloads for cause with review and approval by DMAS on a case-by-case basis. In such circumstances, subdivision F 2 of this section shall apply.

~~G. MEDALLION identification material. Each client enrolled shall receive a MEDALLION identifier, which shall be distinct from the Medicaid card in appearance or shall contain information in magnetic or other form which allows identification of the client as a member of the MEDALLION program.~~

~~1. The front of the identifier shall include the client's name, Medicaid case identification number, birthdate, sex, PCP's name, address, 24 hour access telephone number, and the effective time period covered by the identifier.~~

~~2. The MEDALLION Hot Line 800 number will be listed on the identifier.~~

H. G. Prior authorization.

1. Clients shall contact their assigned PCP or designated covering provider to obtain authorization prior to seeking nonemergency care.

2. Emergency services *and family planning services* shall be provided without delay or prior authorization. However, the emergency nature of the treatment shall be documented by the provider providing treatment and should be reported to the PCP after treatment is provided. Clients should inform the PCP of any emergency treatment received.

± H. Enrollee rights.

1. Each primary care provider must comply with any and all applicable federal and state laws and regulations regarding enrollee rights including, but not limited to, the applicable sections of 42 CFR 438.100 et seq., Title VI of the Civil Rights Act of 1964, and other applicable laws regarding privacy and confidentiality, and ensure that their staff and affiliated providers take those rights into account when furnishing services to enrollees.

2. Each enrollee shall be free to exercise his rights, and the exercise of those rights shall not adversely affect the way the primary care provider or DMAS treats the enrollee.

12 VAC 30-120-290. Providers of services.

Providers who may enroll to provide MEDALLION services include, but are not limited to, physicians of the following primary care specialties: general practice, family practice, internal medicine, and pediatrics. *Federally qualified health centers [and] rural health clinics [as defined in 42 CFR 405.2401], and certain [clinics (as defined by 12 VAC 5-90-10) administered by] local health departments may also serve as primary care providers.* Exceptions may be as follows:

1. Providers specializing in obstetric/gynecologic care may enroll as MEDALLION providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

2. Physicians with subspecialties may enroll as MEDALLION providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

3. Other specialty physicians may enroll as PCPs under extraordinary, client-specific circumstances when DMAS determines with the provider's and recipient's concurrence that the assignment would be in the client's best interests. Such circumstances may include, but are not limited to, the usual-and-customary practice of general medicine by a board-certified specialist, maintenance of a pre-existing patient-physician relationship, or support of the special medical needs of the client.

4. DMAS shall review applications from physicians and other health care professionals to determine appropriateness of their participating as a MEDALLION PCP.

5. The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.

12 VAC 30-120-310. Services exempted from MEDALLION referral requirements.

A. The following services shall be exempt from the supervision and referral requirements of MEDALLION:

1. Obstetrical and gynecological services (pregnancy and pregnancy related);
2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;
3. Family planning services;
4. Routine newborn services when billed under the mother's Medicaid number;
5. Annual or routine vision examinations (under age 21);
6. Dental services (under age 21);
7. Emergency services;
8. EPSDT well-child exams [~~(health departments only and under age 21)~~]; and
9. Immunizations (health departments only);
10. All school health services provided pursuant to the Individuals with Disabilities Education Act (IDEA);
11. Services for the treatment of sexually transmitted diseases;
12. Targeted case management services;
13. Transportation services;
14. Pharmacy services;
15. Substance abuse treatment for pregnant women; and
16. [~~Mental health/mental retardation MR waiver services and MH~~] community rehabilitation services.

B. While reimbursement for these services does not require the referral from or authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

12 VAC 30-120-320. PCP payments.

A. DMAS shall pay for services rendered to MEDALLION clients through the existing fee-for-service methodology and a case management fee.

B. MEDALLION providers shall receive a monthly case management fee of \$3.00 per client.

C. Individual PCPs may serve a maximum of ~~2,000~~ 1,500 MEDALLION clients. ~~Groups or clinics may serve a maximum of 2,000 MEDALLION clients per authorized PCP in the group or clinic.~~

D. [*Federally qualified health centers, rural health clinics and Department of Health*] clinics enrolled as Medicaid providers are limited to no more than 10,000 enrolled recipients per clinic. Exceptions to this will be considered on a case-by-case basis predicated upon client needs.

12 VAC 30-120-350. ~~PCP remedies for violation, breach, or nonperformance of provider agreement terms and addendum Sanctions.~~

A. The sanctions, as described in § 1932(e)(1) of the Social Security Act (the Act) and listed in subsection B of this section, may be imposed by DMAS if the PCP:

1. Fails substantially to provide medically necessary services that the PCP is required to provide, under law or under its contract with DMAS, to an enrollee covered under the contract;
2. Imposes on enrollees premiums or charges that are in excess of the premiums or charges permitted under the Medicaid program;
3. Acts to discriminate among enrollees on the basis of their health status or need for health care services;
4. Misrepresents or falsifies information furnished to the Commonwealth;
5. Misrepresents or falsifies information furnished to an enrollee, potential enrollee, or health care provider;
6. Has distributed directly or indirectly, through any agent or independent contractor, marketing materials that have not been approved by DMAS or that contain false or materially misleading information; or
7. Has violated any of the other applicable requirements of § 1932 or § 1905(t)(3) of the Act and any implementing regulations.

B. Section 1932(e)(2) of the Act provides for the Commonwealth to impose the following civil money penalties and other sanctions:

1. A maximum of \$25,000 for each determination of failure to provide services, misrepresentations or false statements to enrollees, potential enrollees, or health care providers, or marketing violations;
2. A maximum of \$100,000 for each determination of discrimination or misrepresentation or false statements to the Commonwealth;
3. A maximum of \$15,000 for each recipient the Commonwealth determines was not enrolled because of a discriminatory practice (subject to a \$100,000 overall limit); and
4. Up to \$25,000 or double the amount of the excess charges (whichever is greater) for charging premiums or charges in excess of the amounts permitted under the Medicaid program. DMAS shall deduct the excess amount charged from the penalty and return it to the affected enrollees.

A. 5. Termination. Either the PCP or DMAS may terminate the PCP's enrollment in the MEDALLION program at any time if either party determines that the other party has failed to perform any of its functions or duties under the addendum to the provider agreement (hereafter referred to as the addendum) between the ~~department~~ DMAS and the PCP. In such event, the party exercising this option shall notify the other party in writing of the intent to terminate the

Final Regulations

addendum and shall give the other party 30 days to correct the identified violation, breach or nonperformance of the addendum. If such violation, breach or nonperformance of the addendum is not satisfactorily addressed within this time period, the exercising party must notify the other party in writing of its intent to terminate the addendum at least 60 days prior to the proposed termination date. The termination date shall always be the last day of the month in which the 60th day falls. The addendum may be terminated by DMAS sooner than the time periods for notice specified in this subsection if DMAS determines that a recipient's health or welfare is jeopardized by continued enrollment under the care of the PCP. *After DMAS notifies a PCP that it intends to terminate the contract, DMAS will give the entity's enrollees written notice of the state's intent to terminate the contract and will allow enrollees to disenroll immediately without cause.*

~~B-~~ 6. Suspension of new enrollment, *including default enrollment.*

4. a. Whenever DMAS determines that the PCP is out of compliance with the addendum, it may suspend the PCP's right to enroll new recipients. DMAS, when exercising this option, shall notify the PCP in writing of its intent to suspend new enrollment at least 30 days prior to the beginning of the suspension period. The suspension period may be for any length of time specified by DMAS, or may be indefinite. The suspension period may extend up to any expiration date of the addendum.

~~2-~~ b. DMAS may also suspend new enrollment or disenroll recipients in anticipation of the PCP not being able to comply with federal or state laws at its current enrollment level. Such suspension shall not be subject to the 30-day notification requirement. DMAS may notify recipients of their PCP's noncompliance and provide an opportunity to enroll with another PCP.

~~C-~~ 7. Withholding of management or other payments and recovery of damage costs. DMAS may withhold portions of management or other fees or otherwise recover damages from the PCP as follows:

4. a. Whenever DMAS determines that the PCP has failed to perform an administrative function required under this contract, ~~the department~~ DMAS may withhold a portion of management or other fees to compensate for the damages which this failure has entailed. For the purposes of this section, "administrative function" is defined as any contract obligation other than the actual provision of contract services.

~~2-~~ b. In any case under this contract where DMAS has the authority to withhold management or other fees, DMAS also shall have the authority to use all other legal processes for the recovery of damages.

~~D-~~ 8. Department-initiated disenrollment. DMAS may reduce the maximum enrollment level or number of current enrollees whenever it determines that the PCP has:

a. Failed to provide or arrange for the provision of one or more of the services required under the addendum to the provider agreement, or ~~that the PCP has~~

b. Failed to maintain or make available any records or reports required under the addendum which DMAS requires to determine whether the PCP is providing services as required. The PCP shall be given at least 30 days notice prior to DMAS taking any action set forth in this subsection.

~~E-~~ 9. Inappropriate service delivery. PCPs demonstrating a pattern of inappropriate provision of services may be subject to suspension of new enrollments, withholding, in full or in part, of management fees, addendum termination, or refusal to be offered the opportunity to participate as a PCP in a future time period.

VA.R. Doc. No. R04-59; Filed January 13, 2005, 4:38 p.m.

Title of Regulation: **12 VAC 30-120. Waivered Services: MEDALLION II (amending 12 VAC 30-120-360, 12 VAC 30-120-370, 12 VAC 30-120-380, 12 VAC 30-120-400 [, 12 VAC 30-120-410] and 12 VAC 30-120-420).**

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

Effective Date: March 10, 2005.

Agency Contact: Tammy Driscoll, Health Care Services Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-7956, FAX (804) 786-1680, or e-mail Tammy.Driscoll@dmass.virginia.gov.

Summary:

The amendments (i) update the definitions section to conform the language with the federal Balanced Budget Act of 1997 and with other state agencies' regulations; (ii) clarify existing exclusions and add new exclusions from the Medallion II program; (iii) require DMAS to provide written responses to cause requests for disenrollment by Medallion II clients; (iv) permit managed care organizations to impose cost-sharing obligations on Medallion II clients in accordance with 12 VAC 30-20-150 and 12 VAC 30-20-160; (v) require enrollees to follow up on an oral request for an appeal in writing within 10 business days unless it is an expedited appeal; (vi) eliminate the requirement that managed care organizations provide DMAS copies of all requests for appeals and appeal decisions; and (vii) increase the timeframe for managed care organizations to issue appeal decisions from 14 days to 30 days.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

12 VAC 30-120-360. Definitions.

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously

authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
2. Serious impairment to bodily functions, or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the ~~contractor~~ contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and [MCO] enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External Quality Review Organization" (EQRO) is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR related activities as set forth in 42 CFR 438.358, or both.

"Foster care" ~~means is a program in which a child who received~~ receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any ~~health maintenance~~ managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an organization ~~entity that offers managed care health insurance plans (MCHIP) as defined by § 38.2-5800 of the Code of Virginia. Any health maintenance organization as defined in § 38.2-4300 of the Code of Virginia or health carrier that offers preferred provider contracts or policies as defined in § 38.2-3407 of the Code of Virginia or preferred provider subscription contracts as defined in § 38.2-4209 of the Code of Virginia shall be deemed to be offering one or more MCHIPs~~ meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed [contractual] agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

["Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.]

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO or PCCM.

Final Regulations

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

~~"School-based~~ "School health services" means those *physical therapy, occupational therapy, speech therapy services, nursing services [, school health assistant], psychiatric and psychological screenings, and well-child screenings,* services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, *as described in 12 VAC 30-50-229.1.*

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

12 VAC 30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. *DMAS reserves the right to [restrict exclude] from participation in the Medallion II managed care program any recipient who has been consistently noncompliant with the policies and procedures of managed care or who is threatening to providers, MCOs, or DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. Recipients excluded from Medallion II through this provision may appeal the decision to DMAS.*

B. The following individuals shall be excluded from participating in Medallion II. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in *the family planning waiver, and in federal waiver programs for home-based and community-based Medicaid coverage;*
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals *under age 21* who are enrolled in DMAS authorized residential treatment or treatment foster care programs;
7. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider (physician or hospital) does not participate with ~~any of the state contracted MCOs~~ *the enrollee's assigned MCO.* Exclusion requests made during

the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;

8. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;

9. Individuals who receive hospice services in accordance with DMAS criteria;

10. Individuals with *other comprehensive group or individual health insurance coverage, including Medicare coverage , insurance provided to military dependents, and any other insurance purchased through the Health Insurance Premium Payment Program (HIPPP);*

11. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, at the scheduled time of enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge;

12. Individuals who ~~have been preassigned request exclusion during preassignment to an MCO but have not yet been enrolled or within a time set by DMAS from the effective date of their MCO enrollment,~~ who have been diagnosed with a terminal condition and who have a life expectancy of six months or less, ~~if they request exclusion.~~ The client's physician must certify the life expectancy; ~~and~~

13. Certain individuals between birth and age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;;

14. *Individuals who have an eligibility period that is less than three months;*

15. *Individuals who [receive services through are enrolled in] the Commonwealth's Title XXI SCHIP program; and*

16. *Individuals who have an eligibility period that is only retroactive.*

C. Medallion II managed care plans shall be offered to recipients, and recipients shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

D. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS ~~during the interim period,~~ and shall be provided authorized medical

care in accordance with DMAS' procedures; after *Medicaid* eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted MCOs. These letters shall indicate a preassigned MCO, determined as provided in subsection E of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 30 days.

4. ~~A child born to a woman Any newborn whose mother is enrolled with an MCO will [at the time of birth] shall be enrolled with the MCO from birth until the last day of the third month including the month of birth, unless otherwise specified by the Enrollment Broker. For instance, a child born during the month of February will be automatically enrolled until April 30. By considered an enrollee of that same MCO for [at least three months from the date of the child's birth the newborn enrollment period]. This requirement does not preclude the enrollee, once he is assigned a Medicaid identification number, from disenrolling from one MCO to another in accordance with subdivision F 1 of this section.~~

The newborn's continued enrollment with the MCO is not contingent upon the mother's enrollment. Additionally, if the MCO's contract is terminated in whole or in part, the MCO shall continue newborn coverage if the child is born while the contract is active, until the newborn receives a Medicaid number or for the [birth month plus two months timeframe newborn enrollment period], whichever timeframe is earlier. Infants who do not receive a Medicaid identification number prior to the end of that the [third month newborn enrollment period], the child will be disenrolled unless the Enrollment Broker specifies continued enrollment [will be disenrolled. Newborns who remain eligible for participation in Medallion II] will be [enrolled reenrolled] in [managed care an MCO] through the preassignment process upon receiving a Medicaid identification number. If the child remains an inpatient in a hospital at the end of that third month, the child shall automatically remain enrolled until the last day of the month of discharge, unless this child's parent requests disenrollment.

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous MCO without going through preassignment and selection.

E. Clients who do not select an MCO as described in subdivision D 3 of this section shall be assigned to an MCO as follows:

1. Clients are assigned through [a] system algorithm based upon the client's history with a contracted MCO.
2. Clients not assigned pursuant to subdivision 1 of this subsection shall be assigned to the MCO of another family member, if applicable.
3. All other clients shall be assigned to an MCO on a basis of approximately equal number by MCO in each locality.
4. In areas where there is only one contracted MCO, recipients have a choice of enrolling with the contracted MCO or the PCCM program. All eligible recipients in areas

where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.

F. Following their initial enrollment into an MCO or PCCM program, recipients shall be restricted to the MCO or PCCM program until the next open enrollment period, unless appropriately disenrolled or excluded by the department.

1. During the first 90 calendar days of enrollment in a new or initial MCO, a client may disenroll from that MCO to enroll into another MCO or into PCCM, if applicable, for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.

2. During the remainder of the enrollment period, the client may only disenroll from one MCO into another MCO or PCCM, if applicable, upon determination by DMAS that good cause exists as determined under subsection H of this section.

G. The department shall conduct an annual open enrollment for all Medallion II participants, ~~including in areas where there is only one contracted MCO.~~ The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. In areas with only one contracted MCO, recipients will be given the opportunity to select either the MCO or the PCCM program. Enrollment selections will be effective on the first day of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current MCO selection.

H. Disenrollment for ~~good~~ cause may be requested at any time.

1. After the first 90 days of enrollment in an MCO, clients must request disenrollment from DMAS based on ~~good~~ cause. The request may be made orally or in writing to DMAS and must cite the reasons why the client wishes to disenroll. [~~Good~~] Cause for disenrollment shall include the following:

- a. A recipient's desire to seek services from a federally qualified health center which is not under contract with the recipient's current MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;
- b. Performance or nonperformance of service to the recipient by an MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;
- c. Lack of access to a *PCP* or necessary specialty services covered under the State Plan or lack of access

Final Regulations

to providers experienced in dealing with the enrollee's health care needs;

d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO or PCCM program, if applicable, or provider;

e. The enrollee moves out of the MCO's service area;

f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;

g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or

h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether [~~good~~] cause exists for disenrollment. *Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the enrollee files the request, in compliance with 42 CFR 438.56.*

3. [~~Good~~] Cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

4. The DMAS determination concerning [~~good~~] cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12 VAC 30-110-10 through 12 VAC 30-110-380.

5. The current MCO shall provide, within two working days of a request from DMAS, information necessary to determine [~~good~~] cause.

12 VAC 30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

~~B.~~ 2. Services that shall be provided outside the MCO network, [~~and reimbursed by DMAS~~] shall include [~~, but are not limited to,~~] those services [*identified and*] defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include ~~school-based school health services ([*physical therapy, occupational therapy, speech therapy, nursing, school health assistant, psychiatric and psychological services as defined in 12 VAC 30-120-360*])~~

and community mental health services (rehabilitative, targeted case management and substance abuse services).

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. EPSDT [~~screenings services~~] shall be covered by the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain ~~such~~ records as ~~may be~~ required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and ~~must~~ shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. ~~The~~ *In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not charge copayments to any categorically needy impose any cost sharing obligations on enrollees except as set forth in 12 VAC 30-20-150 and 12 VAC 30-20-160.*

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to provide, reimburse for, or provide coverage of, a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

12 VAC 30-120-400. Quality control and utilization review.

A. DMAS shall rigorously monitor the quality of care provided by the MCOs. DMAS may contract with one or more external quality review organizations to perform focused studies on the quality of care provided by the MCOs. The external organizations may utilize data or other tools to ensure contract compliance and quality improvement activities. Specifically, DMAS shall monitor to determine if the MCO:

1. Fails substantially to provide the medically necessary items and services required under law or under the contract to be provided to an enrolled recipient and the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual.
2. Engages in any practice that discriminates ~~among~~ *against* individuals on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, or any practice that could reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by § 1903(m) of the Social Security Act (42 USC § 1396b(m))) by eligible individuals whose medical conditions or histories indicate a need for substantial future medical services.
3. Misrepresents or falsifies information that it furnishes, under § 1903(m) of the Social Security Act (42 USC § 1396b(m)) to CMS, DMAS, an individual, or any other entity.
4. Fails to comply with the requirements of 42 CFR 417.479(d) through (g) relating to physician incentive plans, or fails to submit to DMAS its physician incentive plans as required or requested in 42 CFR 434.70.
5. Imposes on enrollees premiums or charges that are in excess of the premiums or charges permitted under the Medicaid program.

B. DMAS shall ensure that data on performance and patient results ~~is~~ *are* collected.

C. DMAS shall ensure that quality outcomes information is provided to MCOs. DMAS shall ensure that changes which are determined to be needed as a result of quality control or utilization review are made.

[12 VAC 30-120-410. Sanctions.

A. If DMAS determines that an MCO is not in compliance with applicable state or federal laws, regulations (including but not limited to the requirements of or pursuant to 12 VAC 30-120-380 E, or 42 CFR 438, Subpart I), or their Medallion II

contract, DMAS may impose sanctions on the MCO. The sanctions may include, but are not limited to:

1. Limiting enrollments in the MCO by freezing voluntary recipient enrollments;
2. Freezing DMAS assignment of recipients to the MCO;
3. Limiting MCO enrollment to specific areas;
4. Denying, withholding, or retracting payments to the MCO;
5. Terminating the MCO's Medallion II contract; ~~and~~
6. Intermediate sanctions including, but not limited to, the maximum civil money penalties specified in 42 CFR Part 438, Subpart I, for the violations set forth therein, or in accordance therewith; *and*
7. *Civil monetary penalties as specified in 42 CFR 438.704.*

B. In the case of an MCO that has repeatedly failed to meet the requirements of §§ 1903(m) and 1932 of the Social Security Act, DMAS shall, regardless of what other sanctions are imposed, impose the following sanctions:

1. Appoint a temporary manager to:
 - a. Oversee the operation of the Medicaid managed care organization upon a finding by DMAS that there is continued egregious behavior by the organization or there is a substantial risk to the health of enrollees; or
 - b. Assure the health of the organization's enrollees if there is a need for temporary management while (i) there is an orderly termination or reorganization of the organization or (ii) improvements are made to remedy the violations found under subsection A of this section. Temporary management under this subdivision may not be terminated until DMAS has determined that the MCO has the capability to ensure that the violations shall not recur.
2. Permit individuals enrolled with the MCO to disenroll without cause. If this sanction is imposed, DMAS shall be responsible for notifying such individuals of the right to disenroll.

C. Prior to terminating a contract as permitted under subdivision A 5 of this section, DMAS shall provide the MCO with a hearing. DMAS may not provide an MCO with a pretermination hearing before the appointment of a temporary manager under subdivision B 1 of this section.

D. Prior to imposing any sanction other than termination of the MCO's contract, DMAS shall provide the MCO with notice, develop procedures with which the MCO must comply to eliminate specific sanctions, and provide such other due process protections as the ~~state~~ *Commonwealth* may provide.

E. In accordance with the terms of the contract, MCOs shall have the right to appeal any adverse action taken by DMAS. For appeal procedures not addressed by the contract, the MCO shall proceed in accordance with the appeals provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Pursuant to §§ 2.2-4364 and 2.2-4365 of the Code of Virginia, DMAS shall establish an administrative appeals procedure through which the MCO

Final Regulations

may elect to appeal decisions on disputes arising during the performance of its contract. Pursuant to § 2.2-4365 of the Code of Virginia, such appeal shall be heard by a hearing officer; however, in no event shall the hearing officer be an employee of DMAS. In conducting the administrative appeal, the hearing officer shall follow the hearing procedure used in § 2.2-4020 of the Code of Virginia.

F. When DMAS determines that an MCO committed one of the violations specified in 12 VAC 30-120-400 A, DMAS shall implement the provisions of 42 CFR 434.67.

1. Any sanction imposed pursuant to this subsection shall be binding upon the MCO.
2. The MCO shall have the appeals rights for any sanction imposed pursuant to this subsection as specified in 42 CFR 434.67.]

12 VAC 30-120-420. Client grievances and appeals.

A. The MCOs shall, whenever ~~a~~ *an enrolled* client's request for covered services is reduced, denied or terminated, or payment for services is denied, provide a written notice in accordance with the notice provisions specified in 42 CFR 438.404 and 42 CFR 438.210(c), as defined by the contract between DMAS and the MCO, and any other statutory or regulatory requirements.

B. MCOs shall, at the initiation of either new client enrollment or new provider/subcontractor contracts, or at the request of the enrollee, provide to every enrollee the information described in 42 CFR 438.10(g) concerning grievance/appeal rights and procedures.

C. Disputes between the MCO and the client concerning any aspect of service delivery, including medical necessity and specialist referral, shall be resolved through a verbal or written grievance/appeals process operated by the MCO or through the DMAS appeals process. A provider who has the enrollee's written consent may act on behalf of an enrollee in the MCO grievance/appeals or the DMAS appeals process.

1. The enrollee, provider, or representative acting on behalf of the enrollee with the enrollee's written consent, may file an oral or written grievance or appeal with the MCO. The MCO [must ~~shall~~] accept grievances or appeals submitted within 30 days from the date of the notice of adverse action. Oral requests for appeals [must ~~shall~~] be followed up in writing *within 10 business days* by the enrollee, *provider* or ~~his~~ *the representative acting on behalf of the enrollee with the enrollee's consent*, unless the request is for an expedited appeal. The enrollee may also file a written request for a standard or expedited appeal with the DMAS Appeals Division within 30 days of the client's receipt of the notice of adverse action, in accordance with 42 CFR 431 Subpart E, *42 CFR Part 438, Subpart F*, and 12 VAC 30-110.

2. ~~In compliance with 14 VAC 5-210-70 H 4, As specified in 12 VAC 30-110-100,~~ pending the resolution of a grievance or appeal filed by a client or his representative (including a provider acting on behalf of the client), coverage shall not be terminated *or reduced* for the client for any reason which is the subject of the ~~complaint~~ *grievance or appeal*. ~~It~~

~~addition, the MCO shall not terminate or reduce services as specified in 12 VAC 30-110-100.~~

3. The MCO shall ensure that the individuals who make decisions on MCO grievances and appeals were not involved in any previous level of review or decision making, and where the reason for the grievance or appeal involves clinical issues, relates to a denial or a request for an expedited appeal, or where the appeal is based on a lack of medical necessity, shall ensure that the decision makers are health care professionals with the appropriate clinical expertise in treating the enrollee's condition or disease.

D. The MCO shall develop written materials describing the grievance/appeals system and its procedures and operation.

E. The MCO shall maintain a recordkeeping and tracking system for complaints, grievances, and appeals that includes a copy of the original complaint, grievance, or appeal; the decision; and the nature of the decision. This system shall distinguish Medicaid from commercial enrollees, if the MCO does not have a separate system for Medicaid enrollees.

F. At the time of enrollment and at the time of any adverse actions, the MCO shall notify the client, in writing, that:

1. Medical necessity, specialist referral or other service delivery issues may be resolved through a system of grievances and appeals, within the MCO or through the DMAS client appeals process;
2. Clients have the right to appeal directly to DMAS; and
3. The MCO shall promptly provide grievance or appeal forms, reasonable assistance and written procedures to clients who wish to register written grievances or appeals.

~~G. The MCO shall, within two days of receipt of any written request for a grievance or appeal, provide DMAS with a copy of the request.~~

~~H. G.~~ The MCO shall issue grievance/appeal decisions as defined by the contract between DMAS and the MCO. Oral grievance decisions are not required to be in writing.

~~I. H.~~ The MCO shall issue standard appeal decisions within 44 30 days from the date of initial receipt of the appeal in accordance with 42 CFR 438.408 and as defined by the contract between DMAS and the MCO. The appeal decision shall be ~~required to be~~ in writing and shall include, but is *shall* not be limited to, *the following*:

1. The decision reached, the results and the date of the decision reached by the MCO;
2. The reasons for the decision;
3. The policies or procedures ~~which~~ *that* provide the basis for the decision;
4. A clear explanation of further appeal rights and a timeframe for filing an appeal; and
5. For appeals that involve the termination, suspension, or reduction of a previously authorized course of treatment, the right to continue to receive benefits in accordance with 42 CFR 438.420 pending a hearing, and how to request continuation of benefits.

~~J. The MCO shall provide DMAS with a copy of its grievance or appeal decision concurrently with the provision of the decision to the client.~~

~~K. I.~~ An expedited appeal decision shall be issued as expeditiously as the enrollee's condition requires and within three business days in cases of medical emergencies in which delay could result in death or serious injury to a client. Extensions to these timeframes shall be allowed in accordance with 42 CFR 438.408 and as defined by the contract between DMAS and the MCO. Written confirmation of the decision shall promptly follow the verbal notice of the expedited decision.

~~L. J.~~ Any appeal decision issued by the MCO may be appealed by the client to DMAS in accordance with the department's Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380. DMAS shall conduct an evidentiary hearing in accordance with the Client Appeals regulations at 12 VAC 30-110-10 through 12 VAC 30-110-380 and shall not base any appealed decision on the record established by any appeal decision of the MCO. The MCO shall comply with the DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the MCO.

~~M. K.~~ The MCO shall provide information necessary for any DMAS appeal within timeframes established by DMAS.

VA.R. Doc. No. R04-60; Filed January 13, 2005, 4:38 p.m.



TITLE 13. HOUSING

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

Title of Regulation: 13 VAC 10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13 VAC 10-180-10, 13 VAC 10-180-50, 13 VAC 10-180-60, 13 VAC 10-180-90; adding 13 VAC 10-180-110).

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: January 14, 2005.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or e-mail judson.mckellar@vhda.com.

Summary:

The amendments (i) revise documentation requirements to certify the existence of a revitalization area; (ii) require a market study to be submitted with all tax credit reservation applications; (iii) revise documentation requirements for evidence of proper zoning; (iv) delete the point category for credit requests below \$1 million; (v) add points for water

conservation and energy saving features; (vi) delete the point category for certain roofing products; (vii) delete the point category for "hard to develop" projects; (viii) revise the point category that penalizes developers that do not build a development as represented in the application; (ix) add provisions for submitting requests to the authority to find qualified contracts; (x) add a provision to provide for compliance requirements during the extended use period; (xi) lower the threshold score; (xii) exempt elderly rehabilitation developments with project-based subsidy from the maximum credit limitations placed on elderly developments in each tax credit pool; (xiii) delete the limitation on the amount of credits available for reservation to developments in older central cities; and (xiv) make other miscellaneous administrative clarification changes.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 21:3 VA.R. 300-315 October 18, 2004, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

13 VAC 10-180-10. [No change from proposed.]

13 VAC 10-180-50. [No change from proposed.]

13 VAC 10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the

Final Regulations

buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving

such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.
 - a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants

receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) ~~of approval by local authorities~~ of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

c. Submission of plans and specifications or, in the case of rehabilitation for which plans will not be used, a unit-by-unit work write-up for such rehabilitation with certification in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications or work write-up. (20 points multiplied by the quotient calculated by dividing the percentage of completion of such plans and specifications or such work write-up by 75% not to exceed 20 points.)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the ~~local government officials~~ *that chief executive officer (or the equivalent) of the local jurisdiction in which*

the development is to be located (including the certification described in the definition of revitalization area in 13 VAC 10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the ~~planned local government's plan for revitalization of the area.~~ (25 points)

d. If the proposed development is located in a Difficult Development Area as defined by HUD or is in an Enterprise Zone or a Housing Revitalization Zone designated by the state. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13 VAC 10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development for a below-market rate loan or grant; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit

Final Regulations

type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

~~b. Lower amount of credit request. (50 points multiplied by the percentage by which the total amount of the annual tax credits requested is less than \$1,000,000, including negative points using the percentage in which the total amount of annual credits requested is greater than \$1,000,000. Developments financed with tax exempt bonds will receive an automatic 25 points under this scoring category.)~~

e. b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)

(c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

~~(e) If all roofing products meet the EPA's Energy Star qualified program requirements. (5 points)~~

~~(f) (e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)~~

~~(g) (f) If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a HSPF rating of 9.0 or more or thru-the-wall heat pump equipment that has an EER rating of 12.0 or more or (ii) air conditioning units with a SEER rating of 14.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)~~

~~(h) (g) If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)~~

~~(h) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)~~

~~(i) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)~~

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants as elected in subdivision 4 a of this section:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

(3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:

(a) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10-year warranty against breakage of the seal. (3 points)

(b) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 e b of this section is 60 points.

~~d. Any proposed 50 unit or less development that meets at least three of the following criteria: (i) sets maximum rents on all units at or below 25% of the gross income of households at or below 50% of the area median income (without vouchers or rental assistance); (ii) restricts at least 20% of the units for occupancy by households with incomes at or below 40% of the area median income; (iii) requires at least 60% of the developer's fee to pay development costs; and (iv) has below market rate financial assistance from local, state or federal government. (20 points)~~

e. c. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with special needs in

accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll-in showers and roll-under sinks and ranges). (50 points)

~~f.~~ *d.* Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

~~g.~~ *e.* Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

~~(h) Beginning January 1, 2005,~~ *f.* Any development located within one-half mile of a commuter rail, light rail or subway station or one-quarter mile of one or more public bus lines or other public transportation usable by development occupants. (10 points)

4. Tenant population characteristics.

a. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points under this subdivision a)

b. Commitment by the applicant to provide relocation assistance to displaced households at such level required by the authority. (30 points times the number of certified occupied units divided by the greater of (i) the number of certified occupied units or (ii) the number of units of the proposed development)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed at least three tax credit developments that contain at least three times the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected major violation of health, safety and building codes.

(minus 50 points for a period of three years after the violation has been corrected)

~~d. Beginning January 1, 2003,~~ Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

~~e. Beginning January 1, 2003,~~ Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus ~~20~~ *two times the number of points assigned to the item or items not built*, for a period of three years after *the last Form 8609 is issued* for the development ~~is placed in service~~, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

~~f. Beginning January 1, 2005,~~ Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the extended use period of such development. (minus 25 points)

g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)

h. Evidence that the proposed development's architect has completed the Fair Housing Accessibility First program offered by HUD or an equivalent organization and the certificate is attached with the architect's certification. (5 points)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

Final Regulations

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivisions 3 e b and 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in a qualified census tract or difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified

low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13 VAC 10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application that is assigned a total number of points less than a threshold amount of ~~375~~ 350 points (~~300~~ 275 points for developments financed with tax-exempt bonds) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved

per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 15% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation,

criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. *The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy [providing rental assistance for at least 20% of the units] that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.*

Final Regulations

~~Beginning January 1, 2005, the amount of credits available for reservation to developments in older central cities from any pool established by the executive director to serve a geographic area of the state shall be limited to an amount equal to the older central city's percentage share of households paying more than 35% of income for rent in the pool in which the older central city appears. However, notwithstanding the limitation of this paragraph, all applications with a letter of support from the chief executive officer of an older central city will be eligible for a reservation of credits.~~

The above limitation of credits available for elderly housing shall not include assisted living facilities licensed under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for

such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such

applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the

applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such

Final Regulations

credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may terminate the reservation of such credits and draw on any good faith deposit. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in

such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development intended to serve people with disabilities and (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director. Any such reservations made in any calendar year may be up to 3.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

13 VAC 10-180-90. [No change from proposed.]

13 VAC 10-180-110. [No change from proposed.]

VA.R. Doc. No. R05-34; Filed January 14, 2005, 10:32 a.m.



TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

<p>REGISTRAR'S NOTICE: The following regulations 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 Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.</p>
--

Titles of Regulations: **16 VAC 25-90. Federal Identical General Industry Standards (29 CFR Part 1910) (amending 16 VAC 25-90-1910.134).**

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

Effective Date: March 15, 2005.

Summary:

Federal OSHA has approved an additional quantitative fit testing protocol, the controlled negative pressure (CNP) REDON fit testing protocol, for inclusion in Appendix A of its Respiratory Protection Standard, § 1910.134. The CNP REDON protocol will assess respirator fit effectively and also will train employees to detect leakage while donning and doffing a respirator (69 FR 46989). The CNP REDON protocol is not expected to replace existing fit testing protocols, but instead is an alternative to them. Federal

OSHA has adopted its protocol under the provisions of the Respiratory Protection Standard that allow individuals to submit evidence for including additional fit testing protocols in this standard (67 FR 46986).

The CNP REDON protocol requires the performance of three different test exercises followed by two redonings of the respirator. The three test exercises, listed in order of administration, are normal breathing, bending over, and head shaking (69 FR 46986). The CNP protocol previously approved by federal OSHA specifies eight test exercises, including one redoning of the respirator. In addition to amending the Respiratory Protection Standard to include the CNP REDON protocol, federal OSHA also made several editorial and nonsubstantive technical revisions to the standard associated with the CNP REDON protocol and the previously approved CNP protocol. The technical revisions include the following:

1. Paragraph 14(a) of Part I.A in Appendix A of the Respiratory Protection Standard would exempt both the previously approved CNP protocol and the CNP REDON protocol from the test exercises specified for the other approved fit testing protocols listed in the appendix. OSHA deemed this revision necessary because the CNP REDON protocol consists of a test exercise procedure that differs substantially from the procedure required for the other OSHA-approved fit testing protocols (69 FR 46987).

2. In the introductory paragraph in Part I.A. of Appendix A, the outdated reference to the CNP instrument manufacturer as "Dynatech Nevada" was corrected to "Occupational Health Dynamics of Birmingham, Alabama" to accurately identify the current manufacturer of this instrument.

3. Paragraph (c) of the previously approved CNP protocol under Part I.A.4 of the Respiratory Protection Standard was revised to include the screen tracing currently provided on the CNP test instrument as a visual warning device to detect test subjects' non-compliance with the breath-hold procedure.

4. In paragraph (a)(5) of the previously approved CNP protocol, the breath-hold requirement was corrected to 10 seconds from 20 seconds because implementing correct fit test procedures would improve the assessment of respirator fit factors using the previously approved CNP protocol as well as the new CNP REDON protocol. (Id.).

Agency Contact: John Crisanti, VOSH Planning Manager, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, e-mail jjc@doli.virginia.gov.

Note on Incorporation by Reference

Pursuant to § 2.2-4103 of the Code of Virginia, Respiratory Protection Standards, General Industry Standard (29 CFR 1910.134) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the document will not be printed in the Virginia Register of Regulations. Copies of the documents are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

On December 14, 2004, the Safety and Health Codes Board adopted a federal identical version of federal OSHA's

Respiratory Protection Standard, 29 CFR to Appendix A: Controlled Negative Pressure REDON Fit Testing Protocol, as published in the Federal Register (69 FR 46993-46994) August 4, 2004, with a proposed effective date of March 15, 2005.

When the regulations, as set forth in the revisions to General Industry Standards, 16 VAC 25-90-1910.134, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
September 3, 2004	March 15, 2005

VA.R. Doc. No. R05-107; Filed January 7, 2005, 10:54 a.m.

* * * * *

Titles of Regulations: 16 VAC 25-100. Federal Identical Shipyard Employment Standards (29 CFR Part 1915) (amending 16 VAC 25-100-1915.5; adding 16 VAC 25-100-1915.501 through 16 VAC 25-100-1915.509).

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

Effective Date: March 15, 2005.

Summary:

Federal OSHA has promulgated a unified fire protection standard for shipyard employment. The standard provides increased protection for shipyard employment workers from the hazards of fire on vessels and vessel sections and at land-side facilities.

The new standard requires a written fire watch policy while prohibiting workers who perform hot work such as welding, cutting, or grinding to act as their own fire watch. The new rule also allows employers to rely on a combination of internal or external fire response organizations instead of requiring internal fire brigades.

Other topics covered by the rule include training, multi-employer work sites, hot work precautions, fixed extinguishing system hazards, land-side fire protection systems, and evacuation procedures. The rule also includes a model fire safety plan that employers can use to develop their site-specific plans.

The new standard reflects the latest technologies as well as 19 consensus standards from the National Fire Protection Association (NFPA) and includes relevant information from other sources, including OSHA's general industry standard on fire protection, as well as procedures from the U. S. Navy and U. S. Coast Guard.

Agency Contact: John Crisanti, VOSH Planning Manager, Department of Labor and Industry, 13 South 13th Street,

Final Regulations

Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, e-mail jjc@doli.virginia.gov.

Note on Incorporation by Reference

Pursuant to § 2.2-4103 of the Code of Virginia, Fire Protection in Shipyard Employment, General Industry Standards (29 CFR 1915.501 through 1915.509), Incorporation By Reference (29 CFR 1915.5), and Appendix A of Subpart P of Part 1915 are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the documents will not be printed in the Virginia Register of Regulations. Copies of the documents are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

On December 14, 2004, the Safety and Health Codes Board adopted an identical version of federal OSHA's Fire Protection in Shipyard Employment, 29 CFR 1915.501 through 29 CFR 1915.509; Final Rule, and Incorporation by Reference of National Fire Protection Association (NFPA) Consensus Standards, 29 CFR 1915.5, and Appendix A to Subpart P of 29 CFR Part 1915, as published in the Federal Register (69 FR 55702-55708) on September 15, 2004, with a proposed effective date of March 15, 2005. The amendments correct and update 16 VAC 25-100-1915.501 through 16 VAC 25-100-1915.509 and 16 VAC 25-100-1915.5, to conform to 29 CFR 1915.501 through 29 CFR 1915-509 and 29 CFR 1915.5.

When the regulations, as set forth in the revised final rule for Shipyard Employment Standards, 16 VAC 25-100-1915.501 through 16 VAC 25-100-1910.509 and 16 VAC 25-100-1915.5 are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
December 14, 2004	March 15, 2005

VA.R. Doc. No. R0-108; Filed January 7, 2005, 10:52 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

JOINT BOARDS OF NURSING AND MEDICINE

Title of Regulation: 18 VAC 90-30. Regulations Governing the Licensure of Nurse Practitioners (amending 18 VAC 90-30-10, 18 VAC 90-30-60 through 18 VAC 90-30-90; adding 18 VAC 90-30-85).

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Effective Date: March 9, 2005.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 6603 West Broad Street, Richmond, VA 23230, telephone (804) 662-9909, FAX (804) 662-9512, or e-mail jay.douglas@dhp.virginia.gov.

Summary:

The amendments to the nurse practitioner regulations (i) update the names of accrediting bodies; (ii) clarify that approved programs refer to educational programs that offer doctoral degrees as well as those that offer master's degrees; (iii) clarify that the boards will grant field licensure only if the applicant's education and certification are consistent with that field; (iv) clarify that a graduate degree is required for licensure; (v) eliminate six fields of licensure; and (vi) establish qualifications for licensure by endorsement.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18 VAC 90-30-10. Definitions.

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

"Approved program" means a nurse practitioner education program that is accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools, American College of Nurse Midwives, ~~American Association of Colleges of Nursing~~ *Commission on Collegiate Nursing Education* or the National League for Nursing *Accrediting Commission* or is offered by a school of nursing or jointly offered by a school of medicine and a school of nursing which grant a ~~master's~~ *graduate* degree in nursing and which hold a national accreditation acceptable to the ~~board~~ *boards*.

"Boards" means the Virginia Board of Nursing and the Virginia Board of Medicine.

"Collaboration" means the process by which a nurse practitioner, in association with a physician, delivers health care services within the scope of practice of the nurse practitioner's professional education and experience and with medical direction and supervision, consistent with this chapter.

"Committee" means the Committee of the Joint Boards of Nursing and Medicine.

"Controlling institution" means the college or university offering a nurse practitioner education program.

"Licensed nurse practitioner" means a registered nurse who has met the requirements for licensure as stated in Part II (18 VAC 90-30-60 et seq.) of this chapter.

"Licensed physician" means a person licensed by the Board of Medicine to practice medicine or osteopathy.

"Medical direction and supervision" means participation in the development of a written protocol including provision for periodic review and revision; development of guidelines for availability and ongoing communications which provide for and define consultation among the collaborating parties and

the patient; and periodic joint evaluation of services provided, e.g., chart review, and review of patient care outcomes. Guidelines for availability shall address at a minimum the availability of the collaborating physician proportionate to such factors as practice setting, acuity, and geography.

"National certifying body" means a national organization that is accredited by an accrediting agency recognized by the U. S. Department of Education or deemed acceptable by the National Council of State Boards of Nursing and has as one of its purposes the certification of nurse anesthetists, nurse midwives or nurse practitioners, referred to in this chapter as professional certification, and whose certification of such persons by examination is accepted by the committee.

"Preceptor" means a physician or a licensed nurse practitioner who supervises and evaluates the nurse practitioner student.

"Protocol" means a written statement, jointly developed by the collaborating physician(s) and the licensed nurse practitioner(s), that directs and describes the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner(s) in the care and management of patients.

18 VAC 90-30-60. Licensure, general.

A. No person shall perform services as a nurse practitioner in the Commonwealth of Virginia except as prescribed in this chapter and when licensed by the Boards of Nursing and Medicine.

B. The boards shall license applicants who meet the qualifications for licensure as set forth in 18 VAC 90-30-80 or 18 VAC 90-30-85.

18 VAC 90-30-70. Categories of licensed nurse practitioners.

A. The boards shall license nurse practitioners *consistent with their specialty education and certification* in the following categories (a two-digit suffix appears on licenses to designate category):

1. Adult nurse practitioner (01);
2. Family nurse practitioner (02);
3. Pediatric nurse practitioner (03);
4. ~~Family planning nurse practitioner (04);~~
5. ~~Obstetric/gynecologic nurse practitioner (05);~~
6. ~~Emergency nurse practitioner (06);~~
7. 4. Geriatric nurse practitioner (07);
8. 5. Certified registered nurse anesthetist (08);
9. 6. Certified nurse midwife (09);
10. ~~School nurse practitioner (10);~~
11. ~~Medical nurse practitioner (11);~~
12. ~~Maternal child health nurse practitioner (12);~~
13. 7. Neonatal nurse practitioner (13);
14. 8. Women's health nurse practitioner (14);

45. 9. Acute care nurse practitioner (16); and

46. 10. Psychiatric nurse practitioner (17).

B. Other categories of licensed nurse practitioners shall be licensed if the Committee of the Joint Boards of Nursing and Medicine determines that the category meets the requirements of this chapter.

C. Nurse practitioners licensed prior to [~~the effective date of these regulations~~ March 9, 2005,] may retain the specialty category in which they were initially licensed, or, if the specialty category has been subsequently deleted and if qualified by certification, be reissued a license in a specialty category consistent with such certification.

18 VAC 90-30-80. Qualifications for initial licensure.

A. An applicant for initial licensure as a nurse practitioner shall:

1. Be currently licensed as a registered nurse in Virginia;
2. Submit evidence of ~~completion~~ of a *graduate degree in nursing [or in the appropriate nurse practitioner specialty]* from an educational program designed to prepare nurse practitioners that is an approved program as defined in 18 VAC 90-30-10;
3. Submit evidence of professional certification *that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18 VAC 90-30-90 as an agency accepted by the boards;*
4. File the required application; and
5. Pay the application fee prescribed in 18 VAC 90-30-50.

B. Provisional licensure may be granted to an applicant who satisfies all requirements of this section with the exception of subdivision A 3 of this section only until the release of the results of the first national certifying examination for which he is eligible following his application.

18 VAC 90-30-85. Qualifications for licensure by endorsement.

An applicant for licensure by endorsement as a nurse practitioner shall:

1. *Provide verification of licensure as a nurse practitioner or advanced practice nurse in another U.S. jurisdiction with a license in good standing, or, if lapsed, eligible for reinstatement;*
2. *Submit evidence of professional certification that is consistent with the specialty area of the applicant's educational preparation issued by an agency accepted by the boards as identified in 18 VAC 90-30-90; and*
3. *Submit the required application and fee as prescribed in 18 VAC 90-30-50.*

18 VAC 90-30-90. Certifying agencies.

A. The boards shall accept the professional certification by examination of the following:

Final Regulations

1. American College of Nurse Midwives Certification Council;
 2. American Nurses' Credentialing Center;
 3. Council on Certification of Nurse Anesthetists;
 4. ~~National Certification Board of Pediatric Nurse Practitioners and Nurses~~ *Pediatric Nursing Certification Board*;
 5. National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties; and
 6. American Academy of Nurse Practitioners.
- B. The boards may accept professional certification from other certifying agencies on recommendation of the Committee of the Joint Boards of Nursing and Medicine provided the agency meets the definition of a national certifying body set forth in 18 VAC 90-30-10 and that the professional certification is awarded on the basis of:
1. Completion of an approved educational program as defined in 18 VAC 90-30-10; and
 2. Achievement of a passing score on an examination.

VA.R. Doc. No. R04-49; Filed January 19, 2005; 11:49 a.m.



FORMS

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

EDITOR'S NOTICE: The following forms have been filed by the Department of Environmental Quality. The revised forms include only minor technical changes. The forms are available for public inspection at the Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219, or the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia. Copies of the forms may be obtained from G. Stephen Coe, Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219, P.O. Box 10009, Richmond, Virginia, 23219, telephone (804) 698-4029 or e-mail gscoe@deq.virginia.gov.

Title of Regulation: **9 VAC 20-130. Regulations for the Development of Solid Waste Management Plans.**

FORMS

Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 (rev. 6/00).

Locality Recycling Rate Report, DEQ Form 50-30 (rev. ~~4/03~~ 12/04).

GENERAL NOTICES/ERRATA

CHILD DAY-CARE COUNCIL

Periodic Review of Regulations

Pursuant to Executive Order Number 21 (2002), the Child Day-Care Council is currently reviewing 22 VAC 15-10, Public Participation Guidelines, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 21 (2002) and the Department of Social Services' Plan for Review of Existing Agency Regulations.

The council seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until February 28, 2005, in care of Richard Martin, Manager, Office of Legislative and Regulatory Affairs, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, by facsimile to (804) 726-7906, or by e-mail to richard.martin@dss.virginia.gov.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Compulsory Minimum Training Standards for Entry Level Law-Enforcement Officers

The Committee on Training of the Criminal Justice Services Board has approved changes to the training objectives, criteria, and lesson plan guides of the Compulsory Minimum Training Standards for Entry Level Law-Enforcement Officers as part of its annual review under 6 VAC 20-20-25. Copies of the changes may be obtained by contacting Judith Kirkendall at Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, or judith.kirkendall@dcjs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load (TMDL) for Accomack County

The Department of Environmental Quality (DEQ), Virginia Department of Health and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria in seven shellfish propagation waters located Accomack County, Virginia.

All impaired segments are located wholly within Accomack County except for Occohannock Creek which is split between Accomack and Northampton Counties. These areas are described in the following publications:

1. Growing Area 75, Pocomoke Sound and Pocomoke River as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 33, effective 15 October 1996, and Number 118 for Starling Creek, effective 27 April 1989.

2. Growing Area 76 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 167 for Messongo Creek, effective 10 December 1993, and 176 for Young and Guilford Creeks.

3. Growing Area 81, Pungoteague Creek as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 119 for Pungoteague Creek effective 24 February 1997 and 200, for Butcher Creek.

4. Growing Area 82 Nandua and Currituck Creeks, as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 160 for Onancock Creek and 175, for Back Creek.

5. Growing Area 83, Craddock Creek, as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 195.

6. Growing Area 84, Occohannock Creek as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 43.

7. Growing Area 101 Asseteague and Chincoteague Islands south as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 20.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The first public meeting on the development of the fecal coliform TMDL's will be held on March 3, 2005, from 7 p.m. to 9 p.m. at the Accomack County Administration Building, 23296 Courthouse Avenue Accomac, Virginia. Directions can be obtained by calling Chester Bigelow at (804) 698-4554 or Yvonne Williams at (757) 787-5700.

The public comment period will begin on March 3, 2005, and end on April 1, 2005. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or e-mail ccbigelow@deq.virginia.gov.

Total Maximum Daily Load (TMDL) for Callahan Creek

The Virginia Department of Environmental Quality (DEQ), the Department of Mines Minerals and Energy and the Department of Conservation and Recreation seek written and oral comments from interested persons on the draft Total Maximum Daily Load (TMDL) Study for Callahan Creek in Wise County. This stream was identified on the 1998 303(d) Total Maximum Daily Load Priority List and Report as impaired due to violations of the state's water quality standards for the aquatic life use measured by benthic macroinvertebrate samples. In 2004 the stream was listed for bacteria violations also.

The public meeting to present the draft TMDL report to address the benthic and bacteria impairments will be held on Tuesday, February 22, 2005, at 7 p.m. at the First Apostolic Faith Church of God in Appalachia, Virginia. The church is located at 403 Callahan Avenue (Rt. 78N) in Appalachia, Virginia. Note: Should schools be closed due to snow on February 22, the meeting will be rescheduled. The rescheduled date will be posted on the DEQ web site and on signs in the watershed.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

Callahan Creek is in Wise County north of Appalachia, Virginia. The impairments include about 5.2 miles of stream. The lower two miles has both bacteria and benthic impairments and the upper three miles are listed for bacteria violations only. The upstream impairment ends just above Stonega at Possum Trot Hollow. The draft TMDL study identifies sediment and conductivity/total dissolved solids as the stressors for aquatic life problems. The draft study proposes reductions in sedimentation, conductivity/total dissolved solids and bacteria so that the stream can meet the water quality standards.

The public comment period for the draft report will end on March 23, 2005. After February 7, 2005, the draft study can be viewed from the DEQ website: <http://www.deq.virginia.gov/tmdl/homepage.html>. Address questions or information requests to Nancy T. Norton, P. E. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

Total Maximum Daily Load (TMDL) for Cockrell Creek

The Department of Environmental Quality (DEQ), Virginia Department of Health and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria in shellfish

propagation waters in Cockrell Creek, located in Northumberland County, Virginia.

The impaired segment is located wholly within Northumberland County. This area is described in the following publication:

Growing Area 12 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Numbers 2 and 202, Cockrell Creek, effective 14 September 1993, and 23 August 1999, and 15 November 2004 respectively.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The first public meeting on the development of the fecal coliform TMDL's will be held on March 1, 2005, from 7 p.m. to 9 p.m. at the Northumberland County Board Room, located at 72 Monument Place, Heathsville, Virginia. Directions can be obtained by calling Chris French at (804) 521-5124. The public comment period will begin on March 1, 2005, and end at 5 p.m. on March 31, 2005. Questions or information requests should be addressed to Chris French and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chris French, Department of Environmental Quality, Piedmont Regional Office, Glen Allen, VA, 23060, telephone (804) 527-5124, FAX (804)-527-5106, or e-mail rcfrench@deq.virginia.gov.

Total Maximum Daily Load (TMDL) for Onancock Creek

The Department of Environmental Quality (DEQ), Virginia Department of Health and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for fecal coliform bacteria in shellfish propagation waters located in Onancock Creek, Accomack County, Virginia.

All impaired segments are located wholly within Accomack County and the Town of Onancock. These areas are described in the following publications:

Growing Area 80 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 13 for Onancock Creek and Number 169, for Mechtank Creek, effective 2 April 1997.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for

General Notices/Errata

each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

The first public meeting on the development of the fecal coliform TMDL's will be held on March 2, 2005, from 7 p.m. to 9 p.m. at the Town of Onancock Council Chambers, 15 North Street, Onancock, Virginia. Directions can be obtained by calling Chester Bigelow at (804) 698-4554 or the Town Offices at (757) 787-3363.

The public comment period will begin on March 2, 2005, and end on April 1, 2005. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or e-mail cbigelow@deq.virginia.gov.

Total Maximum Daily Load (TMDL) Study for Straight Creek and tributaries; Stone Creek, Ely Creek, Puckett Creek, Lick Branch, Baileys Trace and Gin Creek in Lee County

The Virginia Department of Environmental Quality (DEQ), the Department of Mines Minerals and Energy and the Department of Conservation and Recreation seek written and oral comments from interested persons on the draft Total Maximum Daily Load (TMDL) Study for Straight Creek and tributaries: Stone Creek, Ely Creek, Puckett Creek, Lick Branch, Baileys Trace and Gin Creek in Lee County. These streams were identified on the 1998 303(d) Total Maximum Daily Load Priority List and Report as impaired due to violations of the state's water quality standards for the General Standard (benthic) and Bacteria.

The public meeting on the draft TMDL addressing the benthic and bacteria impairments will be held on Thursday, February 10, 2005 at 7 p.m. in the St. Charles Elementary School gymnasium. St. Charles Elementary School address is 1 Main Street in St. Charles, Virginia. Note: Should the school be closed due to snow on February 10, the meeting will be rescheduled. The rescheduled date will be posted on the DEQ web site and on signs in the watershed.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

Straight Creek and its tributary streams are located in Lee County northwest of Pennington Gap, Virginia. The impairments include about 38 miles of streams in the Straight Creek watershed. Straight Creek flows through St. Charles. The entire length of Straight Creek from its headwaters to confluence with North Fork Powell River is included. Stone Creek follows Route 421 west towards the Kentucky/Virginia state line. The draft TMDL study identifies sediment and conductivity/total dissolved solids as the stressors for aquatic life problems. The draft study proposes reductions in sedimentation, conductivity/total dissolved solids and bacteria so that the stream can meet the water quality standards.

The public comment period for the draft report will end on March 14, 2005. After February 7, 2005, the draft study can be viewed or downloaded and printed from the DEQ website: <http://www.deq.virginia.gov/tmdl/homepage.html>. Address questions or information requests to Nancy T. Norton, P. E. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Nancy T. Norton, P. E., Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212-1688, telephone (276) 676-4807, FAX (276) 676-4899, or e-mail ntnorton@deq.virginia.gov.

DEPARTMENT OF HEALTH

Drinking Water Construction Funding

The Department of Health (VDH) will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Fund (WSAGF) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, contact Thomas B. Gray, at (804) 864-7501.

Dates and locations are:

9:00 a.m.-12:00 p.m., Wednesday, February 23, 2005 at the Pittsylvania/Danville Health District's Auditorium, 326 Taylor Drive, Danville, VA

9:00 a.m.-12:00 p.m., Thursday, February 24, 2005 at the Southwest VA Higher Education Center, Room 240, Abingdon, VA

9:00 a.m.-12:00 p.m., Friday, February 25, 2005 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA

9:00 a.m.-12:00 p.m., Monday, February 28, 2005 at the Chesterfield County Health Department's Multi-purpose Room, 9501 Lucy Corr Circle, Chesterfield, VA

9:00 a.m.-12:00 p.m., Wednesday, March 2, 2005 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA

9:00 a.m.-12:00 p.m., Thursday, March 3, 2005 at the Town of Windsor's Municipal Building Counsel Chamber, 8 East Windsor Blvd., Windsor, VA (Isle of Wight County)

I am pleased to announce several opportunities for drinking water funding. Construction applications may be submitted year round. However, applications received after the due date stated below will be considered for funding in following cycle. As described below, funding is made possible by our Drinking Water State Revolving Fund (DWSRF) Program. We anticipate having at least \$14 million. Also the enclosed attachment describes our Water Supply Assistance Grant Fund Program. Our FY 2006 DWSRF Intended Use Plan will be developed using your input on these issues.

(1) 1452(k) Source Water Protection Initiatives - (Yellow application) Must be postmarked by April 1, 2005.

This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to: (1) community and non-profit noncommunity waterworks to acquire land/conservation easements and (2) to community waterworks, only, to establish local, voluntary incentive-based protection measures.

(2) Construction Funds – (Cream application) Must be postmarked by April 1, 2005.

Private and public owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds, etc. Readiness to proceed with construction is a key element. A Preliminary Engineering Report must be submitted if required by VDH. An instruction packet and Construction Project Schedule are included.

(3) Set-Aside Suggestion Forms – (White form) Must be postmarked by April 1, 2005.

Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(4) Planning & Design Grants – (Gray application) Must be postmarked by August 26, 2005.

Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to \$25,000 per project for small, rural, financially stressed, community waterworks serving fewer than 3,300 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds.

The VDH's Program Design Manual describes the features of the above opportunities for funding. After receiving the aforementioned public input, VDH will develop a draft Intended Use Plan for public review and comment. When developed in August 2005, the draft Intended Use Plan will

describe specific details for use of the funds. A public meeting is planned for October 2005 and written comments will be accepted before we submit a final version to the USEPA for approval.

I am pleased to announce an opportunity for drinking water funding. Funding is made possible by our Water Supply Assistance Grant Fund with the availability of at least \$360,000. This is all grant funding.

The 1999 General Assembly created the Water Supply Assistance Grant (WSAG) Fund in § 32.1-171.2 of the Code of Virginia. The purpose of the WSAG is to make grant funds available to localities and owners of waterworks to assist in the provision of drinking water.

Funds are available by submitting an application postmarked on or before the dates indicated for the following three project types.

(1) Planning Grants – Application must be postmarked by August 26, 2005.

Of available funding, \$60,000 or 16.67% will be used for planning needs. Your application cannot exceed this amount.

In ranking of applications, preference is given to those that address problems of small, rural, community waterworks with multi-jurisdictional support. The applicant submits the current VDH planning application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF funding purposes only, up to 50 extra points are added to the DWSRF rating criteria relative to the Stress Index rank.

Eligible activities may include (but not be limited to): Capacity building activities addressing regionalization or consolidation, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, income surveys, preliminary engineering planning, design and preparation of plans and specifications, or other similar technical assistance projects.

(2) Surface Water Development or Improvement Grants – Application must be postmarked by April 1, 2005.

Of available funding, \$200,000 or 55.55% will be used for community waterworks surface source water development or improvement activities. Your application cannot exceed this amount.

The applicant submits the current VDH construction application to VDH. In ranking of applications, preference is given to those that address problems of small, rural, community waterworks with multi-jurisdictional support.

Eligible activities may include: land purchase, options to purchase land, general site development costs, and dam upgrade and construction.

(3) Small Project Construction Grants – Application must be postmarked by April 1, 2005.

General Notices/Errata

Of available funding, \$100,000 or 27.78% will be used for small project construction that is defined as a project whose total project cost does not exceed \$50,000. Eligible activities may include (but not be limited to): upgrade or construction of well or spring sources, waterlines, storage tanks, and treatment.

The applicant submits the current VDH construction application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAGF purposes only, up to 30 extra points are added to the VDH rating criteria relative to the Stress Index rank. Preference is given to community waterworks. This priority system ensures that all eligible acute or chronic health/ SDWA compliance projects are funded before any other eligible project.

The VDH's WSAGF Program Guidelines describes the features of the above opportunities for funding.

You may request the applications or Program Guidelines from my office by writing, calling, or faxing at the above address. The applications are also accessible on our web site www.vdh.virginia.gov/dw.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Increase the Disproportionate Share Hospital (DSH) Reimbursement Limit for FY 2005

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for inpatient hospitals pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). The change contained in this public notice is occurring in response to the federal Benefits Improvement and Protection Act (BIPA), which now permits states to temporarily increase the DSH limit from 100% to 175% of uncompensated care costs for state fiscal years 2004 and 2005. DMAS intends to make a supplemental DSH payment of \$40 million to Type I hospitals in FY2005. DMAS may not be able to make this payment without increasing the DSH limit. DMAS proposes to fund this payment by an intergovernmental transfer.

A copy of this notice is available for public review from Scott Crawford, Director, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Crawford and such comments are available for review at the same address.

Notice of Intent to Increase the Nursing Facility Per Diem Reimbursement Rate

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for nursing facilities pursuant to Chapter 4, Item 326 YY of the 2004 Acts of the Assembly. This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). The change contained in this public notice is occurring in response to a 2004 Virginia General Assembly mandate requiring the Department of Medical Assistance Services to increase by \$3.00 the per recipient per diem reimbursement rate paid to nursing facilities.

A copy of this notice is available for public review from Scott Crawford, Director, Provider Reimbursement Division, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Mr. Crawford and such comments are available for review at the same address.

Notice of Intent to Increase Payments to Nursing Facilities for Residents Requiring Specialized Treatment Beds

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement plan for nursing facilities pursuant to the department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). The changes contained in this public notice are occurring in response to the cost of providing specialized treatment beds for nursing facility residents who have stage IV pressure ulcers. This payment methodology change is resulting from a specific mandate to the department in the 2004 Acts of the Assembly, Chapter 4, Item 326 RR.

DMAS was directed to modify its reimbursement methodology for nursing facilities to provide an additional \$10 per day reimbursement for residents who require specialized treatment beds due to their having at least one treatable stage IV pressure ulcer. This additional \$10 per day to be added to these NFs' per diem rates is intended to defray their costs of providing specialized treatment beds to their residents with stage IV pressure ulcers. To qualify for this additional payment, NFs must obtain the required prior authorization for each resident who requires this additional service.

DMAS estimates that the annual total fund cost would be approximately \$1.5 million. This estimate assumes that each resident who requires this additional service will need it for an average of 90 days.

A copy of this notice is available for public review from Diana Thorpe, Director, Division of LTC and Quality Assurance, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review at any local public library. Comments or inquiries may be submitted, in writing,

within 30 days of this notice publication to Ms. Thorpe and such comments are available for review at the same address.

BOARD OF PHARMACY

Notice of Periodic Review of Regulations

The Board of Pharmacy within the Department of Health Professions is conducting a periodic review of its regulations for collaborative practice agreements between pharmacists and physicians.

18 VAC 110-40, Regulations for Collaborative Practice Agreements became effective on January 17, 2001, and has not been revised since that date. The board is receiving comment on whether there is a need for amendments for consistency with changes in practice and patient care.

If any member of the public would like to comment on these regulations, please send comments by March 9, 2005, to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 6603 West Broad Street, Richmond, VA 23230-1712. Comments may also be e-mailed to elaine.yeatts@dhp.virginia.gov or faxed to (804) 662-9114. Regulations for collaborative practice may be viewed on-line at www.townhall.virginia.gov or www.dhp.virginia.gov or copies will be sent upon request.

DEPARTMENT OF SOCIAL SERVICES

Periodic Review of Regulations

Pursuant to Executive Order Number 21 (2002), the Department of Social Services is currently reviewing 22 VAC 10-100, Minimum Standards for Licensed Child Care Institutions, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 21 (2002) and the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until February 28, 2005, in care of Kathryn Thomas, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, by facsimile to (804) 726-7132, or by e-mail to kathryn.thomas@dss.virginia.gov.

Periodic Review of Regulations

Pursuant to Executive Order Number 21 (2002), the Department of Social Services is currently reviewing 22 VAC

10-160, Fee Requirements for Processing Applications, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 21 (2002) and the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until February 28, 2005, in care of Kathryn Thomas, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, by facsimile to (804) 726-7132, or by e-mail to kathryn.thomas@dss.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order - Blackstock, Inc.

The State Water Control Board (SWCB) proposes to issue a Consent Special Order (CSO) to Blackstock, Inc., regarding violations of the requirements of the State VPDES Storm Water Program. The settlement is a civil enforcement action resolving unpermitted construction activities at the Summerplace Subdivision in Roanoke County. On behalf of the SWCB, the department will consider written comments relating to this settlement for 30 days after the date of publication of this notice. Comments should be addressed to Steven B. Wright, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, NW, Roanoke, VA 24019.

The final CSO may be examined at the department during regular business hours. Copies are available from Mr. Wright at the address above, or by calling him at (540) 562-6792, or by e-mail sbwright@deq.virginia.gov.

Proposed Consent Special Order - Town of Crewe

The Department of Environmental Quality, on behalf of the State Water Control Board, and the Town of Crewe have agreed to a Consent Special Order in settlement of a civil enforcement action under the Virginia State Water Control Law permit regulation 9 VAC 25-31, regarding the town's wastewater treatment plant and conveyance system. The department will consider written comments relating to this order for 30 days from the date of this notice. Comments must include name, address, and telephone number and can be e-mailed to hfwaggoner@deq.virginia.gov or mailed to Harry F. Waggoner, Department of Environmental Quality, South Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

The order is available at www.deq.virginia.gov/enforcement/notices.html and at the above office during regular business hours. You may request

General Notices/Errata

copies from Mr. Waggoner by calling him at (434) 582-5120 ext. 6037.

Proposed Consent Special Order - Dinwiddie County Water Authority

The State Water Control Board proposes to issue a Consent Special Order to the Dinwiddie County Water Authority to resolve certain alleged violations of environmental laws and regulations occurring at their facility in Dinwiddie County, Virginia. The proposed order requires Dinwiddie County Water Authority to execute corrective action and pay a civil charge.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments related to the proposed consent special order. Comments should be addressed to Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060-6295; or sent to the e-mail address of felupini@deq.virginia.gov. All comments received by e-mail must include the sender's name, address and phone number. A copy of the order may be obtained in person or by mail from the above office.

Proposed Consent Special Order - Henrico County

The State Water Control Board proposes to amend a Consent Special Order issued to Henrico County on January 7, 2003, to address sanitary sewer overflows from its collection system. The proposed amendment requires Henrico County to add the Fourmile Creek Trunk Sewer rehabilitation project to the order's schedule.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments related to the proposed consent special order. Comments should be addressed to Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060-6295; or sent to the e-mail address of felupini@deq.virginia.gov. All comments received by e-mail must include the sender's name, address and phone number. A copy of the order may be obtained in person or by mail from the above office.

Proposed Consent Special Order - Lesueur-Richmond Slate Corporation

The Department of Environmental Quality, on behalf of the State Water Control Board, and the Lesueur-Richmond Slate Corporation have agreed to a Consent Special Order in settlement of a civil enforcement action under the Virginia State Water Control Law, § 62.1-44.5 of the Code of Virginia, regarding the operation of the Buckingham-Appomattox Ready Mix Plant. The department will consider written comments relating to this order for 30 days from the date of this notice. Comments must include name, address, and telephone number and can be e-mailed to hfwaggoner@deq.virginia.gov or mailed to Harry F. Waggoner, Department of Environmental Quality, South

Central Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502.

The order is available at www.deq.virginia.gov/enforcement/notices.html and at the above office during regular business hours. You may request copies from Mr. Waggoner by calling him at (434) 582-5120 ext. 6037.

Proposed Consent Special Order - City of Richmond

The City of Richmond owns and operates a combined sanitary and stormwater sewer system which, during periods of rainfall, discharges pollutants from some or all of 29 outfalls to the James River and its local tributaries. The State Water Control Board proposes to issue a Consent Special Order to the City of Richmond to address combined sewer overflows occurring in the City's wastewater collection system. The order contains a schedule for system improvements and funding requirements for implementation of a long-term control plan.

The State Water Control Board is scheduled to consider this matter at their March 15, 2005, meeting. On behalf of the board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments related to the proposed Consent Special Order. Comments should be addressed to Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060-6295; or sent to the e-mail address of felupini@deq.virginia.gov. All comments received by e-mail must include the sender's name, address and phone number. A copy of the order may be obtained in person, by mail from the above office, or an electronic version can be provided by e-mail upon request.

Proposed Consent Special Order - Town of Mt. Jackson

The State Water Control Board proposes to enter into a Consent Special Order with the Town of Mt. Jackson to resolve violations of the State Water Control Law and regulations at Mt. Jackson's sewage treatment plant (STP) in Shenandoah, Virginia. The facility discharges to North Fork Shenandoah River in the Shenandoah River subbasin and the Potomac River basin.

The STP is exceeding its design capacity and experiencing effluent limitation violations due to an Inflow and Infiltration (I&I) problem in its collection system.

The proposed Consent Special Order settles outstanding Notices of Violation and incorporates a schedule of compliance to address the I&I problem and to construct a new and expanded sewage treatment plant. The order also assesses a civil charge for the violations.

The board will receive written comments relating to the Proposed Consent Special Order for 30 days from the date of publication of this notice. Comments should be addressed to Steven W. Hetrick, Department of Environmental Quality, Post Office Box 3000, Harrisonburg, Virginia 22801, and should refer to the consent special order. Comments may also be submitted via electronic mail to swhetrick@deq.virginia.gov.

In order to be considered, electronic comments must be received prior to the close of the comment period and must include the name, address, and telephone number of the person making the comment.

The proposed order may be examined at the Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801. A copy of the order may be obtained in person or by mail from this office.

Proposed Consent Special Order - Town of Vinton

The State Water Control Board (SWCB) proposes to issue an amendment to a Consent Special Order to the Town of Vinton in settlement of a civil enforcement action under the Permit Regulation. The SWCB will consider written comments relating to this settlement for 30 days after date of publication of this notice. Comments must include the sender's name, address, and phone number and can be e-mailed to rpsteele@deq.virginia.gov or mailed to Robert Steele, Department of Environmental Quality (DEQ), West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019.

The order is available at the DEQ home page at 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.

Proposed Consent Special Orders - Wellington, L.L.C., Tyson Farms, Inc., Southampton County, The City of Norfolk and Hampton Roads Sanitation District

The State Water Control Board proposes to enter into consent special orders with the following facilities in settlement of civil enforcement actions under the State Water Control Law:

Wellington, L.L.C. regarding the Wellington subdivision located in James City County, Virginia.

Tyson Farms, Inc. located in Accomack County, Virginia.

Southampton County regarding the wastewater treatment plant located in Boykins, Virginia.

The City of Norfolk and Hampton Roads Sanitation District regarding the sanitary sewage collection system located in Norfolk, Virginia.

The Department of Environmental Quality will consider written comments relating to the above listed special orders from February 7, 2005, to March 9, 2005. Comments should be addressed to Maria R. Nold, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462 and should refer to an order specified above. Comments may also be submitted by e-mail to mrnold@deq.virginia.gov. Comments must include the sender's name, address, and phone number. Proposed orders are available at www.deq.state.va.us/enforcement/notices.html and at the above office during regular business hours. You may also

request copies from Maria R. Nold at the address above or by calling her at (757) 518-2173.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-191. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Concentrated Animal Feeding Operations.**

Publication: 21:2 VA.R. 183-198 October 4, 2004.

Correction to Final Regulation:

Page 190, 9 VAC 25-191-50, Part II, C 1, line 14, change "December 31, 2025" to "December 31, 2005"

Title of Regulation: **9 VAC 25-720. Water Quality Management Planning Regulation.**

Publication: 21:9 VA.R. 1129-1154 January 10, 2005.

Correction to Final Regulation:

Page 1131, 9 VAC 25-720-50 A 22, second column, change "Goose" to "Goose Creek"

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 or contact the organization directly.

For additional information on open meetings and public hearings held by the standing committees of the legislature during the interim, please call Legislative Information at (804) 698-1500 or Senate Information and Constituent Services at (804) 698-7410 or (804) 698-7419/TTY☎, or visit the General Assembly web site's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD OF ACCOUNTANCY

† **April 22, 2005 - 9 a.m.** -- Public Hearing
Department of Professional and Occupational Regulation,
3600 West Broad Street, Room 395, Richmond, Virginia.

† **May 8, 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 Accountancy intends to amend regulations entitled **18 VAC 5-21, Board of Accountancy Regulations**. The purpose of the proposed action is to revise and clarify (i) qualifications for licensure including new language about the current computer based CPA exam and (ii) continuing professional education (CPE) requirements for initial applicants and regulants in ethics.

Statutory Authority: §§ 54.1-4402 and 54.1-4410 of the Code of Virginia.

Contact: Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 W. Broad St., Richmond, VA 23230, Richmond, VA 23230, telephone (804) 367-8505, FAX (804) 367-2174 or e-mail boa@boa.virginia.gov.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

March 17, 2005 - 9 a.m. -- Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor, Boardroom, Richmond, Virginia.♿

A meeting to discuss issues related to Virginia agriculture and consumer services. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy E. Seward, Board Secretary, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 211, Richmond, VA 23219, telephone (804) 786-3538, FAX (804) 371-2945, e-mail roy.seward@vdacs.virginia.gov.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Aquaculture Advisory Board

NOTE: CHANGE IN MEETING DATE

February 7, 2005 - 1 p.m. -- Open Meeting
Virginia Farm Bureau Federation, 12580 West Creek Parkway, Conference 3C, Third Floor, Richmond, Virginia.♿

A meeting to discuss issues related to Virginia aquaculture. For directions call 800-768-8323, extension 1155. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact T. Robins Buck at least five days before the meeting date so that suitable arrangements can be made.

Contact: T. Robins Buck, Board Secretary, Department of Agriculture and Consumer Services, 1100 Bank St., 2nd Floor, Richmond, VA 23219, telephone (804) 371-6094, FAX (804) 371-2945, e-mail Robins.Buck@vdacs.virginia.gov.

Virginia Bright Flue-Cured Tobacco Board

† **March 8, 2005 - 9:30 a.m.** -- Open Meeting
Sheldon's Restaurant, Business Routes 15 and 360, Keysville, Virginia.♿

A meeting to (i) review and consider approval of minutes of the last meeting; review the financial statement and budget for FY05-06; and (iii) consider funding proposals for research, promotion, and education projects pertaining to the Virginia flue-cured tobacco industry. Other business that may come before the board will be considered, as well. 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 D. Stanley Duffer at least five days before the meeting date so that suitable arrangements can be made.

Contact: D. Stanley Duffer, Board Secretary, Virginia Bright Flue-Cured Tobacco Board, P.O. Box 129, Halifax, VA 24558, telephone (434) 572-4568, FAX (434) 572-8234.

Virginia Cattle Industry Board

† **February 24, 2005 - 1:30 p.m.** -- Open Meeting
The Homestead, P.O. Box 2000, Hot Springs, Virginia. 

A meeting to (i) approve minutes from the November 2004 meeting; (ii) review the financial statements for the period October 1 through February 1; (iii) review financial statements for fiscal year 2002-2003, ending September 30, 2004, with a report from Herman Murray of Cherry, Bekeart, and Holland. Staff will give program updates for the state and national level. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Bill R. McKinnon at least five days before the meeting date so that suitable arrangements can be made.

Contact: Bill R. McKinnon, Executive Director, Virginia Cattle Industry Board, P.O. Box 9, Daleville, VA 24083, telephone (540) 992-1992, FAX (540) 992-4632

Virginia Corn Board

February 21, 2005 - 8 a.m. -- Open Meeting
DoubleTree Hotel, Richmond Airport, 5501 Eubank Street, Richmond, Virginia 

A meeting to (i) discuss checkoff revenues resulting from sales of the 2004 corn crop and approve the previous meeting minutes; (ii) hear FY 2004-2005 project reports and receive FY 2005-2006 project proposals; and (iii) make funding decisions for the fiscal year beginning July 1, 2005. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail Phil.Hickman@vdacs.virginia.gov.

Virginia Cotton Board

† **March 3, 2005 - 9:30 a.m.** -- Open Meeting
Tidewater Agriculture Research and Extension Center, 6321 Holland Road, Suffolk, Virginia. 

A meeting to (i) discuss and approve contractual arrangements with national and regional organizations; (ii) receive reports of programs and projects funded over the past year, (iii) conduct a hearing of Project Proposal Grant

Requests on cotton by VPIandSU, VSU, and other groups for the year 2005-06; and (iv) approve financial reports and minutes of the last Cotton Board meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Gail Moody Milteer at least five days before the meeting date so that suitable arrangements can be made.

Contact: Gail Moody Milteer, Program Director, Virginia Cotton Board, 1100 Armory Drive, Suite 120, Franklin, VA 23851, telephone (757) 569-1100, FAX (757) 562-6104.

Virginia Soybean Board

March 10, 2005 - 8 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia. 

A meeting to (i) discuss checkoff revenues resulting from sales of the 2004 soybean crop and approve previous meeting minutes; (ii) hear project reports for FY 2004-2005 and project proposals for FY 2005-2006; and (iii) make funding decisions for the fiscal year beginning July 1, 2005. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Philip T. Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 371-6157, FAX (804) 371-7786, e-mail Phil.Hickman@vdacs.virginia.gov.

Virginia Wine Board

February 24, 2005 - 11 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. 

A meeting to (i) approve the minutes of the last meeting held on November 18, 2004; (ii) review its financial statement; and (iii) discuss old business arising from the last meeting and any new business to come before the board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact David Robishaw at least five days before the meeting date so that suitable arrangements can be made.

Contact: David Robishaw, Board Secretary, Virginia Wine Board, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (434) 984-0573, FAX (434) 984-4156, e-mail David.Robishaw@vdacs.virginia.gov.

Calendar of Events

STATE AIR POLLUTION CONTROL BOARD

† **March 1, 2005 - 7 p.m.** -- Public Hearing
Pulaski County Board Room, 143 Third Street NW, Pulaski, Virginia. 

A public hearing to receive comments on an air permit application from Volvo Trucks North America to expand and operate a facility for the assembly and painting of heavy duty trucks near Dublin, Virginia, with a concurrent increase in emission rates of air pollutants.

Contact: Gary Bradley, Department of Environmental Quality, 3019 Peters Creek Rd., Roanoke, VA 24019, telephone (540) 562-6738, FAX (540) 562-6729, e-mail grbradley@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 cmberndt@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

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.

February 14, 2005 - 9 a.m. -- Open Meeting

February 28, 2005 - 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.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

March 22, 2005 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. 

A quarterly meeting.

Contact: Janet L. Honeycutt, Director of Grant Operations, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9333, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY , e-mail janet.honeycutt@vda.virginia.gov.

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

February 8, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Professional Engineers Section to conduct board business. 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 the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail APELSCIDLA@dpor.state.va.us.

February 10, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. 

A meeting of the Landscape Architects Section 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 the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail APELSCIDLA@dpor.state.va.us.

March 17, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
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 the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail APELSCIDLA@dpor.state.va.us.

ART AND ARCHITECTURAL REVIEW BOARD

March 4, 2005 - 10 a.m. -- Open Meeting
April 1, 2005 - 10 a.m. -- Open Meeting
† May 6, 2005 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street,
Richmond, Virginia. 

A monthly meeting to review projects submitted by state agencies. Art and Architectural Review Board submittal forms and submittal instructions can be downloaded by visiting the DGS Forms Center at www.dgs.state.va.us. Request form #DGS-30-905 or submittal instructions #DGS-30-906. The deadline for submitting project datasheets and other required information is two weeks prior to the meeting date.

Contact: Richard L. Ford, AIA Chairman, Art and Architectural Review Board, 101 Shockoe Slip, 3rd Floor, Richmond, VA 23219, telephone (804) 648-5040, FAX (804) 225-0329, toll free (804) 786-6152, or e-mail rford@comarchs.com.

VIRGINIA COMMISSION FOR THE ARTS

March 31, 2005 - 9 a.m. -- Open Meeting
Location to be determined. 

A quarterly meeting.

Contact: Peggy Baggett, Executive Director, Virginia Commission for the Arts, 223 Governor St., Richmond, VA 23219, telephone (804) 225-3132, FAX (804) 225-4327, (804) 225-3132/TTY , e-mail peggy.baggett@arts.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. The board will consider and may adopt amendments to the Asbestos Licensing Regulations and the Lead-Based Paint Activities Regulations.

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.

February 16, 2005 - 2 p.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting to conduct an informal fact-finding conference.

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.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

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.

February 24, 2005 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. 

A meeting to discuss issues and matters related to board business.

Contact: Elizabeth Young, Executive Director, Board of Audiology and Speech-Language Pathology, Alcoa Building,

Calendar of Events

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.

VIRGINIA AVIATION BOARD

† **February 15, 2005 - 3 p.m.** -- Open Meeting
† **February 16, 2004 - 9 a.m.** -- Open Meeting
Virginia Beach Economic Development, 222 Central Park Avenue, Suite 1000, Virginia Beach, Virginia. ♿

A regular bimonthly meeting. Applications for state funding will be presented to the board; other matters of interest will be presented to the Virginia aviation community. Individuals with disabilities should contact Carolyn Toth at least 10 days prior to the meeting if assistance is needed.

Contact: Carolyn Toth, Administrative Assistant, Virginia Aviation Board, 5702 Gulfstream Rd., Richmond, VA 23250, telephone (804) 236-3637, FAX (804) 236-3635, e-mail carolyn.toth@doav.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

April 4, 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 to consider 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. The department fully complies with the Americans with Disabilities Act.

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.

DEPARTMENT OF BUSINESS ASSISTANCE

Small Business Advisory Board

† **February 14, 2005 - 10 a.m.** -- Open Meeting
707 East Main Street, 3rd Floor Board Room, Richmond, Virginia. ♿

A regular meeting.

Contact: Barbara Anderson, Assistant to the Director, 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.

CEMETERY BOARD

February 24, 2005 - 10 a.m. -- Open Meeting
† **March 1, 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.

CHARITABLE GAMING BOARD

March 1, 2005 - 10 a.m. -- Open Meeting
Science Museum of Virginia, 2500 West Broad Street, Discovery Room, Richmond, Virginia. ♿

A regular quarterly meeting.

Contact: Clyde E. Cristman, Director, Department of Charitable Gaming, James Monroe Bldg., 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 786-1681, FAX (804) 786-1079, e-mail clyde.cristman@dgc.virginia.gov.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **February 15, 2005 - 10 a.m.** -- Open Meeting
James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia.

The Northern Area Review Committee will conduct general business, including review of compliance by various local Chesapeake Bay Preservation Area programs.

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.

† **February 15, 2005 - 2 p.m.** -- Open Meeting
Chesapeake Bay Local Assistance Board, James Monroe Building, 101 North 14th Street, 17th Floor, Richmond, Virginia.

The Southern Area Review Committee will conduct general business, including review of compliance by various local Chesapeake Bay Preservation Area programs.

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.

STATE CHILD FATALITY REVIEW TEAM

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.

STATE BOARD FOR COMMUNITY COLLEGES

March 16, 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 Development 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 ☎

March 17, 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 ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Virginia Cave Board

March 19, 2005 - 11 a.m. -- Open Meeting
Endless Caverns, New Market, Virginia.

Committee meetings will begin at 11 a.m. A general board meeting will begin at 1 p.m.

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.

Virginia Soil and Water Conservation Board

February 16, 2005 - 10 a.m. -- Open Meeting
The Science Museum of Virginia 2500 Broad Street, Richmond, Virginia.

March 23, 2005 - 10 a.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

A meeting of the Ad Hoc Committee on Dam Safety to be held in support of a July 15, 2004, motion of the Virginia Soil and Water Conservation Board that provides that the Virginia Soil and Water Conservation Board establish an ad Hoc Committee for the expressed purpose of studying the Classes of Impounding Structures (4 VAC 50-20-40), Performance Standards Required for Impounding Structures (4 VAC 50-20-50) and the attendant Table 1 established in the 2004 Virginia Impounding Structures Regulations.

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.

BOARD FOR CONTRACTORS

February 8, 2005 - 9 a.m. -- Open Meeting
February 9, 2005 - 9 a.m. -- Open Meeting
February 10, 2005 - 9 a.m. -- Open Meeting
February 15, 2005 - 9 a.m. -- Open Meeting
† February 17, 2005 - 9 a.m. -- Open Meeting
NOTE: CHANGE IN MEETING TIME
February 23, 2005 - 1 p.m. -- Open Meeting
February 23, 2005 - 1:30 p.m. -- Open Meeting
† March 3, 2005 - 9 a.m. -- Open Meeting
March 8, 2005 - 9 a.m. -- Open Meeting
† March 10, 2005 - 9 a.m. -- Open Meeting
† March 15, 2005 - 9 a.m. -- Open Meeting
† March 22, 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.

Calendar of Events

March 1, 2005 - 9 a.m. -- Open Meeting

April 19, 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 and review and render 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. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-2785 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: 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.

BOARD OF CORRECTIONS

March 15, 2005 - 10 a.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. ♿

A meeting of the Liaison Committee to discuss correctional matters of interest to the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

March 15, 2005 - 1 p.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. ♿

A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and policy/regulation matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

March 16, 2005 - 9:30 a.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. ♿

A meeting of the Administration Committee to discuss administrative matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

March 16, 2005 - 10 a.m. -- Open Meeting

Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia. ♿

A regular meeting to discuss matters to be considered by the board.

Contact: Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, e-mail woodhousebl@vadoc.state.va.us.

BOARD OF COUNSELING

February 11, 2005 - 9:30 a.m. -- Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

A meeting of the Discipline Committee to determine if possible violations of the regulations that govern the practice of counseling in Virginia have occurred.

Contact: Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail evelyn.brown@dhp.virginia.gov.

† **February 18, 2005 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, Conference Room 2, Richmond, Virginia. ♿

A meeting of the Ad Hoc Committee on Portability to discuss amendments to, and requirements of regulations to allow for the portability of licensure.

Contact: Benjamin Foster, Deputy Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-7250, (804) 662-7197/TTY ☎, e-mail Benjamin.foster@dhp.virginia.gov.

February 18, 2005 - 9 a.m. -- Public Hearing

Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia.

February 25, 2005 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-2007 of the Code of Virginia that the Board of Counseling intends to adopt regulations entitled **18 VAC 115-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed action is to set criteria for the delegation of certain types of cases to an appropriately qualified agency subordinate to conduct informal fact-finding on behalf of the board.

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

Public comments may be submitted until February 25, 2005, to Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, Richmond, VA 23219.

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.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

† **May 4, 2005 - 10 a.m.** -- Open Meeting
1602 Rolling Hills Drive, 2nd Floor Conference Room,
Richmond, Virginia. (Interpreter for the deaf provided upon
request)

A regular quarterly meeting of the advisory board.

Contact: Leslie Hutcheson Prince, Policy and Planning
Manager, Department for the Deaf and Hard-of-Hearing, 1602
Rolling Hills Dr., Suite 203, Richmond, VA 23235, telephone
(804) 662-9703, toll-free (800) 552-7917, (804) 662-9703/TTY
, e-mail leslie.prince@vddhh.virginia.gov.

BOARD OF DENTISTRY

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 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 establish the
criteria for delegation of certain informal fact-finding to an
agency subordinate.

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

Public comments may be submitted until February 11, 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.

March 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 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 establish the
qualifications for issuance of a temporary resident license in
dentistry.

Statutory Authority: §§ 54.1-2400 and 54.1-2711.1 of the
Code of Virginia.

Public comments may be submitted until March 11, 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.

DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

February 17, 2005 - 11 a.m. -- Open Meeting

March 17, 2005 - 11 a.m. -- Open Meeting

April 21, 2005 - 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.

BOARD OF EDUCATION

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.

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

Calendar of Events

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.

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.

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.

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.

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.

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.

February 23, 2005 - 9 a.m. -- Open Meeting

March 23, 2005 - 9 a.m. -- Open Meeting

April 20, 2005 - 9 a.m. -- Open Meeting

April 21, 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.

February 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 Education intends to amend regulations entitled **8 VAC 20-360, Rules Governing General Educational Development Certificates**. The purpose of the proposed action is to increase testing fees, change the language governing to whom a Virginia GED certificate may be issued, and change scoring requirements for issuance of a Virginia GED certificate.

Statutory Authority: §§ 22.1-16 and 22.1-224 of the Code of Virginia.

Contact: Dr. Yvonne Thayer, Director, Adult Education Programs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2293.

DEPARTMENT OF EDUCATION

† **April 14, 2005 - 8:45 a.m.** -- Open Meeting

April 15, 2005 - 8:45 a.m. -- Open Meeting

Tidewater region; location to be announced.

A meeting of the State Special Education Advisory Committee. Agenda to be determined.

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

Advisory Board on Teacher Education and Licensure

March 21, 2005 - 8:45 a.m. -- Open Meeting

April 18, 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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **February 10, 2005 - 7 p.m.** -- Open Meeting

St. Charles Elementary School, 1 Main Street, Gymnasium, St. Charles, Virginia. 

A public meeting on the draft TMDL addressing benthic and bacteria impairments on Straight Creek and tributaries, Stone Creek, Ely Creek, Puckett Creek, Lick Branch, Baileys Trace and Gin Creek in Lee County. The public notice appears in the Virginia Register of Regulations on February 7, 2005, and the comment period closes on March 14, 2005.

Contact: Nancy T. Norton, Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

February 17, 2005 - 7 p.m. -- Open Meeting

Cooks Corner Community Center, 2893 General Puller Highway, Saluda, Virginia. 

The final public meeting on the development of the fecal coliform TMDLs for shellfish propagation waters in Middlesex County. The public notice appears in the Virginia Register of Regulations on January 24, 2005.

Contact: Chester Bigelow, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, e-mail cbigelow@deq.virginia.gov.

† **February 22, 2005 - 7 p.m.** -- Open Meeting

First Apostolic Faith Church of God, 403 Callahan Avenue, Appalachia, Virginia. 

A public meeting to present the draft TMDL report to address the benthic and bacteria impairments in Callahan Creek in Wise County. The public comment period ends on March 23, 2005. The public notice appears in the Virginia Register of Regulations on February 7, 2005.

Contact: Nancy T. Norton, Department of Environmental Quality, P.O. Box 1688, Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

† **March 1, 2005 - 7 p.m.** -- Open Meeting

Northumberland County Board Room, 72 Monument Place, Heathsville, Virginia. 

The first public meeting on the development of the fecal coliform bacteria TMDL for shellfish propagation waters in Cockrell Creek in Northumberland County. The public notice appears in the February 7, 2005, issue of the Virginia

Calendar of Events

Register of Regulations. The public comment period runs from March 1, 2005, through March 31, 2005.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (840) 527-5124, FAX (804) 527-5106, e-mail rcfrench@deq.virginia.gov.

† **March 2, 2005 - 7 p.m.** -- Open Meeting
Town of Onancock Council Chambers, 15 North Street, Onancock, Virginia. 

The first public meeting on the development of the fecal coliform TMDL for shellfish propagation waters located in Onancock Creek in Accomack County. The public notice appears in the Virginia Register of Regulations on February 7, 2005. The comment period runs from March 2, 2005, through April 1, 2005.

Contact: Chester Bigelow, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, e-mail ccbigelow@deq.virginia.gov.

† **March 3, 2005 - 7 p.m.** -- Open Meeting
Accomack County Administration Building, 23296 Courthouse Avenue, Accomac, Virginia. 

The first public meeting on the development of fecal coliform bacteria TMDLs for seven shellfish propagations waters located in Accomack County. The public notice appears in the Virginia Register of Regulations on February 7, 2005. The public comment period runs from March 3, 2005, through April 1, 2005.

Contact: Chester Bigelow, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, e-mail ccbigelow@deq.virginia.gov.

BOARD OF FORESTRY

† **April 11, 2005 - 1 p.m.** -- Open Meeting
Virginia Military Institute, Lexington, Virginia.  (Interpreter for the deaf provided upon request)

A business meeting.

Contact: Donna S. Hoy, Administrative Staff Specialist, Board of Forestry, 900 Natural Resources Dr., Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, e-mail donna.hoy@dof.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

February 9, 2005 - 8:45 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. 

March 25, 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 Funeral Directors and Embalmers intends to amend regulations entitled **18 VAC**

65-20, Regulations of the Board of Funeral Directors and Embalmers. The purpose of the proposed action is to establish criteria for delegation of certain informal fact finding to an agency subordinate.

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

Public comments may be submitted until March 25, 2005, to Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712.

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.

February 9, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A formal administrative hearing 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.

March 8, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A meeting to discuss issues and matters as they relate to the board.

Contact: Elizabeth Young, Executive Director, Board of Funeral Directors and Embalmers, Alcoa Building, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9907, FAX (804) 662-9523, (804) 662-7197/TTY , e-mail elizabeth.young@dhp.virginia.gov.

BOARD OF GAME AND INLAND FISHERIES

† **February 10, 2005 - 10 a.m.** -- Open Meeting
Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A meeting of the Procurement Review Committee to receive a staff briefing on the department's current procurement process. The committee intends to present recommendations to the full board at its scheduled March 24, 2005, meeting. Public comment will not be received.

Contact: Ray Davis, Director of Administration, Department of Game and Inland Fisheries, 4016 W. Broad St., Richmond VA 23230, telephone (804) 367-2387, FAX (804) 367-9147.

BOARD FOR GEOLOGY

April 20, 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, 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.

STATE BOARD OF HEALTH

February 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 5-585, Biosolids Use Regulations**. The purpose of the proposed action is to provide standards for installation and operation of biosolids storage areas on permitted sites.

Contact: C.M. Sawyer, Division Director, Department of Health, 109 Governor St., 5th Floor, Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475, e-mail cal.sawyer@vdh.virginia.gov.

DEPARTMENT OF HEALTH

March 11, 2005 - 10:30 a.m. -- Open Meeting
Virginia Hospital and Healthcare Association, 4200 Innslake Drive, Glen Allen, Virginia. ☎

A meeting of the Advisory Committee for the Virginia Early Hearing Detection and Intervention Program. The advisory committee meets four times a year.

Contact: Pat T. Dewey, Program Manager, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7713, FAX (804) 864-7721, toll-free (866) 493-1090, (804) 828-1120/TTY ☎, e-mail pat.dewey@vdh.virginia.gov.

Sewage Handling and Disposal Appeal Review Board

February 23, 2005 - 10 a.m. -- Open Meeting
County of Henrico Government Center, 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.

DEPARTMENT OF HEALTH PROFESSIONS

February 18, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Board Room 3, Richmond, Virginia. ☎

A meeting of the Health Practitioners' Intervention Program Committee.

Contact: Peggy W. Call, Intervention Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9424, FAX (804) 662-7358, e-mail peggy.call@dhp.virginia.gov.

March 22, 2005 - 11 a.m. -- Open Meeting
Virginia State Forensic Science Building, 6600 Northside High School Road, Roanoke, Virginia. ☎

A working meeting of the Prescription Monitoring Program Advisory Committee for the purpose of reviewing data collected for the program evaluation workplan. Public comments will be received during the 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) 622-9240.

BOARD FOR HEARING AID SPECIALISTS

March 21, 2005 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A general business meeting to consider 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 interpretive services should contact the department at 804-367-8590 at least 10 days prior to this meeting so that suitable arrangements can be made for an appropriate accommodation. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail hearingaidspec@dpor.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

† **March 17, 2005 - 10 a.m.** -- Public Hearing
Greater Richmond Convention Center, 403 North 3rd Street, Room B-10, Richmond, Virginia.

† **April 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 Housing and Community Development intends to amend regulations entitled **13 VAC 5-21, Virginia Certification Standards**. The purpose of the

Calendar of Events

proposed action is to update regulations to the 2003 ICC model codes.

Statutory Authority: § 36-137 of the Code of Virginia.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

† **March 17, 2005 - 10 a.m.** -- Public Hearing
Greater Richmond Convention Center, 403 North 3rd Street, Room B-10, Richmond, Virginia.

† **April 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 Housing and Community Development intends to amend regulations entitled **13 VAC 5-31, Virginia Amusement Device Regulations**. The purpose of the proposed action is to update regulations to the 2003 ICC model codes.

Statutory Authority: § 36-98.3 of the Code of Virginia.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

† **March 17, 2005 - 10 a.m.** -- Public Hearing
Greater Richmond Convention Center, 403 North 3rd Street, Room B-10, Richmond, Virginia.

† **April 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 Housing and Community Development intends to amend regulations entitled **13 VAC 5-51, Virginia Statewide Fire Prevention Code**. The purpose of the proposed action is to update regulations to the 2003 ICC model codes.

Statutory Authority: § 27-97 of the Code of Virginia.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

† **March 17, 2005 - 10 a.m.** -- Public Hearing
Greater Richmond Convention Center, 403 North 3rd Street, Room B-10, Richmond, Virginia.

† **April 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 Housing and Community

Development intends to repeal regulations entitled **13 VAC 5-62, Virginia Uniform Statewide Building Code (USBC)** and adopt regulations entitled **13 VAC 5-63, Virginia Uniform Statewide Building Code (USBC)**. The purpose of the proposed action is to repeal 13 VAC 5-62 and adopt 13 VAC 5-63 to update regulations to the 2003 ICC model codes.

Statutory Authority: § 36-98 of the Code of Virginia.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

† **March 17, 2005 - 10 a.m.** -- Public Hearing
Greater Richmond Convention Center, 403 North 3rd Street, Room B-10, Richmond, Virginia.

† **April 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 Housing and Community Development intends to amend regulations entitled **13 VAC 5-91, Virginia Industrialized Building Safety Regulations**. The purpose of the proposed action is to update regulations to the 2003 ICC model codes.

Statutory Authority: § 36-73 of the Code of Virginia.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Information Technology Investment Board

† **February 9, 2005 - 9:30 a.m.** -- Open Meeting
VITA Operations Center, 110 South 7th Street, 3rd Floor, Training Room, Richmond, Virginia. 

A meeting of the Project Review Committee. Public comment will be heard at the conclusion of the meeting.

Contact: Roz Witherspoon, Executive Director, Information Technology Investment Board, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 343-9057, FAX (804) 343-9015, e-mail roz.witherspoon@vita.virginia.gov.

† **February 9, 2005 - 1 p.m.** -- Open Meeting
VITA Operations Center, 110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia. 

A regular meeting. Public comment will be heard at the conclusion of the meeting.

Contact: Roz Witherspoon, Executive Director, Information Technology Investment Board, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 343-9057, FAX (804) 343-9015, e-mail roz.witherspoon@vita.virginia.gov.

STATE BOARD OF JUVENILE JUSTICE

† **February 9, 2005 - 9 a.m.** -- Open Meeting
Cedar Lodge Training Facility, 1602 Old Bon Air Road, Bon Air, Virginia. 

The Secure Services Committee and Nonsecure Services Committee will meet at 9 a.m. to receive certification audit reports. The full board will meet at 10 a.m. to take certification action and to consider final action on proposed changes to 6 VAC 35-140, Standards for Juvenile Residential Facilities. The board may also take up other matters brought before it.

Contact: Donald Carignan, Regulatory Coordinator, State Board of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail carigndr@djj.state.va.us.

DEPARTMENT OF LABOR AND INDUSTRY

Virginia Apprenticeship Council

† **February 10, 2005 - 9:30 a.m.** -- Open Meeting
Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia. 

A subcommittee meeting.

Contact: Beverley Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.virginia.gov.

† **March 17, 2005 - 10 a.m.** -- Open Meeting
New Horizons Regional Education Center, 520 Butler Road, Hampton, Virginia.

A general business meeting.

Contact: Beverley Donati, Program Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382, FAX (804) 786-8418, (804) 786-2376/TTY , e-mail bgd@doli.virginia.gov.

STATE LIBRARY BOARD

March 14, 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.

COMMISSION ON LOCAL GOVERNMENT

† **March 14, 2005 - 10 a.m.** -- Open Meeting
The Jackson Center, 501 North 2nd Street, 1st Floor Board Room, Richmond, Virginia. 

A regular meeting to consider matters as may be presented.

Contact: Ted McCormack, Associate Director, Commission on Local Government, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, (804) 828-1120/TTY , e-mail ted.mccormack@dhcd.virginia.gov.

LONGWOOD UNIVERSITY

† **February 22, 2005 - 9:30 a.m.** -- Open Meeting
Retail Merchants' Association of Greater Richmond, 5101 Monument Avenue, Richmond, Virginia. 

A meeting to conduct routine business of the Executive Committee.

Contact: Jeanne S. Hayden, Office of the President, Longwood University, 201 High Street, Farmville, VA, telephone (434) 395-2004, e-mail haydenjs@longwood.edu.

MARINE RESOURCES COMMISSION

February 22, 2005 - 9:30 a.m. -- Open Meeting

March 22, 2005 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia.  (Interpreter for the deaf provided upon request)

A monthly 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

March 8, 2005 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia. 

A quarterly meeting required in the BMAS bylaws.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300,

Calendar of Events

Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail nancy.Malczewski@dmas.virginia.gov.

BOARD OF MEDICINE

February 11, 2005 - 8 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, 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.

February 11, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 📍

The Credentials Committee will meet to consider applicants for licensure. Public comments will be taken on agenda items.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

February 23, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, Richmond, Virginia.

The full board or a panel of the board will convene a formal hearing to inquire into allegations that certain practitioners may have violated laws and regulations concerning the practice of medicine and other healing arts in Virginia. The board may review cases with staff for case disposition including consideration of consent orders for settlement. The board will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Renee Dixon, Case Manager, Department of Health Professions, 6603 W. Broad St., Richmond, VA, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail Renee.Dixon@dhp.virginia.gov.

March 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 Medicine intends to amend regulations entitled **18 VAC 85-80, Regulations Governing the Practice of Occupational Therapy**. The purpose of the proposed action is to establish criteria for use of title of OTA.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.5 of the Code of Virginia.

Public comments may be submitted until March 11, 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.

March 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 Medicine intends to adopt regulations entitled **18 VAC 85-15, Regulations for Delegation to an Agency Subordinate**. The purpose of the proposed action is to establish criteria for the types of cases that may be heard by an agency subordinate in an informal fact-finding proceeding.

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

Public comments may be submitted until March 11, 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.

April 22, 2005 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

The Legislative Committee will 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.

Advisory Board on Acupuncture

April 6, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, 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.

Advisory Board on Athletic Training

April 7, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, 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.

Advisory Board of Occupational Therapy

April 5, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, 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 (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Physician Assistants

April 7, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, 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

April 6, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, 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

April 5, 2005 - 1 p.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street,
5th Floor, Board Room 4, 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 MILK COMMISSION

February 16, 2005 - 10:30 a.m. -- Open Meeting
Department of Mines, Minerals and Energy, Forestry Office
Building, 900 Natural Resources Drive, Charlottesville,
Virginia. ♿

A regular meeting to consider industry issues, distributor licensing, base transfers, and reports from staff. The commission offers anyone in attendance an opportunity to speak at the conclusion of the agenda. Those persons requiring special accommodations should notify the agency 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 Edward.Wilson@vdacs.virginia.gov.

DEPARTMENT OF MINES, MINERALS AND ENERGY

February 11, 2005 - 1 p.m. -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith
Building, 3405 Mountain Empire Road, Room 116, Big Stone
Gap, Virginia. ♿ (Interpreter for the deaf provided upon
request)

A meeting to give interested persons an opportunity to be heard in regard to the FY2005 Abandoned Mine Land Consolidated Grant Application to be submitted to the Federal Office of Surface Mining.

Contact: Roger Williams, Abandoned Mine Land Services Manager, Department of Mines, Minerals and Energy, Big Stone Gap, VA 24219, telephone (276) 523-8208, (800) 828-1120/TTY ☎, e-mail roger.williams@dmmme.virginia.gov.

Calendar of Events

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

† **February 9, 2005 - 8 a.m.** -- Open Meeting
Department of Motor Vehicles, 2300 West Broad Street,
Richmond, Virginia.  (Interpreter for the deaf provided upon
request)

A general business meeting.

Contact: J. C. Branche, R. N., Division Manager, Department
of Motor Vehicles, 2300 W. Broad St., Richmond VA 23220,
telephone (804) 497-7188, FAX (804) 367-1604, toll-free (800)
435-5137, (804) 272-9268/TTY , e-mail
jacquelin.branche@dmv.virginia.gov.

VIRGINIA MUSEUM OF FINE ARTS

February 16, 2005 - 9 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard,
Richmond, Virginia. 

The following committees will meet:

9 a.m. - Expansion Committee - Reynolds Lecture Hall
11 a.m. - Art Acquisitions Subcommittee - Library
12:45 p.m. - Artistic Oversight Committee - CEO Parlor
3:15 p.m. - Government Affairs Committee - CEO Dining
Room

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.

February 17, 2005 - 9 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard, CEO 2nd
Floor Conference Room, Richmond, Virginia. 

A meeting of the Fiscal Oversight 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.

February 17, 2005 - Noon -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard, CEO
Parlor, Richmond, Virginia. 

A meeting of the Board of Trustees. Part of the meeting will
be in closed session. 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.

March 1, 2005 - 8 a.m. -- Open Meeting

April 5, 2005 - 8 a.m. -- Open Meeting

† **May 3, 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.

VIRGINIA MUSEUM OF NATURAL HISTORY

† **February 11, 2005 - 1 p.m.** -- Open Meeting
Virginia Museum of Natural History, 1001 Douglas Avenue,
Martinsville, Virginia. 

A meeting of the Executive Committee to discuss the
direction and management of the museum.

Contact: Cindy Gray, Director's Assistant, Virginia Museum
of Natural History, 1001 Douglas Ave., Martinsville, Virginia
24112, telephone (276) 666-8616, FAX (276) 632-6487, (276)
666-8638/TTY , e-mail cgray@vmnh.net.

† **February 12, 2005 - 10 a.m.** -- Open Meeting
Quality Inn/Dutch Inn, 2360 Virginia Avenue, Collinsville,
Virginia. 

A meeting to hear reports from all standing board
committees.

Contact: Cindy Gray, Director's Assistant, Virginia Museum
of Natural History, 1001 Douglas Ave., Martinsville, Virginia
24112, telephone (276) 666-8616, FAX (276) 632-6487, (276)
666-8638/TTY , e-mail cgray@vmnh.net.

BOARD OF NURSING

February 8, 2005 - 9 a.m. -- Open Meeting

February 14, 2005 - 9 a.m. -- Open Meeting

February 15, 2005 - 9 a.m. -- Open Meeting

February 22, 2005 - 9 a.m. -- Open Meeting

April 5, 2005 - 9 a.m. -- Open Meeting

April 6, 2005 - 9 a.m. -- Open Meeting

April 11, 2005 - 9 a.m. -- Open Meeting

April 12, 2005 - 9 a.m. -- Open Meeting

April 19, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street,
5th Floor, Richmond, Virginia. 

A Special Conference Committee, comprised of two
members of the Virginia Board of Nursing or agency
subordinate, will conduct informal conferences with
licensees and certificate holders. Public comment will not be
received.

Contact: Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive
Director, Board of Nursing, 6603 West Broad Street, 5th Floor,
Richmond, VA 23230, telephone (804) 662-9909, FAX (804)

662-9512, (804) 662-7197/TTY ☎, e-mail nursebd@dhp.virginia.gov.

March 14, 2005 - 9 a.m. -- Open Meeting

March 16, 2005 - 9 a.m. -- Open Meeting

March 17, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Board 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.

March 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 intends to amend regulations entitled **18 VAC 90-20, Regulations Governing the Practice of Nursing**, and **18 VAC 90-25, Regulations Governing Certified Nurse Aides**. The purpose of the proposed action is to consolidate requirements for advanced certified nurse aides and for wearing identification and notifications to the Board of Nursing into 18 VAC 90-25, regulations for nurse aides.

Statutory Authority: §§ 54.1-2400 and 54.1-3025.1 of the Code of Virginia.

Public comments may be submitted until March 11, 2005, to Jay Douglas, R.N., Executive Director, Board of Nursing, 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.

March 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 intends to amend regulations entitled **18 VAC 90-20, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to clarify requirements in the nurse practitioner regulations for consistency with the Nurse Licensure Compact.

Statutory Authority: §§ 54.1-2400 and 54.1-3025.1 of the Code of Virginia.

Public comments may be submitted until March 11, 2005, to Jay Douglas, R.N., Executive Director, Board of Nursing, 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.

March 15, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 W. Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. ♿

A general business meeting including committee reports, consideration of regulatory action and discipline case decisions as presented on the agenda. Public comment will be received at 11 a.m.

Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9909, FAX (804) 662-9512, (804) 662-7197/TTY ☎, e-mail jay.douglas@dhp.virginia.gov.

March 25, 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 intends to amend regulations entitled **18 VAC 90-15, Regulations Governing Delegation to an Agency Subordinate**. The purpose of the proposed action is to establish criteria for delegation of certain informal fact finding to an agency subordinate.

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

Public comments may be submitted until March 25, 2005, to Jay Douglas, R.N., Executive Director, Board of Nursing, 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.

JOINT BOARDS OF NURSING AND MEDICINE

February 23, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿

April 13, 2005 - 9 a.m. -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

A meeting of the Joint Boards of Nursing and Medicine.

Contact: Jay P. Douglas, RN, MSM, CSAC, 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.

Calendar of Events

March 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 intends to amend regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to clarify requirements in the nurse practitioner regulations for consistency with the Nurse Licensure Compact.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public comments may be submitted until March 11, 2005, to Jay Douglas, R.N., Executive Director, Board of Nursing, 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.

March 25, 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 intends to amend regulations entitled **18 VAC 90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to establish the required content of the written protocol authorizing nurse practitioners to sign a certain document in lieu of the supervising physician.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public comments may be submitted until March 25, 2005, to Jay Douglas, R.N., Executive Director, Board of Nursing, 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.

BOARD OF NURSING HOME ADMINISTRATORS

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.

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.

OLD DOMINION UNIVERSITY

NOTE: CHANGE IN MEETING DATE

February 14, 2005 - 3 p.m. -- Open Meeting

March 21, 2004 - 3 p.m. -- Open Meeting

Old Dominion University, Webb University Center, 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, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

April 8, 2005 - 1 p.m. -- Open Meeting

Old Dominion University, Webb University Center, Norfolk, Virginia. ♿

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the Rector and the President.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD FOR OPTICIANS

April 15, 2005 - 9:30 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia ♿

A general business meeting to consider 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 interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Executive Director, Board for Opticians, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-6295, (804) 367-9753/TTY ☎, e-mail opticians@dpor.virginia.gov.

BOARD OF OPTOMETRY

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.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

March 16, 2005 - 10 a.m. -- Open Meeting
202 North 9th Street, 9th Floor, Richmond, Virginia. 

An Executive Committee meeting.

Contact: Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (800) 846-4464/TTY , e-mail sandra.smalls@vbpd.virginia.gov.

March 17, 2005 - 9 a.m. -- Open Meeting
Holiday Inn, 6531 West Broad Street, Richmond, Virginia. 
(Interpreter for the deaf provided upon request)

A quarterly meeting.

Contact: Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-0016, FAX (804) 786-1118, toll-free (800) 846-4464, (800) 846-4464/TTY , e-mail sandra.smalls@vbpd.virginia.gov.

BOARD OF PHARMACY

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 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.

February 17, 2005 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. 

A meeting of an Informal Conference Committee for approval of pilot program applications. No public comment will be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

† **February 22, 2005 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. 

A panel will discuss disciplinary matters. No public comment will be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, Virginia 23230, telephone (804) 662-9911, FAX (804) 662-9313.

March 4, 2005 - 9 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

March 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 Pharmacy intends to amend regulations entitled **18 VAC 110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed regulation is to set requirements that must be met for a dispensing pharmacy to outsource prescription order processing to a remote or centralized pharmacy.

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public comments may be submitted until March 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.

Calendar of Events

BOARD OF PHYSICAL THERAPY

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 Hoeft, 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.hoeft@dpor.virginia.gov.

BOARD OF PSYCHOLOGY

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.

† February 22, 2005 - 10 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

An informal conference.

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.

April 12, 2005 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. 

A business meeting to discuss reports from standing committees and any regulatory and disciplinary 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.

REAL ESTATE APPRAISER BOARD

February 22, 2005 - 10 a.m. -- Open Meeting
† May 3, 2005 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4 West Conference Room, Richmond, Virginia. 

A meeting to discuss board business.

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.

† April 20, 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 karen.oneal@dpor.virginia.gov.

REAL ESTATE BOARD

February 9, 2005 - 9 a.m. -- Open Meeting

February 10, 2005 - 9 a.m. -- Open Meeting

† **March 3, 2005 - 9 a.m.** -- Open Meeting

† **March 10, 2005 - 9 a.m.** -- Open Meeting

March 23, 2005 - 3 pm. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Education Committee to review education applications.

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.

March 24, 2005 - 8:30 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. 

A meeting of the Fair Housing Committee to review fair housing cases.

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.

March 24, 2005 - 9 a.m. -- Open Meeting

Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 4-West,
Richmond, Virginia. 

A meeting to discuss board business.

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

March 23, 2005 - 10 a.m. -- Open Meeting

Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia.

The council (VRMDC) will meet from 10 a.m. to noon, will break for lunch and then hold a joint meeting of its Local Government Assistance and Recycling Rate Subcommittees from 1 p.m. to 3 p.m. The primary purpose of the meeting is to obtain comments from Southwest Virginia localities, waste management authorities and other interested parties on (i) what, if any, changes are recommended in Virginia's 25% recycling rate mandate (including the statutes and regulations implementing that mandate) and (ii) ways in which the VRMDC and state could assist localities and waste management authorities in meeting the state recycling mandate. The VRMDC is traveling to Southwest Virginia in an effort to make it easier

for localities, waste management authorities and members of the public from that region of the state to submit their views and the submission of comments at the meeting is encouraged. Public comments will be sought at the meeting of the full council (to be held from 10 a.m. to noon) and the two subcommittees will then meet jointly (from 1 p.m. to 3 p.m.) to consider the comments received and to discuss their plans for continuing their work in 2005.

Contact: Philip F. Abraham, 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.

VIRGINIA RESOURCES AUTHORITY

February 8, 2005 - 9 a.m. -- Open Meeting

March 8, 2005 - 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 bmcrae@vra.state.va.us.

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **February 16, 2005 - 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 to conduct 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.

Calendar of Events

STATE BOARD OF SOCIAL SERVICES

February 16, 2005 - 9 a.m. -- Open Meeting
Department of Social Services, 7 North 8th Street, 6th Floor,
Conference Room, Richmond, Virginia.

A committee work session and business meeting. 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.

February 17, 2005 - 9 a.m. -- Open Meeting
Department of Social Services, 7 North 8th Street, 6th Floor,
Conference Room, Richmond, Virginia.

A business 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.

March 16, 2005 - 9 a.m. -- Open Meeting
Department of Social Services, 7 North 8th Street, 6th Floor,
Conference Room, Richmond, Virginia.

A work session/roundtable to discuss assisted living facilities.

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.

BOARD OF SOCIAL WORK

February 25, 2005 - 10 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street,
5th Floor, Conference Room 1, Richmond, Virginia. ♿

March 25, 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 Social Work intends to amend regulations entitled **18 VAC 140-20, Regulations Governing the Practice of Social Work**. The purpose of the proposed regulation is to establish criteria for delegation of certain informal fact finding to an agency subordinate.

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

Public comments may be submitted until March 25, 2005, to Evelyn B. Brown, Executive Director, Board of Social Work, 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.

TREASURY BOARD

February 16, 2005 - 9 a.m. -- Open Meeting
March 16, 2005 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor,
Treasury Board Room, Richmond, Virginia. ♿

A regular meeting.

Contact: Melissa Mayes, Secretary, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011, FAX (804) 225-2142, e-mail melissa.mayes@trs.virginia.gov.

DEPARTMENT OF VETERANS SERVICES

Joint Leadership Council of Veterans Service Organizations

† **February 23, 2005 - 11 a.m.** -- Open Meeting
American Legion Department of Virginia, 1708
Commonwealth Avenue, Richmond, Virginia. ♿

A regular meeting. Public comment will be received at approximately 12:45 p.m.

Contact: Steven J. Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond VA 23219, telephone (804) 786-0294, e-mail steven.combs@dvs.virginia.gov.

Board of Veterans Services

† **March 28, 2005 - 1 p.m.** -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street,
Richmond, Virginia. ♿

A regular meeting. Public comment will be received at approximately 2:45 p.m.

Contact: Steven Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond VA 23219, telephone (804) 786-0294, e-mail steven.combs@dvs.virginia.gov.

Veterans Services Foundation

March 9, 2005 - 11 a.m. -- Open Meeting
Virginia War Memorial, 621 South Belvidere Street,
Richmond, Virginia. ♿

A meeting of the Board of Trustees.

Contact: Steve Combs, Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0286, e-mail steven.combs@dvs.virginia.gov.

BOARD OF VETERINARY MEDICINE

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 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.

STATE WATER CONTROL BOARD

February 23, 2005 - 3 p.m. -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A public meeting to receive comments on the Notice of Intended Regulatory Action (NOIRA) to amend the Virginia Water Protection Permit Regulation. The NOIRA appears in the Virginia Register of Regulations on January 24, 2005.

Contact: Catherine Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, e-mail cmharold@deq.virginia.gov.

March 7, 2005 - 2 p.m. -- Public Hearing
Luray Fire Station, 1 Firehouse Lane, Luray, Virginia.

April 1, 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 proposed amendment to the Antidegradation Policy, part of the state's Water Quality Standards, would designate portions of Big Run, Brokenback Run, Doyles River, East Branch Naked Creek, East Hawksbill Creek, Hughes River, Jeremys Run, North Fork Thornton River, Piney River, Rose River, and White Oak Canyon Run for special protection as exceptional state waters.

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

Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113 or e-mail jwgregory@deq.virginia.gov.

† **March 10, 2005 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A public meeting to receive comments on the State Water Control Board's notice of intent to amend the general VPDES permit for ready-mix concrete plants to include concrete products plants. The notice of intent appears in the Virginia Register of Regulations on February 7, 2005, and the public comment period closes on March 11, 2005.

Contact: Lily Choi, State Water Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4054, FAX (804) 698-4032, e-mail ychoi@deq.virginia.gov.

† **March 10, 2005 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. ☎

A meeting to receive comments from the public on the State Water Control Board's notice of intent to adopt a general VPDES permit for wastewater discharges from coin operated laundromats. The notice of intent is published in the Virginia Register of Regulations on February 7, 2005, and the comment period closes on March 11, 2005.

Contact: George E. Cosby, State Water Control Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4067, FAX (804) 698-4032, e-mail gecosby@deq.virginia.gov.

March 15, 2005 - 9:30 a.m. -- Open Meeting
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ☎

A regular board meeting. Agenda will be posted approximately 10 days before the meeting.

Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4378, FAX (804) 698-4346, e-mail cmberndt@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

February 8, 2005 - 8:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 5-East, Richmond, Virginia. ☎

A meeting of the Criminal History Records Check Committee to consider information developed by the board's staff and to develop a report to present to the full board during its meeting scheduled for March 9, 2005.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail waterwasteoper@dpor.virginia.gov.

Calendar of Events

February 8, 2005 - 10:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 5-East,
Richmond, Virginia 

A meeting of the Examination Review Committee to review the board's current examination and develop recommendations and a report to present to the March 9, 2005, meeting of the full board. The committee will review materials from the examination that is still in use and, therefore, excluded from public disclosure under § 2.2-3705 (4) of the Code of Virginia. Much of the committee meeting will take place in closed session under the authority of § 2.2-3711 A 11 of the Code of Virginia.

Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY , e-mail waterwasteoper@dpor.virginia.gov.

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.

INDEPENDENT

STATE LOTTERY BOARD

February 9, 2005 - 9:30 a.m. -- Open Meeting
State Lottery Department, 900 East Main Street, 13th Floor,
Richmond, Virginia. 

A regular meeting to conduct routine business. 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.

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

PAIMI Advisory Council

† **February 10, 2005 - 10 a.m.** -- Open Meeting
Virginia Office for Protection and Advocacy, 1910 Byrd
Avenue, Richmond, Virginia.  (Interpreter for the deaf
provided upon request)

A regular meeting. Public comment is welcome and will be received at the beginning of the meeting. For those needing

interpreter services or other accommodations, please contact Delicia (Dee) Vance.

Contact: Delicia (Dee) Vance, Outreach Advocate, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 662-7099, FAX (804) 662-7057, toll-free (800) 552-3962, (804) 225-2042/TTY , e-mail vancedm@vopa.state.va.us.

VIRGINIA RETIREMENT SYSTEM

February 9, 2005 - 9 a.m. -- Open Meeting
Virginia Retirement System Headquarters Building, 1200 East
Main Street, Richmond, Virginia. 

A meeting of the Director's Search 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.

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.

February 16, 2005 - 11 a.m. -- Open Meeting

March 23, 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 phenderson@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.

February 17, 2005 - 9 a.m. -- Open Meeting

March 24, 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.

LEGISLATIVE

Notice to Subscribers

Legislative meetings held during the Session of the General Assembly are exempted from publication in the *Virginia Register of Regulations*. You may call Legislative Information for information on standing committee meetings. The number is (804) 698-1500.

CHRONOLOGICAL LIST

OPEN MEETINGS

February 7

Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board

February 8

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Contractors, Board for
Nursing, Board of
Resources Authority, Virginia
Waterworks and Wastewater Works Operators, Board for

February 9

Contractors, Board for
Funeral Directors and Embalmers, Board of
† Information Technologies Agency, Virginia
- Investment Board
† Juvenile Justice, State Board of
Lottery Board, State
† Motor Vehicles, Department of
- Medical Advisory Board
Real Estate Board
Retirement System, Virginia

February 10

Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Contractors, Board for
† Environmental Quality, Department of
† Game and Inland Fisheries, Board of

† Labor and Industry, Department of
- Virginia Apprenticeship Council
† Protection and Advocacy, Virginia Office for
- PAIMI Advisory Council
Real Estate Board

February 11

Counseling, Board of
Medicine, Board of
Mines, Minerals and Energy, Department of
† Museum of Natural History, Virginia

February 12

† Museum of Natural History, Virginia

February 14

Alcoholic Beverage Control Board
† Business Assistance, Department of
- Small Business Advisory Board
Nursing, Board of
Old Dominion University

February 15

† Aviation Board, Virginia
† Chesapeake Bay Local Assistance Board
Contractors, Board for
Nursing, Board of
Retirement System, Virginia

February 16

Asbestos, Lead, and Home Inspectors, Virginia Board for
† Aviation Board, Virginia
Conservation and Recreation, Department of
- Soil and Water Conservation Board, Virginia
Milk Commission, State
Museum of Fine Arts, Virginia
Retirement System, Virginia
† Small Business Financing Authority, Virginia
Social Services, State Board of
Treasury Board

February 17

† Contractors, Board for
Design-Build/Construction Management Review Board
Environmental Quality, Department of
Museum of Fine Arts, Virginia
Pharmacy, Board of
Retirement System, Virginia
Social Services, State Board of

February 18

† Counseling, Board of
Health Professions, Department of
- Health Practitioners' Intervention Program Committee

February 21

Agriculture and Consumer Services, Department of
- Virginia Corn Board

February 22

† Environmental Quality, Department of
† Longwood University
Marine Resources Commission
Nursing, Board of
† Pharmacy, Board of
† Psychology, Board of
Real Estate Appraiser Board

February 23

Contractors, Board for
Education, Board of
Health, Department of

Calendar of Events

- Sewage Handling and Disposal Appeal Review Board
Medicine, Board of
Nursing and Medicine, Joint Boards of
† Veterans Services, Department of
- Joint Leadership Council of Veterans Service
Organizations
† Water Control Board, State

February 24

† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
- Virginia Wine Board
Audiology and Speech-Language Pathology, Board of
Cemetery Board

February 28

Alcoholic Beverage Control Board

March 1

† Cemetery Board
Charitable Gaming Board
Contractors, Board for
† Environmental Quality, Department of
Museum of Fine Arts, Virginia

March 2

Air Pollution Control Board, State
† Environmental Quality, Department of

March 3

† Agriculture and Consumer Services, Department of
- Virginia Cotton Board
† Contractors, Board for
† Environmental Quality, Department of
Polygraph Examiners Advisory Board
† Real Estate Board

March 4

Art and Architectural Review Board

March 8

† Agriculture and Consumer Services, Department of
- Virginia Bright Flue-Cured Tobacco Board
Contractors, Board for
Funeral Directors and Embalmers, Board of
Medical Assistance Services, Board of
Resources Authority, Virginia

March 9

Veterans Services, Department of
- Veterans Services Foundation
Waterworks and Wastewater Works Operators, Board for

March 10

Agriculture and Consumer Services, Department of
- Virginia Soybean Board
† Contractors, Board for
† Real Estate Board
† Water Control Board, State

March 11

Child Fatality Review Team, State
Health, Department of
- Virginia Early Hearing Detection and Intervention
Program Advisory Committee

March 14

Library Board, State
† Local Government, Commission on
Nursing, Board of

March 15

† Contractors, Board for
Corrections, Board of

Nursing, Board of
Water Control Board, State

March 16

Community Colleges, State Board for
Corrections, Board of
Nursing, Board of
People with Disabilities, Virginia Board for
Social Services, State Board of
Treasury Board

March 17

Agriculture and Consumer Services, Board of
Architects, Professional Engineers, Land Surveyors,
Certified Interior Designers and Landscape Architects,
Board for
Community Colleges, State Board for
Design-Build/Construction Management Review Team
† Labor and Industry, Department of
- Virginia Apprenticeship Council
Nursing, Board of
People with Disabilities, Virginia Board for

March 19

Conservation and Recreation, Department of
- Virginia Cave Board

March 21

Education, Department of
- Advisory Board on Teacher Education and Licensure
Hearing Aid Specialists, Board for
Old Dominion University

March 22

Alzheimer's Disease and Related Disorders Commission
† Contractors, Board for
Health Professions, Department of
- Prescription Monitoring Program Advisory Committee
Marine Resources Commission

March 23

Conservation and Recreation, Department of
- Soil and Water Conservation Board, Virginia
Education, Board of
Real Estate Board
Recycling Markets Development Council
Retirement System, Virginia

March 24

Real Estate Board
Retirement System, Virginia

March 28

† Veterans Services, Department of
- Board of Veterans Services

March 31

Arts, Virginia Commission for the

April 1

Art and Architectural Review Board

April 4

Barbers and Cosmetology, Board for

April 5

Medicine, Board
- Advisory Board of Occupational Therapy
- Advisory Board on Respiratory Care
† Museum of Fine Arts, Virginia
Nursing, Board of

April 6

Medicine, Board of
- Advisory Board on Acupuncture

- Advisory Board on Radiologic Technology
Nursing, Board of

April 22

† Accountancy, Board of

April 7

Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physician Assistants

April 8

Old Dominion University

April 11

† Forestry, Board of
Nursing, Board of

April 12

Nursing, Board of
Psychology, Board of

April 13

Nursing and Medicine, Joint Boards of

April 14

Education, Department of
- State Special Education Advisory Committee

April 15

Education, Department of
- State Special Education Advisory Committee
Opticians, Board for

April 18

Education, Department of
- Advisory Board on Teacher Education and Licensure

April 19

Contractors, Board for
Nursing, Board of

April 20

Education, Board of
Geology, Board for
† Real Estate Appraiser Board

April 21

Design-Build/Construction Management Review Team
Education, Board of

April 22

Medicine, Board of

May 3

† Museum of Fine Arts, Virginia
† Real Estate Appraiser Board

May 4

† Deaf and Hard-of-Hearing, Department for the

May 6

† Art and Architectural Review Board

PUBLIC HEARINGS

February 9

Funeral Directors and Embalmers, Board of

February 18

Counseling, Board of

February 25

Social Work, Board of

March 1

† Air Pollution Control Board, State

March 4

Pharmacy, Board of

March 7

Water Control Board, State

March 17

† Housing and Community Development, Board of

Calendar of Events
