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CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED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printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2005 VAC Supplement includes final regulations published through *Virginia Register* Volume 21, Issue 24, dated August 8, 2005). 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 55-20-320	Amended	22:8 VA.R. 1174	3/15/06
Title 4. Conservation and Natural Resources			
4 VAC 3-10-10	Amended	22:5 VA.R. 706	12/14/05
4 VAC 3-10-20	Amended	22:5 VA.R. 707	12/14/05
4 VAC 3-10-30	Amended	22:5 VA.R. 707	12/14/05
4 VAC 3-10-40	Repealed	22:5 VA.R. 709	12/14/05
4 VAC 5-15-10	Amended	22:7 VA.R. 1000	1/11/06
4 VAC 5-15-40	Amended	22:7 VA.R. 1004	1/11/06
4 VAC 5-15-60	Amended	22:7 VA.R. 1004	1/11/06
4 VAC 5-15-80	Amended	22:7 VA.R. 1005	1/11/06
4 VAC 5-15-100	Amended	22:7 VA.R. 1005	1/11/06
4 VAC 5-15-110	Amended	22:7 VA.R. 1006	1/11/06
4 VAC 5-15-130	Repealed	22:7 VA.R. 1006	1/11/06
4 VAC 5-15-140	Amended	22:7 VA.R. 1006	1/11/06
4 VAC 5-15-150	Amended	22:7 VA.R. 1008	1/11/06
4 VAC 15-20-210	Added	22:6 VA.R. 888	1/1/06
4 VAC 15-30-40	Amended	22:6 VA.R. 888	12/1/05
4 VAC 5-36-10	Amended	22:9 VA.R. 1367	2/8/06
4 VAC 5-36-20	Amended	22:9 VA.R. 1367	2/8/06
4 VAC 5-36-40 through 4 VAC 5-36-160	Amended	22:9 VA.R. 1367-1383	2/8/06
4 VAC 5-36-180 through 4 VAC 5-36-210	Amended	22:9 VA.R. 1384-1395	2/8/06
4 VAC 15-90-293	Amended	22:6 VA.R. 891	11/1/05
4 VAC 15-380-70	Amended	22:6 VA.R. 891	3/1/06
4 VAC 15-380-71	Added	22:6 VA.R. 892	3/1/06
4 VAC 15-430-60	Amended	22:6 VA.R. 892	3/1/06
4 VAC 15-430-160	Amended	22:6 VA.R. 892	3/1/06
4 VAC 20-20-20	Amended	22:8 VA.R. 1183	12/1/05-12/30/05
4 VAC 20-20-50	Amended	22:8 VA.R. 1183	12/1/05-12/30/05
4 VAC 20-70-30	Amended	22:4 VA.R. 575	12/1/05
4 VAC 20-70-70	Amended	22:4 VA.R. 575	12/1/05
4 VAC 20-70-140	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-80-30	Amended	21:25 VA.R. 3469	7/29/05
4 VAC 20-110-60	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-150-60	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-230-30	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-230-50	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-252-30 emer	Amended	22:4 VA.R. 627	9/29/05-10/28/05
4 VAC 20-252-30	Amended	22:7 VA.R. 1013	11/14/05
4 VAC 20-252-90	Amended	22:1 VA.R. 81	9/1/05
4 VAC 20-252-100	Amended	22:1 VA.R. 81	9/1/05
4 VAC 20-252-135	Amended	22:7 VA.R. 1013	11/14/05
4 VAC 20-252-160	Amended	22:7 VA.R. 1014	11/14/05
4 VAC 20-270-30	Amended	21:25 VA.R. 3469	7/29/05
4 VAC 20-310-15	Added	22:4 VA.R. 582	10/1/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-310-20	Amended	22:4 VA.R. 582	10/1/05
4 VAC 20-310-40	Amended	22:4 VA.R. 583	10/1/05
4 VAC 20-310-50	Amended	22:4 VA.R. 583	10/1/05
4 VAC 20-490-20	Amended	22:8 VA.R. 1113	12/1/05
4 VAC 20-490-40	Amended	22:8 VA.R. 1114	12/1/05
4 VAC 20-490-41	Added	22:8 VA.R. 1115	12/1/05
4 VAC 20-490-42	Added	22:8 VA.R. 1115	12/1/05
4 VAC 20-490-43	Added	22:8 VA.R. 1115	12/1/05
4 VAC 20-490-50	Amended	22:8 VA.R. 1115	12/1/05
4 VAC 20-490-60	Repealed	22:8 VA.R. 1115	12/1/05
4 VAC 20-566-10 through 4 VAC 20-566-50 emer	Added	21:25 VA.R. 3552	8/16/05-9/14/05
4 VAC 20-566-10 through 4 VAC 20-566-50	Added	22:1 VA.R. 81-82	9/15/05
4 VAC 20-610-40	Amended	22:4 VA.R. 576	12/1/05
4 VAC 20-610-50	Amended	22:4 VA.R. 577	12/1/05
4 VAC 20-650-10 through 4 VAC 20-650-40 emer	Amended	22:4 VA.R. 628	10/1/05-10/30/05
4 VAC 20-650-20	Amended	22:6 VA.R. 893	10/28/05
4 VAC 20-670-20	Amended	22:4 VA.R. 577	12/1/05
4 VAC 20-670-30	Amended	21:25 VA.R. 3470	7/29/05
4 VAC 20-670-50	Amended	21:25 VA.R. 3470	7/29/05
4 VAC 20-720-20	Amended	22:4 VA.R. 584	10/1/05
4 VAC 20-720-40	Amended	22:4 VA.R. 585	10/1/05
4 VAC 20-720-50	Amended	22:4 VA.R. 586	10/1/05
4 VAC 20-720-60	Amended	22:4 VA.R. 586	10/1/05
4 VAC 20-720-70	Amended	22:4 VA.R. 586	10/1/05
4 VAC 20-720-70	Amended	22:8 VA.R. 1184	12/1/05-12/30/05
4 VAC 20-720-75	Amended	22:4 VA.R. 587	10/1/05
4 VAC 20-720-80	Amended	22:4 VA.R. 587	10/1/05
4 VAC 20-720-100	Amended	22:4 VA.R. 587	10/1/05
4 VAC 20-730-20	Repealed	22:4 VA.R. 577	12/1/05
4 VAC 20-751-20	Amended	22:6 VA.R. 893	11/1/05
4 VAC 20-890-25	Amended	22:4 VA.R. 577	12/1/05
4 VAC 20-900-30	Amended	22:4 VA.R. 578	12/1/05
4 VAC 20-910-45	Amended	22:8 VA.R. 1184	12/1/05-12/30/05
4 VAC 20-920-30	Amended	22:4 VA.R. 578	12/1/05
4 VAC 20-920-40	Amended	22:4 VA.R. 578	12/1/05
4 VAC 20-950-46 emer	Amended	22:4 VA.R. 628	10/1/05-10/30/05
4 VAC 20-950-46	Amended	22:6 VA.R. 894	11/1/05
4 VAC 20-950-48 emer	Amended	22:4 VA.R. 629	10/1/05-10/30/05
4 VAC 20-950-48	Amended	22:6 VA.R. 894	11/1/05
4 VAC 20-950-48.2 emer	Added	22:4 VA.R. 629	10/1/05-10/30/05
4 VAC 20-950-48.2	Added	22:6 VA.R. 895	11/1/05
4 VAC 20-950-49 emer	Amended	22:4 VA.R. 630	10/1/05-10/30/05
4 VAC 20-950-49	Amended	22:6 VA.R. 895	11/1/05
4 VAC 20-1090-10 through 4 VAC 20-1090-40	Added	22:4 VA.R. 579-582	12/1/05
4 VAC 20-1090	Erratum	22:8 VA.R. 1198	--
4 VAC 25-10-90	Added	22:6 VA.R. 896	12/28/05
4 VAC 25-20 (Forms)	Amended	22:5 VA.R. 720	--
4 VAC 25-130-816.11	Amended	21:26 VA.R. 3706	8/10/05-8/9/06
4 VAC 25-130-816.64	Amended	21:26 VA.R. 3707	8/10/05-8/9/06
Title 6. Criminal Justice and Corrections			
6 VAC 20-230-10 through 6 VAC 20-230-350	Added	21:26 VA.R. 3680-3691	10/5/05
6 VAC 20-230-160	Erratum	22:2 VA.R. 296	--
6 VAC 20-230-210	Erratum	22:2 VA.R. 296	--
6 VAC 35-190-10 through 6 VAC 35-190-120 emer	Added	22:9 VA.R. 1423-1425	12/14/05-12/13/06
Title 8. Education			
8 VAC 20-21-80	Amended	21:25 VA.R. 3471	9/22/05

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-21-90	Amended	21:25 VA.R. 3473	9/22/05
8 VAC 20-21-660	Amended	21:25 VA.R. 3473	9/22/05
8 VAC 20-21-680	Amended	21:25 VA.R. 3474	9/22/05
8 VAC 40-30	Repealed	22:6 VA.R. 925	11/8/05-11/7/06
8 VAC 40-31-10 through 8 VAC 40-31-320	Added	22:6 VA.R. 925-939	11/8/05-11/7/06
Title 9. Environment			
9 VAC 5-50-400	Amended	22:4 VA.R. 588	12/1/05
9 VAC 5-60-60	Amended	22:4 VA.R. 588	12/1/05
9 VAC 5-60-90	Amended	22:4 VA.R. 588	12/1/05
9 VAC 5-60-100	Amended	22:4 VA.R. 588	12/1/05
9 VAC 10-10-10	Amended	22:5 VA.R. 709	12/14/05
9 VAC 10-10-20	Amended	22:5 VA.R. 710	12/14/05
9 VAC 10-10-30	Amended	22:5 VA.R. 710	12/14/05
9 VAC 20-80-60	Amended	21:26 VA.R. 3691	10/5/05
9 VAC 20-80-400	Amended	21:26 VA.R. 3694	10/5/05
9 VAC 20-80-480	Amended	21:26 VA.R. 3697	10/5/05
9 VAC 20-80-485	Amended	21:26 VA.R. 3698	10/5/05
9 VAC 20-80-485	Erratum	22:2 VA.R. 296	--
9 VAC 20-80-790	Amended	22:1 VA.R. 104	12/19/05
9 VAC 25-40-10	Amended	22:3 VA.R. 370	11/16/05
9 VAC 25-40-20	Repealed	22:3 VA.R. 370	11/16/05
9 VAC 25-40-25	Added	22:3 VA.R. 370	11/16/05
9 VAC 25-40-30	Amended	22:3 VA.R. 371	11/16/05
9 VAC 25-40-40	Amended	22:3 VA.R. 371	11/16/05
9 VAC 25-40-50	Amended	22:3 VA.R. 371	11/16/05
9 VAC 25-40-70	Added	22:3 VA.R. 371	11/16/05
9 VAC 25-110-10	Amended	22:4 VA.R. 595	11/30/05
9 VAC 25-110-20	Amended	22:4 VA.R. 595	11/30/05
9 VAC 25-110-60	Amended	22:4 VA.R. 596	11/30/05
9 VAC 25-110-70	Amended	22:4 VA.R. 596	11/30/05
9 VAC 25-110-80	Amended	22:4 VA.R. 597	11/30/05
9 VAC 25-115-10 through 9 VAC 25-115-50	Amended	22:9 VA.R. 1395	2/8/06
9 VAC 25-180-10 through 9 VAC 25-180-70	Repealed	22:4 VA.R. 605	11/30/05
9 VAC 25-193-10	Amended	22:9 VA.R. 1396	2/8/06
9 VAC 25-193-20	Amended	22:9 VA.R. 1396	2/8/06
9 VAC 25-193-40 through 9 VAC 25-193-70	Amended	22:9 VA.R. 1396	2/8/06
9 VAC 25-260-30	Amended	22:3 VA.R. 381	*
9 VAC 25-260-310	Amended	22:7 VA.R. 1015	**
9 VAC 25-260-410	Amended	22:7 VA.R. 1017	**
9 VAC 25-260-530	Amended	22:7 VA.R. 1018	**
9 VAC 25-630-50	Amended	22:2 VA.R. 229	11/2/05
9 VAC 25-720-10	Amended	22:3 VA.R. 372	11/16/05
9 VAC 25-720-30	Amended	22:3 VA.R. 374	11/16/05
9 VAC 25-720-40	Amended	22:3 VA.R. 374	11/16/05
9 VAC 25-720-50	Amended	22:2 VA.R. 236	11/2/05
9 VAC 25-720-50	Amended	22:3 VA.R. 376	11/16/05
9 VAC 25-720-50	Amended	22:6 VA.R. 896	12/28/05
9 VAC 25-720-60	Amended	22:7 VA.R. 1019	1/11/06
9 VAC 25-720-70	Amended	22:3 VA.R. 378	11/16/05
9 VAC 25-720-80	Amended	22:6 VA.R. 897	12/28/05
9 VAC 25-720-90	Amended	22:2 VA.R. 237	11/2/05
9 VAC 25-720-90	Amended	22:6 VA.R. 899	12/28/05

* Effective upon filing notice of approval by U.S. EPA.

** Effective upon submittal of notice of EPA approval to the Registrar of Regulations.

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-720-110	Amended	22:3 VA.R. 380	11/16/05
9 VAC 25-720-120	Amended	22:7 VA.R. 1021	1/11/06
9 VAC 25-720-130	Amended	22:2 VA.R. 238	11/2/05
9 VAC 25-720-130	Amended	22:6 VA.R. 900	12/28/05
9 VAC 25-750-10 through 9 VAC 25-750-50	Repealed	22:4 VA.R. 605	11/30/05
9 VAC 25-780-10 through 9 VAC 25-780-190	Added	22:2 VA.R. 238-246	11/2/05
9 VAC 25-780-30	Erratum	22:4 VA.R. 660	--
9 VAC 25-780-50	Erratum	22:4 VA.R. 660	--
9 VAC 25-780-90	Erratum	22:4 VA.R. 660	--
9 VAC 25-780-140	Erratum	22:4 VA.R. 660	--
9 VAC 25-810-10 through 9 VAC 25-810-70	Added	22:9 VA.R. 1396-1403	2/8/06
Title 10. Finance and Financial Institutions			
10 VAC 5-20-50	Added	22:3 VA.R. 383	9/30/05
Title 11. Gaming			
11 VAC 15-22-10 through 11 VAC 15-22-120	Amended	22:6 VA.R. 901-915	12/28/05
11 VAC 15-22-35	Added	22:6 VA.R. 906	12/28/05
11 VAC 15-31-10	Amended	22:6 VA.R. 915	1/1/06
11 VAC 15-31-20	Amended	22:6 VA.R. 917	1/1/06
11 VAC 15-31-30	Amended	22:6 VA.R. 919	1/1/06
11 VAC 15-31-50	Amended	22:6 VA.R. 922	1/1/06
11 VAC 15-31-60	Amended	22:6 VA.R. 922	1/1/06
Title 12. Health			
12 VAC 5-70-10 through 12 VAC 5-70-50 emer	Repealed	22:5 VA.R. 713	3/1/06-2/28/07
12 VAC 5-71-10 through 12 VAC 5-71-170 emer	Added	22:5 VA.R. 713-719	3/1/06-2/28/07
12 VAC 5-371-180	Amended	22:7 VA.R. 1023	1/11/06
12 VAC 5-371-210	Amended	22:7 VA.R. 1024	1/11/06
12 VAC 5-371-240	Amended	22:7 VA.R. 1024	1/11/06
12 VAC 5-371-300	Amended	22:7 VA.R. 1025	1/11/06
12 VAC 5-371-320	Amended	22:7 VA.R. 1025	1/11/06
12 VAC 5-371-340	Amended	22:7 VA.R. 1025	1/11/06
12 VAC 5-371-350	Repealed	22:7 VA.R. 1026	1/11/06
12 VAC 5-371-360	Amended	22:7 VA.R. 1026	1/11/06
12 VAC 5-371-370	Amended	22:7 VA.R. 1027	1/11/06
12 VAC 5-371-410	Amended	22:7 VA.R. 1027	1/11/06
12 VAC 5-371-425	Added	22:7 VA.R. 1028	1/11/06
12 VAC 5-371-430 through 12 VAC 5-371-560	Repealed	22:7 VA.R. 1028-1031	1/11/06
12 VAC 5-380	Repealed	22:3 VA.R. 388	1/1/06
12 VAC 5-381-10 through 12 VAC 5-381-360	Added	22:3 VA.R. 388-406	1/1/06
12 VAC 5-381-120	Erratum	22:4 VA.R. 659	--
12 VAC 5-410	Erratum	22:9 VA.R. 1445	--
12 VAC 5-410-260 through 12 VAC 5-410-290	Amended	22:8 VA.R. 1116-1117	1/25/06
12 VAC 5-410-340 through 12 VAC 5-410-390	Amended	22:8 VA.R. 1117-1119	1/25/06
12 VAC 5-410-442	Amended	22:8 VA.R. 1119	1/25/06
12 VAC 5-410-444	Amended	22:8 VA.R. 1121	1/25/06
12 VAC 5-410-445	Amended	22:8 VA.R. 1125	1/25/06
12 VAC 5-410-450	Amended	22:8 VA.R. 1128	1/25/06
12 VAC 5-410-480	Amended	22:8 VA.R. 1128	1/25/06
12 VAC 5-410-490	Amended	22:8 VA.R. 1128	1/25/06
12 VAC 5-410-500	Amended	22:8 VA.R. 1128	1/25/06
12 VAC 5-410-510 through 12 VAC 5-410-640	Repealed	22:8 VA.R. 1129-1130	1/25/06
12 VAC 5-410-650	Amended	22:8 VA.R. 1130	1/25/06
12 VAC 5-410-655	Added	22:8 VA.R. 1130	1/25/06
12 VAC 5-410-660 through 12 VAC 5-410-710	Repealed	22:8 VA.R. 1131-1132	1/25/06
12 VAC 5-410-720	Amended	22:8 VA.R. 1132	1/25/06
12 VAC 5-410-730	Repealed	22:8 VA.R. 1132	1/25/06

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12 VAC 5-410-740	Repealed	22:8 VA.R. 1132	1/25/06
12 VAC 5-410-750	Repealed	22:8 VA.R. 1132	1/25/06
12 VAC 5-410-760	Amended	22:8 VA.R. 1134	1/25/06
12 VAC 5-410-770 through 12 VAC 5-410-1140	Repealed	22:8 VA.R. 1134-1151	1/25/06
12 VAC 5-410-1250	Amended	22:8 VA.R. 1151	1/25/06
12 VAC 5-410-1260	Amended	22:8 VA.R. 1151	1/25/06
12 VAC 5-410-1290	Amended	22:8 VA.R. 1151	1/25/06
12 VAC 5-410-1310 through 12 VAC 5-410-1340	Repealed	22:8 VA.R. 1151-1152	1/25/06
12 VAC 5-410-1350	Amended	22:8 VA.R. 1152	1/25/06
12 VAC 5-410-1360	Repealed	22:8 VA.R. 1152	1/25/06
12 VAC 5-410-1370	Repealed	22:8 VA.R. 1153	1/25/06
12 VAC 5-410-1380	Amended	22:8 VA.R. 1153	1/25/06
12 VAC 5-410-1390 through 12 VAC 5-410-1420, Appendices A, B, and C	Repealed	22:8 VA.R. 1153-1154	1/25/06
12 VAC 5-500-10 through 12 VAC 5-500-350	Repealed	22:3 VA.R. 407	1/1/06
12 VAC 5-501-10 through 12 VAC 5-501-350	Added	22:3 VA.R. 407-413	1/1/06
12 VAC 30-30-60	Added	22:8 VA.R. 1185	1/1/06-12/31/06
12 VAC 30-40-10	Amended	22:8 VA.R. 1186	1/1/06-12/31/06
12 VAC 30-50-35	Added	22:8 VA.R. 1187	1/1/06-12/31/06
12 VAC 30-50-75	Added	22:8 VA.R. 1187	1/1/06-12/31/06
12 VAC 30-50-130	Amended	22:8 VA.R. 1155	1/25/06
12 VAC 30-50-530	Amended	22:8 VA.R. 1188	1/1/06-12/31/06
12 VAC 30-60-61	Amended	22:8 VA.R. 1157	1/25/06
12 VAC 30-80-30	Amended	22:8 VA.R. 1188	12/2/05-12/1/06
12 VAC 30-80-40	Amended	22:3 VA.R. 414	11/16/05
12 VAC 30-120-280	Amended	22:8 VA.R. 1178	4/3/06
12 VAC 30-120-370	Amended	22:8 VA.R. 1180	4/3/06
12 VAC 30-120-1600 through 12 VAC 30-120-1660 emer	Added	22:2 VA.R. 255-261	9/14/05-9/13/06
12 VAC 30-130-860 through 12 VAC 30-130-890	Amended	22:8 VA.R. 1158-1163	1/25/06
12 VAC 30-141-10 emer	Amended	21:25 VA.R. 3553	8/1/05-7/31/06
12 VAC 30-141-10 emer	Amended	21:25 VA.R. 3561	8/1/05-7/31/06
12 VAC 30-141-40 emer	Amended	21:25 VA.R. 3555	8/1/05-7/31/06
12 VAC 30-141-100 emer	Amended	21:25 VA.R. 3555	8/1/05-7/31/06
12 VAC 30-141-100 emer	Amended	21:25 VA.R. 3563	8/1/05-7/31/06
12 VAC 30-141-120 emer	Amended	21:25 VA.R. 3564	8/1/05-7/31/06
12 VAC 30-141-150 emer	Amended	21:25 VA.R. 3564	8/1/05-7/31/06
12 VAC 30-141-160 emer	Amended	21:25 VA.R. 3557	8/1/05-7/31/06
12 VAC 30-141-170 emer	Repealed	21:25 VA.R. 3557	8/1/05-7/31/06
12 VAC 30-141-175 emer	Added	21:25 VA.R. 3559	8/1/05-7/31/06
12 VAC 30-141-200 emer	Amended	21:25 VA.R. 3560	8/1/05-7/31/06
12 VAC 30-141-660	Amended	22:8 VA.R. 1182	4/3/06
12 VAC 30-141-810 through 12 VAC 30-141-1660 emer	Added	21:25 VA.R. 3566-3573	8/1/05-7/31/06
12 VAC 35-45-25	Added	22:8 VA.R. 1191	12/2/05-12/1/06
12 VAC 35-105-925	Added	22:8 VA.R. 1193	12/6/05-12/5/06
Title 13. Housing			
13 VAC 5-21-10 through 13 VAC 5-21-70	Amended	22:3 VA.R. 416-419	11/16/05
13 VAC 5-21-45	Added	22:3 VA.R. 418	11/16/05
13 VAC 5-21-61	Erratum	22:5 VA.R. 734	--
13 VAC 5-31-20	Amended	22:3 VA.R. 420	11/16/05
13 VAC 5-31-40	Amended	22:3 VA.R. 420	11/16/05
13 VAC 5-31-50	Amended	22:3 VA.R. 421	11/16/05
13 VAC 5-31-80	Amended	22:3 VA.R. 421	11/16/05
13 VAC 5-31-100	Amended	22:3 VA.R. 422	11/16/05
13 VAC 5-31-190	Amended	22:3 VA.R. 422	11/16/05
13 VAC 5-31-200	Added	22:3 VA.R. 422	11/16/05
13 VAC 5-31-210	Added	22:3 VA.R. 422	11/16/05

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-51-21	Amended	22:3 VA.R. 422	11/16/05
13 VAC 5-51-31	Amended	22:3 VA.R. 423	11/16/05
13 VAC 5-51-41	Amended	22:3 VA.R. 423	11/16/05
13 VAC 5-51-51	Amended	22:3 VA.R. 424	11/16/05
13 VAC 5-51-51	Erratum	22:5 VA.R. 734	--
13 VAC 5-51-61	Amended	22:3 VA.R. 425	11/16/05
13 VAC 5-51-81	Amended	22:3 VA.R. 425	11/16/05
13 VAC 5-51-91	Amended	22:3 VA.R. 432	11/16/05
13 VAC 5-51-121	Amended	22:3 VA.R. 433	11/16/05
13 VAC 5-51-130	Amended	22:3 VA.R. 434	11/16/05
13 VAC 5-51-131	Amended	22:3 VA.R. 434	11/16/05
13 VAC 5-51-132	Amended	22:3 VA.R. 435	11/16/05
13 VAC 5-51-133	Amended	22:3 VA.R. 435	11/16/05
13 VAC 5-51-133.5	Added	22:3 VA.R. 436	11/16/05
13 VAC 5-51-134	Added	22:3 VA.R. 436	11/16/05
13 VAC 5-51-135	Amended	22:3 VA.R. 436	11/16/05
13 VAC 5-51-135.5	Added	22:3 VA.R. 437	11/16/05
13 VAC 5-51-136	Repealed	22:3 VA.R. 437	11/16/05
13 VAC 5-51-145	Added	22:3 VA.R. 437	11/16/05
13 VAC 5-51-150	Amended	22:3 VA.R. 438	11/16/05
13 VAC 5-51-152	Added	22:3 VA.R. 442	11/16/05
13 VAC 5-51-154	Added	22:3 VA.R. 442	11/16/05
13 VAC 5-51-155	Amended	22:3 VA.R. 443	11/16/05
13 VAC 5-62-10 through 13 VAC 5-62-480	Repealed	22:3 VA.R. 444	11/16/05
13 VAC 5-63-10 through 13 VAC 5-63-550	Added	22:3 VA.R. 444-497	11/16/05
13 VAC 5-63-120	Erratum	22:5 VA.R. 734	--
13 VAC 5-63-210	Erratum	22:5 VA.R. 734	--
13 VAC 5-63-270	Erratum	22:5 VA.R. 734	--
13 VAC 5-63-300	Erratum	22:5 VA.R. 734	--
13 VAC 5-91-10	Amended	22:3 VA.R. 498	11/16/05
13 VAC 5-91-20	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-40	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-50	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-70	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-80	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-90	Amended	22:3 VA.R. 499	11/16/05
13 VAC 5-91-110 through 13 VAC 5-91-220	Amended	22:3 VA.R. 499-501	11/16/05
13 VAC 5-91-245 through 13 VAC 5-91-270	Amended	22:3 VA.R. 502	11/16/05
13 VAC 5-112-10 through 13 VAC 5-112-560 emer	Added	22:4 VA.R. 630-649	9/30/05-9/29/06
13 VAC 10-160-10	Amended	22:7 VA.R. 1032	12/1/05
13 VAC 10-160-30	Amended	22:7 VA.R. 1033	12/1/05
13 VAC 10-160-55	Amended	22:7 VA.R. 1034	12/1/05
13 VAC 10-160-60	Amended	22:7 VA.R. 1034	12/1/05
13 VAC 10-160-80	Amended	22:7 VA.R. 1035	12/1/05
13 VAC 10-160-90	Amended	22:7 VA.R. 1035	12/1/05
13 VAC 10-180-10	Amended	22:9 VA.R. 1403	1/1/06
13 VAC 10-180-50	Amended	22:9 VA.R. 1404	1/1/06
13 VAC 10-180-60	Amended	22:9 VA.R. 1403	1/1/06
13 VAC 10-180-90	Amended	22:9 VA.R. 1415	1/1/06
Title 14. Insurance			
14 VAC 5-170-20 through 14 VAC 5-170-105	Amended	21:25 VA.R. 3477-3490	8/15/05
14 VAC 5-170-120	Amended	21:25 VA.R. 3490	8/15/05
14 VAC 5-170-130	Amended	21:25 VA.R. 3492	8/15/05
14 VAC 5-170-150	Amended	21:25 VA.R. 3493	8/15/05
14 VAC 5-170-150	Erratum	22:1 VA.R. 114	--
14 VAC 5-170-160	Amended	21:25 VA.R. 3525	8/15/05

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-170-190 Appendices A through D	Amended	21:25 VA.R. 3527-3548	8/15/05
Title 16. Labor and Employment			
16 VAC 15-21-20	Amended	22:4 VA.R. 606	12/1/05
16 VAC 15-21-30	Amended	22:4 VA.R. 606	12/1/05
Title 18. Professional and Occupational Licensing			
18 VAC 47-20-10 emer	Amended	21:25 VA.R. 3574	8/1/05-7/31/06
18 VAC 47-20-35 emer	Added	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-70 emer	Amended	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-70	Amended	22:6 VA.R. 923	1/1/06
18 VAC 47-20-140 emer	Amended	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-140	Amended	22:6 VA.R. 923	1/1/06
18 VAC 47-20-240 emer	Repealed	21:25 VA.R. 3575	8/1/05-7/31/06
18 VAC 47-20-250 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 47-20-260 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 47-20-270 emer	Added	21:25 VA.R. 3576	8/1/05-7/31/06
18 VAC 50-22-10	Amended	22:8 VA.R. 1163	2/1/06
18 VAC 50-22-20	Amended	22:8 VA.R. 1164	2/1/06
18 VAC 50-22-30	Amended	22:8 VA.R. 1165	2/1/06
18 VAC 50-22-50	Amended	22:8 VA.R. 1168	2/1/06
18 VAC 50-22-60	Amended	22:8 VA.R. 1169	2/1/06
18 VAC 50-22-260	Amended	22:8 VA.R. 1169	2/1/06
18 VAC 50-22-270	Repealed	22:8 VA.R. 1171	2/1/06
18 VAC 60-20-10 emer	Amended	22:1 VA.R. 106	9/1/05-8/31/06
18 VAC 60-20-20 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-71 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-105 emer	Amended	22:1 VA.R. 107	9/1/05-8/31/06
18 VAC 60-20-106 emer	Amended	22:1 VA.R. 108	9/1/05-8/31/06
18 VAC 60-20-210 emer	Amended	22:1 VA.R. 108	9/1/05-8/31/06
18 VAC 60-20-230 emer	Amended	22:1 VA.R. 109	9/1/05-8/31/06
18 VAC 76-20-20 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-30 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-50 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-60 emer	Amended	21:25 VA.R. 3577	7/25/05-7/24/06
18 VAC 76-20-70 emer	Added	21:25 VA.R. 3578	7/25/05-7/24/06
18 VAC 85-20	Erratum	22:1 VA.R. 114	--
18 VAC 85-20-22	Amended	22:9 VA.R. 1418	2/8/06
18 VAC 85-20-25	Added	22:1 VA.R. 82	10/19/05
18 VAC 85-20-26	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-27	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-28	Added	22:1 VA.R. 83	10/19/05
18 VAC 85-20-29	Added	22:1 VA.R. 84	10/19/05
18 VAC 85-20-30	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-40	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-50	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-80	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-90	Amended	22:1 VA.R. 84	10/19/05
18 VAC 85-20-100	Amended	22:1 VA.R. 85	10/19/05
18 VAC 85-20-105	Amended	22:1 VA.R. 85	10/19/05
18 VAC 85-40-35	Amended	22:9 VA.R. 1418	2/8/06
18 VAC 85-40-66	Amended	22:7 VA.R. 1036	1/11/06
18 VAC 85-40-85 through 18 VAC 85-40-91	Added	22:1 VA.R. 87-89	10/19/05
18 VAC 85-50-35	Amended	22:9 VA.R. 1419	2/8/06
18 VAC 85-50-175 through 18 VAC 85-50-184	Added	22:1 VA.R. 89-91	10/19/05
18 VAC 85-80-26	Amended	22:9 VA.R. 1419	2/8/06
18 VAC 85-80-120 through 18 VAC 85-80-125	Added	22:1 VA.R. 92-93	10/19/05
18 VAC 85-80-120 through 18 VAC 85-80-125	Erratum	22:4 VA.R. 659	--

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-101-25	Amended	22:9 VA.R. 1419	2/8/06
18 VAC 85-101-161 through 18 VAC 85-101-166	Added	22:1 VA.R. 94-95	10/19/05
18 VAC 85-110-35	Amended	22:9 VA.R. 1420	2/8/06
18 VAC 85-110-175 through 18 VAC 85-110-183	Added	22:1 VA.R. 95-98	10/19/05
18 VAC 85-120-50	Amended	22:2 VA.R. 254	12/17/05
18 VAC 85-120-150	Amended	22:9 VA.R. 1420	2/8/06
18 VAC 85-120-155 through 18 VAC 85-120-162	Added	22:1 VA.R. 98-100	10/19/05
18 VAC 90-25-80	Amended	22:8 VA.R. 1171	1/25/06
18 VAC 105-20-5	Added	22:4 VA.R. 607	11/30/05
18 VAC 105-20-10	Amended	22:4 VA.R. 607	11/30/05
18 VAC 105-20-15	Amended	22:4 VA.R. 607	11/30/05
18 VAC 105-20-16	Added	22:4 VA.R. 608	11/30/05
18 VAC 105-20-20	Amended	22:4 VA.R. 608	11/30/05
18 VAC 105-20-70	Amended	22:4 VA.R. 608	11/30/05
18 VAC 105-30-10 through 18 VAC 105-30-120	Repealed	22:4 VA.R. 606	11/30/05
18 VAC 110-20-20	Amended	22:2 VA.R. 246	11/2/05
18 VAC 110-20-320	Amended	22:7 VA.R. 1037	1/11/06
18 VAC 112-20-135	Amended	22:1 VA.R. 100	10/19/05
18 VAC 112-20-150	Amended	22:1 VA.R. 101	10/19/05
18 VAC 112-20-151	Repealed	22:1 VA.R. 101	10/19/05
18 VAC 115-20-20	Amended	22:2 VA.R. 249	1/14/06
18 VAC 115-20-130	Amended	22:7 VA.R. 1039	1/11/06
18 VAC 115-20-140	Amended	22:7 VA.R. 1040	1/11/06
18 VAC 115-20-150	Amended	22:7 VA.R. 1041	1/11/06
18 VAC 115-30-30	Amended	22:2 VA.R. 250	1/21/06
18 VAC 115-50-110	Amended	22:7 VA.R. 1041	1/11/06
18 VAC 115-50-120	Amended	22:7 VA.R. 1042	1/11/06
18 VAC 115-50-130	Amended	22:7 VA.R. 1043	1/11/06
18 VAC 115-60-130	Amended	22:7 VA.R. 1043	1/11/06
18 VAC 115-60-140	Amended	22:7 VA.R. 1045	1/11/06
18 VAC 115-60-150	Amended	22:7 VA.R. 1045	1/11/06
18 VAC 140-20-30	Amended	22:9 VA.R. 1420	2/8/06
18 VAC 150-20-100	Amended	21:26 VA.R. 3701	10/5/05
Title 20. Public Utilities and Telecommunications			
20 VAC 5-400-80	Repealed	22:4 VA.R. 612	11/1/05
20 VAC 5-427-10	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-10 through 20 VAC 5-427-170	Added	22:4 VA.R. 613-625	11/1/05
20 VAC 5-427-100	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-110	Erratum	22:1 VA.R. 114	--
20 VAC 5-427-130	Erratum	22:1 VA.R. 114	--
Title 22. Social Services			
22 VAC 40-71-10 emer	Amended	22:2 VA.R. 261	12/28/05-12/27/06
22 VAC 40-71-50 emer	Amended	22:2 VA.R. 266	12/28/05-12/27/06
22 VAC 40-71-55 emer	Added	22:2 VA.R. 266	12/28/05-12/27/06
22 VAC 40-71-60 emer	Amended	22:2 VA.R. 267	12/28/05-12/27/06
22 VAC 40-71-65 emer	Added	22:2 VA.R. 269	12/28/05-12/27/06
22 VAC 40-71-80 emer	Amended	22:2 VA.R. 269	12/28/05-12/27/06
22 VAC 40-71-120 emer	Amended	22:2 VA.R. 270	12/28/05-12/27/06
22 VAC 40-71-130 emer	Amended	22:2 VA.R. 270	12/28/05-12/27/06
22 VAC 40-71-150 emer	Amended	22:2 VA.R. 270	12/28/05-12/27/06
22 VAC 40-71-400 emer	Amended	22:2 VA.R. 274	12/28/05-12/27/06
22 VAC 40-71-485 emer	Added	22:2 VA.R. 277	12/28/05-12/27/06
22 VAC 40-71-485	Erratum	22:4 VA.R. 659	--
22 VAC 40-71-630 emer	Amended	22:2 VA.R. 278	12/28/05-12/27/06
22 VAC 40-71-630	Erratum	22:4 VA.R. 660	--
22 VAC 40-71-650 emer	Amended	22:2 VA.R. 279	12/28/05-12/27/06

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-71-660 emer	Repealed	22:2 VA.R. 280	12/28/05-12/27/06
22 VAC 40-71-670 emer	Amended	22:2 VA.R. 280	12/28/05-12/27/06
22 VAC 40-71-700 emer	Amended	22:2 VA.R. 281	12/28/05-12/27/06
22 VAC 40-80-120 emer	Amended	22:2 VA.R. 285	12/28/05-12/27/06
22 VAC 40-80-340 emer	Amended	22:2 VA.R. 286	12/28/05-12/27/06
22 VAC 40-80-345 emer	Added	22:2 VA.R. 287	12/28/05-12/27/06
22 VAC 40-730-10	Amended	22:2 VA.R. 251	11/2/05
22 VAC 40-730-115	Amended	22:2 VA.R. 252	11/2/05
22 VAC 40-730-115	Amended	22:9 VA.R. 1421	2/8/06

NOTICES OF INTENDED REGULATORY ACTION

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Soil and Water Conservation Board intends to consider amending regulations entitled **4 VAC 50-20, Impounding Structure Regulations.** The purpose of the proposed action is to (i) establish an alternative procedure (decision matrix) that would allow for the evaluation of spillway design floods (SDF) less than the probable maximum flood (PMF) where there would be unreasonable or significant increase in hazard to life and property; (ii) establish alteration permit requirements similar to construction permit requirements; (iii) expand the requirements of an emergency action plan to meet federal requirements; (iv) amend references to new and existing dams to clarify that the regulations refer to all dams unless otherwise specified; (v) improve the applicability and consistency of Table 1 in 4 VAC 50-20-50 and improve the risk classification system; (vi) establish permit application fees for the administration of the dam safety program; (vii) amend or remove the forms that are incorporated by reference; (viii) clarify the meanings of terminologies such as "significantly," "appropriate," and "reasonable" as well as the threshold at which "probable" becomes "possible"; and (ix) revise the regulations as needed to improve the administration and implementation of the Virginia Dam Safety Program.

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

Statutory Authority: § 10.1-604 of the Code of Virginia.

Public comments may be submitted until February 24, 2006.

Contact: David C. Dowling, Policy, Planning and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141 or e-mail david.dowling@dcr.virginia.gov.

VA.R. Doc. No. R06-130; Filed December 7, 2005, 9:51 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Soil and Water Conservation Board intends to consider amending regulations entitled **4 VAC 50-60, Stormwater Management Regulations.** The Virginia Stormwater Management Program was created by Chapter 372 of the 2004 Virginia Acts of Assembly (HB1177) and this action transferred the responsibility of the permitting programs for MS4s and construction activities from the State Water Control Board and DEQ to the Virginia Soil and Water Conservation Board and DCR. The law authorized the board to delegate to the department or to an approved locality any of the powers and duties vested in it except the adoption and promulgation of regulations. The purpose of this proposed action is to consider the development and adoption of revised regulations to establish minimal criteria of a local stormwater management program and board approval procedures for the delegation of the stormwater management program for construction activities, or parts thereof, to localities per §10.1-603.3 of the Code of Virginia; and to revise the regulation, as needed, to improve the administration and implementation of the Virginia Stormwater Management Act (§ 10.1-603.2 et seq.) per the requirements set forth in the federal Clean Water Act and its attendant regulations.

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

Statutory Authority: §§ 10.1-107 and 10.1-603.4 of the Code of Virginia.

Public comments may be submitted until February 24, 2006.

Contact: David C. Dowling, Policy, Planning and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141 or e-mail david.dowling@dcr.virginia.gov.

VA.R. Doc. No. R06-128; Filed December 7, 2005, 10:04 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Soil and Water Conservation Board intends to consider amending regulations entitled **4 VAC 50-60, Stormwater Management Regulations.** The purpose of the proposed action is to consider the development and adoption of regulations that establish or revise the statewide stormwater permit fees at a level sufficient to carry out the stormwater management program per § 10.1-603.4.5 of the Code of Virginia; and to revise the related provisions in the regulations, as needed, to improve the administration and implementation of fees under the Virginia Stormwater Management Act (§ 10.1-603.2 et seq.).

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

Statutory Authority: §§ 10.1-107 and 10.1-603.4 of the Code of Virginia.

Public comments may be submitted until February 24, 2006.

Contact: David C. Dowling, Policy, Planning and Budget Director, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone

(804) 786-2291, FAX (804) 786-6141 or e-mail david.dowling@dcr.virginia.gov.

VA.R. Doc. No. R06-129; Filed December 7, 2005, 10:04 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF JUVENILE JUSTICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Juvenile Justice intends to consider adopting regulations entitled **6 VAC 35-190, Regulations Governing Juvenile Work Release Programs**. The purpose of the proposed action is establish a new regulation, mandated by Chapter 648 of the 2005 Acts of Assembly, that sets forth the rules and criteria by which the department may operate work release programs whereby committed juveniles may (i) be employed by private individuals, corporations, or state agencies at places of business or (ii) attend educational or other related community activity programs outside of a juvenile correctional facility. Chapter 648 requires the department to provide juveniles committed to the department with opportunities to work and participate in career training or technical education programs as operated by DJJ or by the Department of Correctional Education (DCE) and sets forth requirements to be included in the regulation, including eligibility for work release, compensation, custody, and penalties for violating the terms of work release.

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

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

Public comments may be submitted until February 8, 2006.

Contact: Donald R. Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin Street, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 371-0743, FAX (804) 371-0773, or e-mail don.carignan@djj.virginia.gov.

VA.R. Doc. No. R06-139; Filed December 14, 2005, 11:42 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-30, Groups Covered and Agencies Responsible for Eligibility Determinations; 12 VAC 30-30, Eligibility Conditions and Requirements; and 12 VAC 30-50, Amount, Duration and Scope of Medical and Remedial Care Services.** The purpose of the proposed action is to implement a new program for prescription drug coverage for Medicaid/Medicare dual eligibles.

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

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

Public comments may be submitted until January 27, 2006.

Contact: Jack Quigley, Policy and Research Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-1300, FAX (804) 786-1680 or e-mail jack.quigley@dmas.virginia.gov.

VA.R. Doc. No. R06-132; Filed December 7, 2005, 9:51 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to implement a new supplemental payment method for faculty in dental pediatric residency programs.

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

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

Public comments may be submitted until January 25, 2006.

Contact: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or e-mail william.lessard@dmas.virginia.gov.

VA.R. Doc. No. R06-125; Filed December 2, 2005, 4:36 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Mental Health, Mental Retardation And Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-45, Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children.** The purpose of the proposed action is to add provisions for issuing an order of summary suspension of the

license to operate a group home or residential facility for children.

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

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public comments may be submitted until January 25, 2006.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail leslie.anderson@co.dmhmrsas.virginia.gov.

VA.R. Doc. No. R06-123; Filed December 2, 2005, 11:27 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 Mental Health, Mental Retardation And Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-45, Regulations for Providers of Mental Health, Mental Retardation and Substance Abuse Residential Services for Children.** The purpose of the proposed action is to add provisions for licensing providers of brain injury services in accordance with Chapter 725 of the 2005 Acts of Assembly.

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

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public comments may be submitted until February 24, 2006.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail leslie.anderson@co.dmhmrsas.virginia.gov.

VA.R. Doc. No. R06-159; Filed December 30, 2005, 2:43 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 Mental Health, Mental Retardation And Substance Abuse Services Board intends to consider amending regulations entitled **12 VAC 35-105, Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to add provisions for licensing providers of brain injury services in accordance with Chapter 725 of the 2005 Acts of Assembly.

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

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public comments may be submitted until February 24, 2006.

Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 371-6885, FAX (804) 692-0066 or e-mail leslie.anderson@co.dmhmrsas.virginia.gov.

VA.R. Doc. No. R06-161; Filed December 30, 2005, 2:40 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider amending regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.** The purpose of the proposed action is to establish standards for mixing, diluting or reconstituting sterile drug products by doctors or persons under their supervision in accordance with Chapter 475 of the 2005 Acts of the Assembly.

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

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

Public comments may be submitted until February 22, 2006.

Contact: William J. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R06-148; Filed December 21, 2005, 1:51 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to consider adopting regulations entitled **18 VAC 85-130, Regulations Governing the Practice of Licensed Midwives.** The purpose of the proposed action is to establish new regulations for the licensure of midwives.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957.9 of the Code of Virginia.

Public comments may be submitted until February 22, 2006.

Contact: William J. Harp, M.D., Executive Director, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943 or e-mail william.harp@dhp.virginia.gov.

VA.R. Doc. No. R06-149; Filed December 21, 2005, 1:52 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 repealing regulations entitled **22 VAC 40-20, Food Stamp Program - Income Conversion Method.** The purpose of the proposed action is to repeal 22 VAC 40-20, which requires local social services workers to use conversion factors of 4.3 for weekly income amounts and 2.15 for biweekly amounts when calculating income to determine eligibility and benefit level for the Food Stamp Program. The provisions of this regulation will be included in a proposed new regulation, 22 VAC 40-601, Food Stamp Program.

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

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

Public comments may be submitted until January 25, 2006.

Contact: Celestine Jackson, Program Specialist, Division of Benefit Programs, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356 or e-mail celestine.jackson@dss.virginia.gov.

VA.R. Doc. No. R06-135; Filed December 7, 2005, 10:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled **22 VAC 40-540, Allowance of Telephone Costs in the Food Stamp Program.** The purpose of the proposed action is to repeal 22 VAC 40-20, which requires local social services workers to use a standard telephone amount when calculating shelter expenses to determine eligibility and benefit level for the Food Stamp Program. The provisions of this regulation will be included in a proposed new regulation, 22 VAC 40-601, Food Stamp Program.

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

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

Public comments may be submitted until January 25, 2006.

Contact: Celestine Jackson, Program Specialist, Division of Benefit Programs, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356 or e-mail celestine.jackson@dss.virginia.gov.

VA.R. Doc. No. R06-136; Filed December 7, 2005, 10:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider repealing regulations entitled **22 VAC 40-600, Food Stamp Program - Administrative Disqualification Hearings.** The purpose of the proposed action is to repeal 22 VAC 40-600, which establishes an administrative process to determine if an individual has committed an intentional act against the Food Stamp Program. The provisions of this regulation will be included in a proposed new regulation, 22 VAC 40-601, Food Stamp Program.

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

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

Public comments may be submitted until January 25, 2006.

Contact: Celestine Jackson, Program Specialist, Division of Benefit Programs, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356 or e-mail celestine.jackson@dss.virginia.gov.

VA.R. Doc. No. R06-137; Filed December 7, 2005, 10:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to consider adopting regulations entitled **22 VAC 40-601, Food Stamp Program.** The purpose of the proposed action is to promulgate a new regulation for determining eligibility and benefit level for the Food Stamp Program. The new regulation will establish calculation methods for determining monthly income, require use of a standard amount for telephone expenses, and establish a process for administrative hearings to determine when intentional acts have been committed. 22 VAC 40-20, 22 VAC 40-540, and 22 VAC 40-600 will be repealed and provisions incorporated into the proposed regulation, 22 VAC 40-601.

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

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

Public comments may be submitted until January 25, 2006.

Contact: Celestine Jackson, Program Specialist, Division of Benefit Programs, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356 or e-mail celestine.jackson@dss.virginia.gov.

VA.R. Doc. No. R06-138; Filed December 7, 2005, 10:32 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Title of Regulation: **9 VAC 25-260. Water Quality Standards (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.

Public Hearing Date: March 21, 2006 - 2 p.m.
Public comments may be submitted until April 5, 2006.
(See Calendar of Events section
for additional information)

Agency Contact: David C. Whitehurst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4121, FAX (804) 698-4116, or e-mail dcwhitehurst@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia mandates and authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at § 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The EPA Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the exceptional state waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as exceptional state waters.

Purpose: This proposed amendment is a necessary revision to the state water quality standards regulation. The State Water Control Board views Exceptional State Waters nominations as citizen petitions under § 2.2-4007 of the Code of Virginia. Therefore, the board took action on this petition for proposed designation because department staff had concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The Exceptional State Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional State Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

Substance: The proposed amendments designate two tributaries to the Pedlar River, three tributaries to the North Fork of the Buffalo River, and a portion of the North Fork of the Buffalo River for special protection as Exceptional State Waters.

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

A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective that would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment. However, the only riparian landowner for each of these waters is a federal agency (U.S. Forest Service) and none of these waters contain any permitted point source discharges nor are any anticipated by the applicable federal agency.

The primary advantage to the public is that these waters will be protected at their present high level of quality for the use and enjoyment of current and future generations of Virginians.

The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and possessing outstanding recreational opportunities and/or exceptional aquatic communities are described in the department's November 15, 2004 "04-2021, Guidance for Exceptional State Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3)." Although all of these waters proposed for designation are located on public (federal) land, those localities and businesses located near the designated waters may experience financial benefits through an increase in

ecotourism to the area because of the exceptional nature of the water body that led to its designation.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

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 State Water Control Board (board) proposes to amend the Antidegradation Policy section of the state's Water Quality Standards regulation to designate six surface waters for special protection as Exceptional State Waters. These waters, all located in Amherst County, include Roberts Creek, Shady Mountain Creek, Cove Creek, Little Cove Creek and its tributaries, Rochy Branch, and North Fork of the Buffalo River.

Estimated economic impact. The proposed regulation designates six surface waters within Amherst County as Exceptional State Waters. These waters include Roberts Creek, Shady Mountain Creek, Cove Creek, Little Cove Creek and its tributaries, Rochy Branch, and North Fork of the Buffalo River. Waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities may be designated as Exceptional State Waters if they meet the eligibility requirements based on the information available at the time of preliminary evaluation.[1] An exceptional water quality designation provides extra protection against water quality degradation due to point source discharges. No new, additional, or increased point source discharge of sewage, industrial waste, or other pollution are allowed into the water once it has been designated as an Exceptional State Water. The only exception would be temporary, limited impact activities.

Designation of these waters as Exceptional State Waters will prohibit riparian landowners within the designated segment from new or expanded permanent point source discharges to the designated segment. Thus, the riparian landowners will have to seek alternatives to discharging to the designated segment and will incur additional financial expenditures associated with wastewater or storm water treatment. On the other hand, by designating these waters as Exceptional State Waters, the proposed regulatory change will protect these waters at their present high level of quality for the use and enjoyment of current and future generations of Virginians. As a result, the proposed change will encourage tourism in the surrounding areas and increase the number of people coming to the areas seeking recreational outdoor activities such as fishing, camping and hiking, which, in turn, will likely boost economic activity in these areas. The net impact of the proposed change will depend on whether total benefit exceeds total cost.

According to Department of Environmental Quality (DEQ), the only riparian landowner for each of these waters is a federal agency (U.S. Forest Service). Currently none of these waters contain any permitted point source discharges, nor are any anticipated by the U.S. Forest Service. Therefore, the proposed regulatory change will likely not significantly change the aquatic environment in these areas and thus, will not likely have any significant negative or positive impact in the foreseeable future.

Businesses and entities affected. The Exceptional State Waters designation prohibits new or expanded point source discharges in the designated waters. Currently the U.S. Forest Service is the only riparian landowner and there are no Virginia Pollutant Discharge Elimination System (VPDES) permittees located on these waters nor are any anticipated by the U.S. Forest Service. Therefore, in the foreseeable future, the proposed regulatory change will likely not have any significant impact on businesses.

If in the future, the riparian landowners have an intent to discharge to the designated waters, they will be required to seek alternatives to discharging and incur additional costs that will reduce their profits. On the other hand, businesses located near the designated waters may experience financial benefits through an increase in ecotourism to the area because of the exceptional nature of the water body.

Localities particularly affected. The proposed regulatory change will affect the county of Amherst where the six designated surface waters are located.

Projected impact on employment. The proposed regulatory change will likely not have any significant impact on the businesses and employment in the foreseeable future. In the event that the riparian landowners have an intent to discharge to the designated waters in the future, the proposed regulatory change will likely restrict employment growth in these businesses, while at the same time encourage employment growth in industries related to tourism and outdoor recreation in the surrounding areas.

Effects on the use and value of private property. Since the U.S. Forest Service is the only riparian landowner for the six waters, and currently no businesses are permitted dischargers to these waters nor are any anticipated in the future, the proposed designation of Exceptional State Waters will likely not cause any significant impact on the ecological environment in these areas and therefore the impact on private properties will be limited.

If in the future the riparian landowners have an intent to discharge to the designated waters, they will experience an increased cost and reduced profit which will commensurately reduce their asset values. Those related to tourism and outdoor recreation in the surrounding areas may experience

[1] Guidance for Exceptional State Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A .3).

increases in their profits and commensurately increased property values. In addition, improvements in water quality due to the Exceptional State Waters designation may have a positive impact on the value of the residential properties in the surrounding areas.

Small Businesses: Costs and Other Effects. The proposed regulatory change will likely not have any significant impact on the small businesses in the foreseable future, since the U.S. Forest Service is the only riparian landowner and currently there are no VPDES permittees located on these waters and none are anticipated by the U.S. Forest Service.

If in the future the riparian landowners have an intent to discharge but are prohibited by the Exceptional State Waters designation from discharging to the designated waters, they will be required to seek alternatives to discharging and incur additional costs. On the other hand, small businesses involved in tourism and outdoor recreation in the surrounding areas may experience increase in their profits.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulatory change will likely not have any significant impact on small businesses in the foreseeable future.

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

Summary:

The amendments designate five surface waters and a segment of a sixth surface water for special protection as Exceptional State Waters.

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 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) Little Stony Creek in Giles County from the first footbridge above the Cascades picnic area, upstream to the 3,300-foot elevation.

(2) Bottom Creek in Montgomery County and Roanoke County from Route 669 (Patterson Drive) downstream to the last property boundary of the Nature Conservancy on the southern side of the creek.

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

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

(5) Brown Mountain Creek, located on U.S. Forest Service land in Amherst County, from the City of Lynchburg property boundary upstream to the first crossing with the national forest property boundary.

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

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

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

(9) Ramseys Draft, located on U.S. Forest Service land in Augusta County, from its headwaters (which includes Right and Left Prong Ramseys Draft) downstream to the Wilderness Area boundary.

(10) Whitetop Laurel Creek, located on U.S. Forest Service land in Washington County, from the national forest boundary immediately upstream from the second railroad trestle crossing the creek above Taylors Valley upstream to the confluence of Green Cove Creek.

(11) Ragged Island Creek in Isle of Wight County from its confluence with the James River at a line drawn across the creek mouth at N36°56.306'/W76°29.136' to N36°55.469'/W76°29.802' upstream to a line drawn across the main stem of the creek at N36°57.094'/W76°30.473' to N36°57.113'/W76°30.434', excluding wetlands and impounded areas and including only those tributaries completely contained within the Ragged Island Creek Wildlife Management Area on the northeastern side of the creek.

(12) Big Run in Rockingham County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Big Run within the confines of Shenandoah National Park.

(13) Doyles River in Albemarle County from its headwaters to the first crossing with the Shenandoah National Park boundary and Jones Falls Run from its headwaters to its confluence with Doyles River and all tributaries to these segments of Doyles River and Jones Fall Run within the confines of Shenandoah National Park.

(14) East Hawksbill Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Hawksbill Creek within the confines of Shenandoah National Park.

(15) Jeremys Run in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Jeremys Run within the confines of Shenandoah National Park.

(16) East Branch Naked Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Branch Naked Creek within the confines of Shenandoah National Park.

(17) Piney River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the Piney River within the confines of Shenandoah National Park.

(18) North Fork Thornton River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the North Fork Thornton River within the confines of Shenandoah National Park.

(19) (Reserved.)

(20) (Reserved.)

(21) (Reserved.)

(22) (Reserved.)

(23) Roberts Creek from its confluence with the Pedlar River upstream to its first crossing with the National Forest boundary.

(24) Shady Mountain Creek from its headwaters downstream to its confluence with the Pedlar River.

(25) Cove Creek from its headwaters downstream to the National Forest boundary.

(26) Little Cove Creek and its tributaries from the headwaters downstream to the National Forest boundary.

(27) Rocky Branch from its headwaters downstream to its confluence with the North Fork of the Buffalo River.

(28) North Fork of the Buffalo River from its confluence with Rocky Branch downstream to the National Forest Boundary.

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. R05-103; Filed December 29, 2005, 3:21 p.m.

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Title of Regulation: **9 VAC 25-260. Water Quality Standards (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.

Public Hearing Date: March 27, 2006 - 5:30 p.m.
Public comments may be submitted until April 11, 2006.
(See Calendar of Events section for additional information)

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4116, or e-mail jwgregory@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia mandates and authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law, and to modify, amend or cancel any such standards or policies established. The federal Clean Water Act at § 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses and an antidegradation policy. All of the citations mentioned describe mandates for water quality standards.

The EPA Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the exceptional state waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as exceptional state waters.

Purpose: This proposed amendment is a necessary revision to the state water quality standards regulation. The State Water Control Board views Exceptional State Waters nominations as citizen petitions under § 2.2-4007 of the Code of Virginia. Therefore, the board took action on this petition for proposed designation because department staff had concluded, based on the information available at the time of the preliminary evaluation, that the proposed designation met the eligibility requirements that a water body must meet before it can be afforded the extra point source protection provided by such a designation. The Exceptional State Waters category of the Antidegradation Policy allows the board to designate waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities for added protection. Once designated, the Antidegradation Policy provides that no water quality degradation would be allowed in the Exceptional State Waters. The only exception would be temporary, limited impact activities. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities or exceptional aquatic communities, the board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

Substance: The amendments designate four tributaries to Simpson Creek as Exceptional State Waters. These tributaries are Blue Suck Branch in Alleghany and Botetourt counties and Downey Branch, Piney Mountain Branch, and the North Branch Simpson Creek in Alleghany County.

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

A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective that would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment. However, the only riparian landowner for each of these waters is a federal agency (U.S. Forest Service) and none of these waters contain any permitted point source discharges nor are any anticipated by the applicable federal agencies.

The primary advantage to the public is that these waters will be protected at their present high level of quality for the use and enjoyment of current and future generations of Virginians.

The factors to be considered in determining whether a nominated water body meets the eligibility decision criteria of exceptional environmental settings and possessing outstanding recreational opportunities and/or exceptional aquatic communities are described in the department's April 25, 2001, "Guidance and/or Exceptional Surface Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3)." Although all of these waters proposed for designation are located on public (federal) land, those localities and businesses located near the designated waters may experience financial benefits through an increase in ecotourism to the area because of the exceptional nature of the water body that led to its designation.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

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 State Water Control Board (board) proposes to amend the Antidegradation Policy section of the state's Water Quality Standards regulation to designate four tributaries of the Simpson Creek (Blue Such Branch, Downy Branch, Piney Mountain Branch, and North Branch Simpson Creek) for special protection as Exceptional State Waters.

Estimated Economic Impact. The proposed regulation designates four tributaries of the Simpson Creek as Exceptional State Waters: Blue Such Branch, Downy Branch, Piney Mountain Branch, and North Branch Simpson Creek. Blue Such Branch is located in Alleghany County and Botetourt County, the other three are located in Alleghany County. Waters that display exceptional environmental settings and either exceptional aquatic communities or exceptional recreational opportunities may be designated as Exceptional State Waters if they meet the eligibility requirements based on the information available at the time of preliminary evaluation.[1] An exceptional water quality designation provides extra protection against water quality degradation due to point source discharges. No new, additional, or increased point source discharge of sewage, industrial waste, or other pollution are allowed into the water once it has been designated as an exceptional state water. The only exception would be temporary, limited impact activities.

Designation of these waters as Exceptional State Waters will prohibit riparian landowners within the designated segment from new or expanded permanent point source discharges to the designated segment. Thus, the riparian landowners will have to seek alternatives to discharging to the designated segment and will incur additional financial expenditures associated with wastewater or storm water treatment. On the other hand, by designating these waters as exceptional state waters, the proposed regulatory change will protect these waters at their present high level of quality for the use and enjoyment of current and future generations of Virginias. As a result, the proposed change will encourage tourism in the surrounding areas and increase the number of people coming to the areas seeking recreational outdoor activities such as fishing, camping and hiking, which, in turn, will likely boost economic activity in these areas. The net impact of the proposed change will depend on whether total benefit exceeds total cost.

According to Department of Environmental Quality (DEQ), the only riparian landowner for each of these waters is a federal agency (U.S. Forest Service). Currently none of these waters contain any permitted point source discharges, nor are any anticipated by the U.S. Forest Service. Therefore, the proposed regulatory change will likely not significantly change the aquatic environment in these areas and thus, will not likely have any significant negative or positive impact in the foreseeable future.

Businesses and entities affected. The Exceptional State Waters designation prohibits new or expanded point source discharges in the designated waters. Currently the U.S. Forest Service is the only riparian landowner and there are no Virginia Pollutant Discharge Elimination System (VPDES) permittees located on these waters nor are any anticipated by the U.S. Forest Service. Therefore, in the foreseeable future, the proposed regulatory change will likely not have any significant impact on businesses.

If in the future, the riparian landowners have an intent to discharge to the designated waters, they will be required to seek alternatives to discharging and incur additional costs that will reduce their profits. On the other hand, businesses located near the designated waters may experience financial benefits through an increase in ecotourism to the area because of the exceptional nature of the water body.

Localities particularly affected. The proposed regulatory change will affect the counties of Alleghany and Botetourt where the four designated surface waters are located.

Projected impact on employment. The proposed regulatory change will likely not have any significant impact on the businesses and employment in the foreseeable future. In the event that the riparian landowners have an intent to discharge to the designated waters in the future, the proposed regulatory change will likely restrict employment growth in these businesses, while at the same time encourage employment growth in industries related to tourism and outdoor recreation in the surrounding areas.

Effects on the use and value of private property. Since the U.S. Forest Service is the only riparian landowner for the four waters, and currently no businesses are permitted dischargers to these waters nor are any anticipated in the future, the proposed designation of Exceptional State Waters will likely not cause any significant impact on the ecological environment in these areas and; therefore, the impact on private properties will be limited.

If in the future the riparian landowners have an intent to discharge to the designated waters, they will experience an increased cost and reduced profit that will commensurately reduce their asset values. Those related to tourism and outdoor recreation in the surrounding areas may experience increases in their profits and commensurately increased property values. In addition, improvements in water quality due to the Exceptional State Waters designation may have a positive impact on the value of the residential properties in the surrounding areas.

Small Businesses: Costs and Other Effects. The proposed regulatory change will likely not have any significant impact on the small businesses in the foreseeable future, since the U.S.

[1] Guidance for Exceptional State Waters Designations in Antidegradation Policy Section of Virginia Water Quality Standards Regulation (9 VAC 25-260-30 A 3).

Forest Service is the only riparian landowner and currently there are no VPDES permittees located on these waters and none are anticipated by the U.S. Forest Service.

If in the future the riparian landowners have an intent to discharge but are prohibited by the Exceptional State Waters designation from discharging to the designated waters, they will be required to seek alternatives to discharging and incur additional costs. On the other hand, small businesses involved in tourism and outdoor recreation in the surrounding areas may experience increase in their profits.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulatory change will likely not have any significant impact on small businesses in the foreseeable future.

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

Summary:

The amendments designate four surface waters for special protection as Exceptional State Waters.

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 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) Little Stony Creek in Giles County from the first footbridge above the Cascades picnic area, upstream to the 3,300-foot elevation.

(2) Bottom Creek in Montgomery County and Roanoke County from Route 669 (Patterson Drive) downstream to the last property boundary of the Nature Conservancy on the southern side of the creek.

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

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

(5) Brown Mountain Creek, located on U.S. Forest Service land in Amherst County, from the City of Lynchburg property boundary upstream to the first crossing with the national forest property boundary.

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

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

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

(9) Ramseys Draft, located on U.S. Forest Service land in Augusta County, from its headwaters (which includes Right and Left Prong Ramseys Draft) downstream to the Wilderness Area boundary.

(10) Whitetop Laurel Creek, located on U.S. Forest Service land in Washington County, from the national forest boundary immediately upstream from the second railroad trestle crossing the creek above Taylors Valley upstream to the confluence of Green Cove Creek.

(11) Ragged Island Creek in Isle of Wight County from its confluence with the James River at a line drawn across the creek mouth at N36°56.306'/W76°29.136' to N36°55.469'/W76°29.802' upstream to a line drawn across the main stem of the creek at N36°57.094'/W76°30.473' to N36°57.113'/W76°30.434', excluding wetlands and impounded areas and including only those tributaries completely contained within the Ragged Island Creek Wildlife Management Area on the northeastern side of the creek.

(12) Big Run in Rockingham County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Big Run within the confines of Shenandoah National Park.

(13) Doyles River in Albemarle County from its headwaters to the first crossing with the Shenandoah National Park boundary and Jones Falls Run from its headwaters to its confluence with Doyles River and all tributaries to these segments of Doyles River and Jones Fall Run within the confines of Shenandoah National Park.

(14) East Hawksbill Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Hawksbill Creek within the confines of Shenandoah National Park.

(15) Jeremys Run in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Jeremys Run within the confines of Shenandoah National Park.

(16) East Branch Naked Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Branch Naked Creek within the confines of Shenandoah National Park.

(17) Piney River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the Piney River within the confines of Shenandoah National Park.

(18) North Fork Thornton River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the North Fork Thornton River within the confines of Shenandoah National Park.

(19) Blue Suck Branch from its headwaters downstream to the first crossing with the George Washington National Forest boundary.

(20) Downy Branch from its headwaters downstream to the first crossing with the George Washington National Forest boundary.

(21) Piney Mountain Branch from its headwaters downstream to the first crossing with the George Washington National Forest boundary.

(22) North Branch Simpson Creek (Brushy Run) from its headwaters downstream to its confluence with Simpson Creek.

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. R05-26; Filed December 29, 2005, 3:20 p.m.

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Title of Regulation: **9 VAC 25-260. Water Quality Standards (amending 9 VAC 25-260-5, 9 VAC 25-260-50, 9 VAC 25-260-310, 9 VAC 25-260-350, 9 VAC 25-260-415, 9 VAC 25-260-420, 9 VAC 25-260-450, 9 VAC 25-260-480, 9 VAC 25-260-540; adding 9 VAC 25-260-187).**

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

Public Hearing Date: March 23, 2006 - 10 a.m.
Public comments may be submitted until April 7, 2006.
(See Calendar of Events section for additional information)

Agency Contact: Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA

23240, telephone (804) 698-4113, FAX (804) 698-4116, or e-mail jwgregory@deq.virginia.gov.

Basis: Federal and state mandates in the Clean Water Act at 303(c), 40 CFR Part 131 and § 62.1-44.15(3a) of the Code of Virginia are the sources of legal authority identified to promulgate these amendments.

The scope and objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The Clean Water Act at § 303(c)(1) requires that the states hold public hearings for review of applicable water quality standards and, as appropriate, modification and adoption of standards.

The scope of the federal regulations at 40 CFR Part 131 is to describe the requirements and procedures for developing, reviewing, revising and approving water quality standards by the states as authorized by § 303(c) of the Clean Water Act 40 CFR Part 131 specifically requires the states to adopt criteria to protect designated uses.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at § 62.1-44.15(3a) requires the board to establish standards of quality and to modify, amend or cancel any such standards or policies. It also requires the board to hold public hearings from time to time for the purpose of reviewing the water quality standards, and, as appropriate, adopting, modifying or canceling such standards.

The correlation between the proposed regulatory action and the legal authority identified above is that criteria and designated uses are requirements of the Water Quality Standards and the amendments being considered are modifications of criteria that will protect designated uses.

Purpose: This rulemaking is needed to establish the appropriate nutrient criteria for lakes and reservoirs in the Commonwealth of Virginia because:

1. The U.S. Environmental Protection Agency (EPA) has published ecoregion water body specific nutrient related criteria and stated its intent in a National Nutrient Strategy (1998) to promulgate these default nutrient criteria for a state if the state does not adopt nutrient criteria by December 31, 2004, or submit a nutrient development plan with timelines for adoption of this criteria that are accepted by EPA. As discussed below, Virginia decided to take the latter approach.

2. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act § 305(b) report and on the § 303(d) list.

3. Waters not meeting standards will require development of a Total Maximum Daily Load (TMDL) under § 303(d) of the Clean Water Act. Adoption of water body type specific criteria and uses is necessary to define the most accurate water quality goals for clean up or TMDL development and to protect the appropriate aquatic life and recreational uses of lakes and reservoirs.

Since Virginia intended to develop state specific criteria rather than adopt the EPA published national nutrient criteria, the state submitted to EPA a nutrient criteria development plan for Virginia that EPA has accepted. EPA will use the plan to track Virginia's progress in nutrient criteria development. If the Commonwealth keeps to the schedule contained in the plan, EPA is not expected to promulgate nutrient criteria for the Commonwealth.

Virginia is committed through its Nutrient Criteria Development Plan to adopt new and revised water quality standards for estuaries, lakes and reservoirs, and rivers and streams. The department is using a two step process - technical development of nutrient criteria and administrative adoption of the criteria - for each water body type. Prioritization of waters for criteria development and adoption is based on availability of data to proceed with a rulemaking. This sequential approach to the development and regulatory adoption of nutrient criteria was initiated in 2003 for estuaries; the current rulemaking is for lakes and reservoirs and in 2006 a separate rulemaking will be initiated for rivers and streams.

Since mid-2003 an Academic Advisory Committee (AAC) on Freshwater Nutrient Criteria, which was formed by the Virginia Water Resources Research Center under contract to DEQ, has been providing advice to the department on nutrient criteria development for lakes and reservoirs. The documents produced by the AAC and used by the department in developing these amendments can be found on the department's website at http://www.deq.virginia.gov/wqs/rule.html#NUT2.

Substance: The substantive changes that are being proposed in this regulatory action are special nutrient standards for the two natural lakes in Virginia – Mountain Lake and Lake Drummond, chlorophyll *a* and total phosphorus criteria for 116 man-made lakes and reservoirs that the department has previously monitored or plans to monitor (the total phosphorus criteria apply only when algicide treatments are made during the monitoring period of April 1 through October 31) and application of existing dissolved oxygen criteria during thermal stratification to only the upper layer in the lake-like portion of man-made lakes and reservoirs that will be protected from the effects of nutrient enrichment by the proposed numerical criteria. In addition, a statement is included to allow for site specific modifications to the criteria if the nutrient criteria specified for a man-made lake or reservoir do not provide for the attainment and maintenance of the water quality standards of downstream waters; this was proposed to address the phased development of nutrient criteria for lakes and reservoirs preceding those for rivers and streams.

This rulemaking effort also involved an evaluation of the applicability of Virginia's current regulatory program (Nutrient Enriched Waters) for controlling nutrients in surface waters, including lakes and reservoirs. The concept of Nutrient Enriched Waters was not incorporated into the final approach selected by the state, so a plan was developed to transition from the existing regulatory Nutrient Enriched Waters listings to the new regulatory approach by sequentially deleting currently designated Nutrient Enriched Waters as the Commonwealth adopts nutrient criteria for those waters. Therefore, this rulemaking proposes the repeal of the

following nutrient enriched waters designations in 9 VAC 25-260-350, Designation of Nutrient Enriched Waters: Smith Mountain Lake, Lake Chesdin, South Fork Rivanna Reservoir, and Claytor Lake.

Issues: The primary advantage and benefit to the public is that the proposed nutrient criteria, once implemented fully, will result in the protection of the fishery and other associated recreational uses in identified lakes and reservoirs from the effects of nutrient enrichment. The disadvantage is that 22 entities currently discharging to these waters may have to incur the costs of installing treatment for nutrient reduction.

The advantage to the agency is that the adoption of these criteria will continue to meet the phased obligations to EPA of the Commonwealth's nutrient criteria development plan and to develop nutrient criteria appropriate for Virginia waters instead of EPA promulgating default national criteria.

The advantage to the Commonwealth is that the adoption of these criteria will help protect the public water supplies and recreational lakes listed in these proposed amendments from the effects of nutrient enrichment.

There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Pertinent matters of interest to the regulated community, government officials, and the public are the potential costs to meet the requirements of this regulation.

Requirements More Restrictive Than Federal: There is no requirement of the proposal that is more stringent than federal recommendations, guidance or regulation. Federal regulation requires states to adopt criteria to protect designated uses. The proposal accurately provides that protection in accordance with EPA guidance.

Localities Particularly Affected: Counties of Albemarle, Alleghany, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Brunswick, Buckingham, Campbell, Charles City, Charlotte, Chesterfield, Culpeper, Dickenson, Fairfax, Frederick, Greensville, Halifax, Henry, Isle of Wight, James City, Lee, Loudoun, Louisa, Mecklenburg, Montgomery, Nelson, New Kent, Nottoway, Patrick, Pittsylvania, Prince Edward, Prince William, Pulaski, Roanoke, Rockbridge, Rockingham, Russell, Scott, Shenandoah, Spotsylvania, Smyth, Stafford, Sussex, Washington, Wythe, Wise, York.

Cities of Newport News, Norfolk, Suffolk, Virginia Beach.

Towns of Lawrenceville and Victoria.

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 State Water Control Board (board) proposes to amend the state's Water Quality Standards regulation to add new nutrients criteria for man-made lakes and reservoirs as well as the two natural lakes. The board also proposes to restrict the existing dissolved oxygen criteria during times of thermal stratification to the upper layer (epilimnion) in man-made lakes and reservoirs.

Estimated economic impact. Nutrients have consistently ranked as one of the top three causes of use impairment in U.S. waters for more than a decade. Although nutrients such as phosphorus are necessary for the growth of algae which are an essential part of the food chain, excess nutrients lead to significant water quality problems including harmful algal blooms, hypoxia, declines in fish and fish habitat.

The U.S. Environmental Protection Agency (EPA) has published ecoregion water body specific nutrient related criteria and stated its intent in a National Nutrient Strategy (1998) to promulgate these default nutrient criteria for a state if the state does not adopt nutrient criteria by December 31, 2004 or submit a nutrient development plan with timelines for adoption of this criteria that are accepted by EPA.

With an intent to develop state specific criteria rather than adopt the EPA published national nutrient criteria, the Virginia Department of Environmental Quality (DEQ) submitted to EPA a nutrient criteria development plan which was accepted by EPA on June 15, 2004. According to the plan, Virginia is committed to adopt new and revised water quality standards for estuaries, lakes and reservoirs and rivers and streams. These standards will be used in setting Virginia Pollutant Discharge Elimination System (VPDES) permit limits[1] and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act 305 (b) report and on the 303 (d) list. Waters not meeting standards will require development of a Total Maximum Daily Load (TMDL) under section 303(d) of the Clean Water.[2]

The board has adopted uses and nutrient criteria for the Chesapeake Bay which were effective on June 24, 2005. Adoption of site specific criteria for the York River (30-day dissolved oxygen) and James River (numerical chlorophyll) is scheduled for the 11/21/05 board meeting. Now the board proposes to add new numerical and narrative nutrient criteria for man-made lakes and reservoirs as well as the two natural lakes in the state. Specifically, chlorophyll *a* and total phosphorus criteria will be established for the 116 man-made lakes and reservoirs that DEQ has previously monitored or plans to monitor.[3] Special nutrient standards will be added for the two natural lakes in Virginia: Mountain Lake and Lake Drummond. In addition, a statement is included to allow for

[1] VPDES permit regulations are addressed in 9 VAC 25-31.
[2] TMDLs are addressed through §§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia. "Water Quality Monitoring, Information, and Restoration Act (WQMIRA)".
[3] Chlorophyll *a* criteria apply to all waters on the list. The total phosphorus criteria apply only when algicide treatments are made during the monitoring period of April 1 through October 31.

site specific modifications to the criteria if the nutrient criteria specified for a man-made lake or reservoir do not provide for the attainment and maintenance of the water quality standards of downstream waters. This is proposed to address the phased development of nutrient criteria for lakes and reservoirs preceding those for rivers and streams.

Currently nutrients in lakes and reservoirs of the Commonwealth are regulated under Policy for Nutrient Enriched Waters (9 VAC 25-40). The board designates Nutrient Enriched Waters based upon an evaluation of the historical water quality data for one or more of the following indicators of nutrient enrichment: chlorophyll *a* concentrations, dissolved oxygen fluctuations, and concentrations of total phosphorus. The permitted dischargers that exceed specified flow rates are required not to exceed a monthly average total phosphorus effluent limitation. Currently four lakes and reservoirs are designated as Nutrient Enriched Waters: Claytor Lake, Lake Chesdin, South Fork Rivanna Reservoir and Smith Mountain Lake. Since the proposed regulation provides for a new method for controlling nutrients, Claytor Lake, Lake Chesdin, South Fork Rivanna Reservoir and Smith Mountain Lake will be removed from the existing regulatory Nutrient Enriched Waters listings.

The establishment of new nutrient criteria for lakes and reservoirs is likely to impose economic cost for point source dischargers to the lakes and reservoirs that have nutrients in their discharges. The proposed water quality standards will be used in calculating the nutrients (phosphorus) load allocation for all point sources and the load allocation so determined will be used to set VPDES permit limits. The point source dischargers are likely to incur additional cost in order to control total phosphorus in their discharges through such processes as precipitation and setting and solid disposal. According to DEQ, currently there are no permitted dischargers to the two natural lakes while there are 17 permitted dischargers to the man-made lakes and reservoirs in the Commonwealth, which include eleven wastewater treatment plants, four water treatment plants, one power station and one restaurant. The estimated total cost for the two biggest (Clarksville Wastewater Treatment Plant and River Ridge) will be about $400,000 on an annualized basis, assuming that all of the phosphorus in their discharges are to be removed.[4] The estimated total cost for all the 17 dischargers would be between $400,000 and $1,000,000 on an annualized basis.

The actual cost, however, will be less than the estimated numbers. The above estimated costs are calculated assuming that all the phosphorus in the discharges is to be removed. While actually the point sources will be required to remove only the amount of phosphorus that exceeds the permitted limits. Also, according to DEQ, dischargers will be subject to changes in their permit limits only upon permit issuance or renewal, which might take as long as five years[5], in addition to a four-year compliance period. This means that the dischargers may not be required to comply and the cost may not occur until a few years later, which will lower the current value of the total cost.

For DEQ, the additional permitting requirements for nutrient control can be handled at the time of permit issuance or re-issuance rather than incur the cost to the state of reopening the estimated 17 discharge permits. However, if a lake or reservoir is designated as impaired water pursuant to section 303(d) of the Clean Water Act, DEQ will be required to develop TMDL which will cause an increased cost of a minimum $15,000 per lake or reservoir.[6]

This proposed regulatory change will reduce the amount of nutrients and restore water quality, thus producing benefits for public health, commercial fisheries, tourism and recreation. There is an existing body of literature on the benefits of water quality improvements. For example, Morgan and Owens (2001) compared the 1996 water quality of the Chesapeake Bay with what it would have been in 1996 without the Clean Water Act and related legislation and estimated that the monetized annual boating, fishing, and swimming benefits of water quality improvements in the Chesapeake Bay range from $357.9 million to $1.8 billion. According to DEQ, the estimated annual reduction of total phosphorus from the two biggest point source dischargers (Clarksville Wastewater Treatment Plant and River Ridge) will be 5,327 pounds, assuming that all the phosphorus in the discharges are to be removed. The other point source dischargers either have small effluents or have little nutrients in their discharges. Although not required by the proposed nutrient criteria, the nonpoint sources, such as businesses in agriculture, forestry, and grazing, may be encouraged to reduce their contribution of nutrients in the lakes and reservoirs on a voluntary basis. Since nutrient reduction from nonpoint sources is not easily identified, and not all of the benefits accruing from point source nutrient reductions are easily quantifiable, total benefit from the proposed nutrient criteria is unknown.

The board also proposes to restrict the existing dissolved oxygen criteria during times of thermal stratification to the upper layer (epilimnion) in man-made lakes and reservoirs. The rationale is that lakes and reservoirs naturally have low oxygen levels in the bottom layer during times of stratification. Nutrient enrichment may contribute to even lower oxygen levels at these depths. However, those effects of nutrient enrichment would be controlled by the proposed applicable nutrient criteria. Therefore, the low oxygen in the deeper portions of these lakes and reservoirs would only be due to national conditions. Under the revised dissolved oxygen criteria, some lakes that are currently on the impaired lake list and slated for TMDL development because of dissolved oxygen would no longer show impairment if the dissolved oxygen criteria is only to be applied to the epilimnion during stratification. According to DEQ, there will be at least five lakes[7] that would come off the impaired lake list because of the revised dissolved oxygen criteria. Given that the cost of developing TMDL is $15,000 for each lake, the total cost

[4] The estimated cost to remove phosphorus is $74 per pound for Wastewater Treatment Plant. Karl Blankenship (2004), "6 Most Cost Effective Ways To Reduce Nutrients", *Bay Journal*.

[5] A permit is on its own schedule every five years.

[6] TMDLs are addressed through §§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia. "Water Quality Monitoring, Information, and Restoration Act (WQMIRA)".

[7] Source: DEQ.

savings from not having to initiate the TMDL process for these five lakes will be at least $75,000.

The net economic impact of the proposed regulatory change will depend on whether the total benefit exceeds the total cost. Since the total monetized benefit from the nutrient reductions is not known, it is not possible to precisely establish whether the total benefit exceeds the total cost.

Businesses and entities affected. Entities that have discharges to the lakes or reservoirs will be affected. According to DEQ, currently there are no permitted dischargers to the two natural lakes while there are 17 permitted dischargers to the man-made lakes and reservoirs in the Commonwealth, which include eleven wastewater treatment plants, four water treatment plants, one power station and one restaurant. Table 1 lists the 17 dischargers that will be affected by the proposed regulatory change.

These dischargers may be required to remove part or all of the nutrients in their discharges and will incur an increased cost, which will commensurately reduce their profits. According to DEQ, the estimated total cost for the two biggest (Clarksville Wastewater Treatment Plant and River Ridge) will be about $400,000 on an annualized basis, assuming that all of the phosphorus in their discharges is to be removed. The estimated total cost for all the 17 dischargers would be between $400,000 and $1,000,000 on an annualized basis. However, the dischargers might not be required to comply until a few years later because the permit limit is only implemented upon permit issuance and renewal, and there is an approximately four-year compliance schedule. Therefore, the actual total cost will be lower. The increase in cost will reduce the profits for the permitted dischargers, however, for some entities such as power stations, part of the increased cost may be passed on to the consumers in the form of increased price.

Businesses and entities involved in industries such as commercial fisheries, tourism and recreation, and boat building and repair will likely benefit from any improvement in water quality in the lakes and reservoirs.

Table 1 Facility with Discharges to Lakes or Reservoirs

#	Facility with discharges to reservoirs	
1	Nine O Three Inc WWTP	Wastewater treatment plant
2	US Army Corps of Engineers - Rudds Creek So	
3	Clarksville WWTP	
4	River Ridge Association Inc	
5	Longwood Sand Filter	
6	Longwood Sand Filter South	
7	US Army Corps of Engineers – Rudds Creek	
8	Callebs Cove Campground STP	
9	United Company STP	
10	Lake Anna Family Campground STP	
11	Bolar Mountain Complex STP	
12	Stafford County - Abel Lake Water Treatment Plant	Water treatment plant
13	Motts Run Water Treatment Plant	
14	Scottsville WTP	
15	Crozet WTP	
16	Virginia Power - North Anna	Power Station
17	Simmons Terminal and Restaurant	Restaurant

Localities particularly affected. The proposed regulatory change will particularly affect the localities where the lakes and reservoirs are located.

Projected impact on employment. The proposed nutrient criteria will cause an increased cost due to phosphorus control for the 17 permitted dischargers. The increase in cost will commensurately reduce their profits, which will likely reduce the number of people employed. On the other hand, the proposed regulation will likely have a positive effect on employment in industries such as commercial fisheries, tourism and recreation, and boat building and repair that will benefit from any improvement in water quality in the lakes and reservoirs.

Effects on the use and value of private property. The proposed regulatory change will cause an increased cost for the 17 permitted dischargers to the lakes and reservoirs, which may reduce their profit and commensurately, reduce the asset value of these businesses. Businesses in commercial fisheries, tourism and recreation, and boat building and repair that will benefit from water quality improvement in lakes and reservoirs may experience increases in their profits and commensurately increased property values. In addition, improvements in water quality may have a positive impact on the value of the residential properties in the surrounding areas.

Small businesses: costs and other effects. According to DEQ, among the 17 entities that will be affected by the proposed regulations, an estimated five are small businesses: Nine O Three Inc, Simmons Terminal and Restaurant, Callebs Cove Campground, Lake Anna Family Campgrounds, and Bolar Mountain Complex. These facilities may be required to remove part or all of the nutrients in their discharges and will incur an increased cost, which will commensurately reduce their profits. However, according to DEQ, these facilities have small discharges close to or below 0.02 Million Gallons per Day (MGD), thus the impact of the proposed regulatory change will likely not be significant.

Small businesses: alternative method that minimizes adverse impact. An alternative to the proposed regulatory change is to adopt EPA's national nutrient criteria rather than developing state specific criteria. According to DEQ, this alternative plan will be more stringent than the proposed criteria and will be more costly to implement. So there is no alternative method that would both achieve the benefit and have a smaller adverse impact.

References. Morgan and Owens (2001), Benefits of water quality policies: the Chesapeake Bay, Ecological Economics, Volume 39, Issue 2, November 2001, Pages 271-284

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

reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

Substantive changes are proposed to amend the Water Quality Standards regulation to add new numerical and narrative criteria to protect designated uses of man-made lakes and reservoirs as well as the two natural lakes in the Commonwealth from the impacts of nutrients. The proposed amendments also clarify that the existing dissolved oxygen criteria during times of thermal stratification should only apply to the upper layer (epilimnion) in man-made lakes and reservoirs where nutrient enrichment is controlled by applicable nutrient criteria in 9 VAC 25-260-187.

PART I.
SURFACE WATER STANDARDS WITH GENERAL, STATEWIDE APPLICATION.

9 VAC 25-260-5. Definitions.

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

"Algicides" means chemical substances, most commonly copper-based, used as a treatment method to control algae growths.

"Board" means State Water Control Board.

"Chesapeake Bay and its tidal tributaries" means all tidally influenced waters of the Chesapeake Bay; western and eastern coastal embayments and tributaries; James, York, Rappahannock and Potomac Rivers and all their tidal tributaries to the end of tidal waters in each tributary (in larger rivers this is the fall line); and includes subdivisions 1, 2, 3, 4, 5, and 6 of 9 VAC 25-260-390, subdivisions 1, 1b, 1d, 1f and 1o of 9 VAC 25-260-410, subdivisions 5 and 5a of 9 VAC 25-260-415, subdivisions 1 and 1a of 9 VAC 25-260-440, subdivisions 2, 3, 3a, 3b and 3e of 9 VAC 25-260-520, and subdivision 1 of 9 VAC 25-260-530. This definition does not include free flowing sections of these waters.

"Criteria" means elements of the board's water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

"Designated uses" means those uses specified in water quality standards for each water body or segment whether or not they are being attained.

"Drifting organisms" means planktonic organisms that are dependent on the current of the water for movement.

"Epilimnion" means the upper layer of nearly uniform temperature in a thermally stratified man-made lake or reservoir listed in 9 VAC 25-260-187 B.

"Existing uses" means those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Lacustrine" means the zone within a lake or reservoir that corresponds to nonflowing lake-like conditions such as those near the dam. The other two zones within a reservoir are riverine (flowing, river-like conditions) and transitional (transition from river to lake conditions).

"Man-made lake or reservoir" means a constructed impoundment.

"Mixing zone" means a limited area or volume of water where initial dilution of a discharge takes place and where numeric water quality criteria can be exceeded but designated uses in the water body on the whole are maintained and lethality is prevented.

"Natural lake" means an impoundment that is natural in origin. There are two natural lakes in Virginia: Mountain Lake in Giles County and Lake Drummond located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp.

"Passing organisms" means free swimming organisms that move with a mean velocity at least equal to the ambient current in any direction.

"Primary contact recreation" means any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming, water skiing, canoeing and kayaking).

"Pycnocline" means the portion of the water column where density changes rapidly because of salinity and/or temperature. In an estuary the pycnocline is the zone separating deep, cooler more saline waters from the less saline, warmer surface waters. The upper and lower boundaries of a pycnocline are measured as a change in density per unit of depth that is greater than twice the change of the overall average for the total water column.

"Secondary contact recreation" means a water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of waters (examples include but are not limited to wading, boating and fishing).

"Swamp waters" means waters with naturally occurring low pH and low dissolved oxygen caused by: (i) low flow velocity that prevents mixing and reaeration of stagnant, shallow waters and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes tannic acids to color the water and lower the pH.

"Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in 9 VAC 25-260-10 H.

"Water quality standards" means provisions of state or federal law which consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC § 1251 et seq.).

9 VAC 25-260-50. Numerical criteria for dissolved oxygen, pH, and maximum temperature.***

CLASS*****	DESCRIPTION OF WATERS	DISSOLVED OXYGEN (mg/l)****		pH	Max. Temp. (°C)
		Min.	Daily Avg.		
I	Open Ocean	5.0	--	6.0-9.0	--
II	Estuarine Waters (Tidal Water-Coastal Zone to Fall Line)	4.0	5.0	6.0-9.0	--
III	Nontidal Waters (Coastal and Piedmont Zones)	4.0	5.0	6.0-9.0	32
IV	Mountainous Zones Waters	4.0	5.0	6.0-9.0	31
V	Stockable Trout Waters	5.0	6.0	6.0-9.0	21
VI	Natural Trout Waters	6.0	7.0	6.0-9.0	20
VII	Swamp Waters	*	*	4.3-9.0*	**

*This classification recognizes that the natural quality of these waters may fall outside of the ranges for D.O. and pH set forth above as water quality criteria; therefore, on a case-by-case basis, criteria for specific Class VII waters can be developed that reflect the natural quality of the waterbody. Virginia Pollutant Discharge Elimination System limitations in Class VII waters shall meet pH of 6.0 - 9.0.

**Maximum temperature will be the same as that for Classes I through VI waters as appropriate.

***The water quality criteria in this section do not apply below the lowest flow averaged (arithmetic mean) over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years (a climatic year begins April 1 and ends March 31).

****See 9 VAC 25-260-55 for implementation of these criteria in waters naturally low in dissolved oxygen.

*****For a thermally stratified man-made lake or reservoir in Class III, IV, V or VI waters that are listed in 9 VAC 25-260-187, these dissolved oxygen criteria apply only to the epilimnion in the lacustrine portion of the water body. When these waters are not stratified, the dissolved oxygen criteria apply throughout the water column.*

PART II.
STANDARDS WITH MORE SPECIFIC APPLICATION.

9 VAC 25-260-187. Criteria for man-made lakes and reservoirs to protect aquatic life and recreational designated uses from the impacts of nutrients.

A. The list of man-made lakes and reservoirs in subsection B of this section are those waters previously monitored or planned for monitoring by the department. Additional man-made lakes and reservoirs will be added as new reservoirs are constructed or monitoring data become available from outside groups or future agency monitoring.

B. Whether or not algicide treatments are used, the chlorophyll a criteria apply to all waters on the list. The total phosphorus criteria apply only if a specific man-made lake or reservoir received algicide treatment during the monitoring and assessment period of April 1 through October 31.

The 90th percentile of the chlorophyll a data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between April 1 and October 31 in any given year shall not exceed the chlorophyll a criterion for that water body for two consecutive assessments. The median of the total phosphorus data collected at one meter or less within the lacustrine portion of the man-made lake or reservoir between April 1 and October 31 in any given year shall not exceed the total phosphorus criterion for two consecutive assessments for a water body that received algicide treatment.

Monitoring data used for assessment shall be from sampling location(s) within the lacustrine portion where observations are evenly distributed over the seven months from April 1 through October 31 and are in locations that are representative, either individually or collectively, of the condition of the man-made lake or reservoir.

Man-made Lake or Reservoir Name	*Location*	*Chlorophyll a (µg/L)*	*Total Phosphorus (µg/L)*
Able Lake	*Stafford County*	*35*	*40*
Airfield Pond	*Sussex County*	*35*	*40*
Amelia Lake	*Amelia County*	*35*	*40*
Aquia Reservoir (Smith Lake)	*Stafford County*	*35*	*40*
Bark Camp Lake (Corder Bottom Lake, Lee/Scott/Wise Lake)	*Scott County*	*35*	*40*
Beaver Creek Reservoir	*Albemarle County*	*35*	*40*
Beaverdam Creek Reservoir (Beaverdam Reservoir)	*Bedford County*	*35*	*40*
Beaverdam Reservoir	*Loudoun County*	*35*	*40*
Bedford Reservoir (Stony Creek Reservoir)	*Bedford County*	*35*	*40*
Big Cherry Lake	*Wise County*	*35*	*40*
Breckenridge Reservoir	*Prince William County*	*35*	*40*
Briery Creek Lake	*Prince Edward County*	*35*	*40*
Brunswick Lake (County Pond)	*Brunswick County*	*35*	*40*
Burke Lake	*Fairfax County*	*35*	*40*
Carvin Cove Reservoir	*Botetourt County*	*35*	*40*
Cherrystone Reservoir	*Pittsylvania County*	*35*	*40*
Chickahominy Lake	*Charles City County*	*35*	*40*

Claytor Lake	Pulaski County	25	20
Clifton Forge Reservoir (Smith Creek Reservoir)	Alleghany County	35	20
Coles Run Reservoir	Augusta County	10	10
Curtis Lake	Stafford County	60	40
Diascund Creek Reservoir	New Kent County	35	40
Douthat Lake	Bath County	25	20
Elkhorn Lake	Augusta County	10	10
Emporia Lake (Meherrin Reservoir)	Greensville County	35	40
Fairystone Lake	Henry County	35	40
Falling Creek Reservoir	Chesterfield County	35	40
Fort Pickett Reservoir	Nottoway/ Brunswick County	35	40
Gatewood Reservoir	Pulaski County	35	40
Georges Creek Reservoir	Pittsylvania County	35	40
Goose Creek Reservoir	Loudoun County	35	40
Graham Creek Reservoir	Amherst County	35	40
Great Creek Reservoir	Lawrenceville	35	40
Harrison Lake	Charles City County	35	40
Harwood Mills Reservoir	York County	60	40
Hidden Valley Lake	Washington County	35	40
Hogan Lake	Pulaski County	35	40
Holiday Lake	Appomattox County	35	40
Hungry Mother Lake	Smyth County	35	40
Hunting Run Reservoir	Spotsylvania County	35	40
J. W. Flannagan Reservoir	Dickenson County	25	20
Kerr Reservoir, Virginia portion (Buggs Island Lake)	Halifax County	25	30
Keysville Reservoir	Charlotte County	35	40
Lake Albemarle	Albemarle County	35	40
Lake Anna	Louisa County	25	30
Lake Burnt Mills	Isle of Wight County	60	40
Lake Chesdin	Chesterfield County	35	40
Lake Cohoon	Suffolk City	60	40
Lake Conner	Halifax County	35	40
Lake Frederick	Frederick County	35	40
Lake Gaston, (Virginia portion)	Brunswick County	25	30
Lake Gordon	Mecklenburg County	35	40
Lake Keokee	Lee County	35	40
Lake Kilby	Suffolk City	60	40
Lake Lawson	Virginia Beach City	60	40
Lake Manassas	Prince William County	35	40
Lake Meade	Suffolk City	60	40
Lake Moomaw	Bath County	10	10
Lake Nelson	Nelson County	35	40
Lake Nottoway (Lee Lake, Nottoway Lake)	Nottoway County	35	40
Lake Pelham	Culpeper County	35	40
Lake Prince	Suffolk City	35	40
Lake Robertson	Rockbridge County	35	40
Lake Smith	Virginia Beach City	60	40
Lake Whitehurst	Norfolk City	25	20
Lake Wright	Norfolk City	60	40
Laurel Bed Lake	Russell County	35	40
Lee Hall Reservoir (Newport News Reservoir)	Newport News City	60	40
Leesville Reservoir	Bedford County	25	30
Little Creek Reservoir	Virginia Beach City	60	40
Little Creek Reservoir	James City County	25	30
Little River Reservoir	Montgomery County	35	40
Lone Star Lake F (Crystal Lake)	Suffolk City	60	40
Lone Star Lake G (Crane Lake)	Suffolk City	60	40
Lone Star Lake I (Butler Lake)	Suffolk City	60	40
Lunga Reservoir	Prince William County	35	40
Lunenburg Beach Lake (Victoria Lake)	Town of Victoria	35	40
Martinsville Reservoir (Beaver Creek Reservoir)	Henry County	35	40
Mill Creek Reservoir	Amherst County	35	40
Modest Creek Reservoir	Town of Victoria	35	40

Motts Run Reservoir	*Spotsylvania County*	*25*	*30*
Mount Jackson Reservoir	*Shenandoah County*	*35*	*40*
Mountain Run Lake	*Culpeper County*	*35*	*40*
Ni Reservoir	*Spotsylvania County*	*35*	*40*
North Fork Pound Reservoir	*Wise County*	*35*	*40*
Northeast Creek Reservoir	*Louisa County*	*35*	*40*
Occoquan Reservoir	*Fairfax County*	*35*	*40*
Pedlar Lake	*Amherst County*	*25*	*20*
Philpott Reservoir	*Henry County*	*25*	*30*
Phelps Creek Reservoir (Brookneal Reservoir)	*Campbell County*	*35*	*40*
Ragged Mountain Reservoir	*Albemarle County*	*35*	*40*
Rivanna Reservoir (South Fork Rivanna Reservoir)	*Albemarle County*	*35*	*40*
Roaring Fork	*Pittsylvania County*	*35*	*40*
Rural Retreat Lake	*Wythe County*	*35*	*40*
Sandy River Reservoir	*Prince Edward County*	*35*	*40*
Shenandoah Lake	*Rockingham County*	*35*	*40*
Silver Lake	*Rockingham County*	*35*	*40*
Smith Mountain Lake	*Bedford County*	*25*	*30*
South Holston Reservoir	*Washington County*	*25*	*20*
Speights Run Lake	*Suffolk City*	*60*	*40*
Spring Hollow Reservoir	*Roanoke County*	*25*	*20*
Staunton Dam Lake	*Augusta County*	*35*	*40*
Stonehouse Creek Reservoir	*Amherst County*	*60*	*40*
Strasburg Reservoir	*Shenandoah County*	*35*	*40*
Stumpy Lake	*Virginia Beach*	*60*	*40*
Sugar Hollow Reservoir	*Albemarle County*	*25*	*20*
Swift Creek Reservoir	*Chesterfield County*	*35*	*40*
Switzer Lake	*Rockingham County*	*10*	*10*
Talbott Reservoir	*Patrick County*	*35*	*40*
Thrashers Creek Reservoir	*Amherst County*	*35*	*40*
Totier Creek Reservoir	*Albemarle County*	*35*	*40*
Townes Reservoir	*Patrick County*	*25*	*20*
Troublesome Creek Reservoir	*Bucking-ham County*	*35*	*40*
Waller Mill Reservoir	*York County*	*25*	*30*
Western Branch Reservoir	*Suffolk City*	*25*	*20*
Wise Reservoir	*Wise County*	*25*	*20*

C. If the nutrient criteria specified for a man-made lake or reservoir in subsection B of this section do not provide for the attainment and maintenance of the water quality standards of downstream waters as required in 9 VAC 25-260-10 C, the nutrient criteria herein may be modified on a site-specific basis to protect the water quality standards of downstream waters.

9 VAC 25-260-310. Special standards and requirements.

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present,

including those waters on which condemnation or restriction classifications are established by the State Department of Health, the following criteria for fecal coliform bacteria will apply:

The geometric mean fecal coliform value for a sampling station shall not exceed an MPN (most probable number) of 14 per 100 ml of sample and the 90th percentile shall not exceed 43 for a 5-tube, 3-dilution test or 49 for a 3-tube, 3-dilution test.

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board adopted a policy (9 VAC 25-415, Policy for the Potomac Embayments) to control point source discharges of conventional pollutants into the Virginia embayment waters of the Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County to the Route 301 bridge in King George County. The policy sets effluent limits for BOD_5, total suspended solids, phosphorus, and ammonia, to protect the water quality of these high profile waterbodies.

c. Cancelled.
d. Cancelled.
e. Cancelled.
f. Cancelled.

g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are

an important water supply for Northern Virginia. Following a public hearing on November 20, 1980, the board, at its December 10-12, 1980 meeting, adopted as of February 1, 1981, revisions to this policy (Minute 20). These revisions became effective March 4, 1981. Additional amendments were made following a public hearing on August 22, 1990, and adopted by the board at its September 24, 1990, meeting (Minute 24) and became effective on December 5, 1990. Copies are available upon request from the Department of Environmental Quality.

h. Cancelled.
i. Cancelled.
j. Cancelled.
k. Cancelled.
l. Cancelled.

m. The following effluent limitations apply to wastewater treatment facilities in the entire Chickahominy watershed above Walker's Dam (this excludes effluents consisting solely of stormwater):

CONSTITUENT	CONCENTRATION
1. Biochemical Oxygen demand 5-day at 20	6.0 mg/l monthly average, with not more than 5% of individual samples to exceed 8.0 mg/l
2. Settleable Solids	Not to exceed 0.1 ml/l
3. Suspended Solids	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l
4. Ammonia Nitrogen	Not to exceed 2.0 mg/l as N
5. Total Phosphorus	Not to exceed 0.1 mg/l monthly average for all discharges with the exception of Tyson Foods, Inc. which shall meet 0.3 mg/l monthly average and 0.5 mg/l daily maximum.
6. Other Physical and Chemical Constituents	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

n. No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Bosher and Williams Island Dams.

o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes which are now present in the stream from natural sources and from existing discharges in the watershed.

p. Cancelled.

q. Cancelled.
r. Cancelled.
s. Chlorides not to exceed 40 mg/l at any time.
t. Cancelled.

u. Maximum temperature for the New River Basin from West Virginia state line upstream to the Giles-Montgomery County line:

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature criteria for the New River would be consistent with those of West Virginia, since the stream flows into that state.

v. The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line shall be 29°C (84°F).

w. Cancelled.

x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality criteria for copper (measured as total recoverable) in this section of the Clinch River are 12.4 µg/l for protection from chronic effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are needed to provide protection to several endangered species of freshwater mussels.

y. Tidal freshwater Potomac River and tributaries that enter the tidal freshwater Potomac River from Cockpit Point (below Occoquan Bay) to the fall line at Chain Bridge. During November 1 through February 14 of each year the 30-day average concentration of total ammonia nitrogen (in mg N/L) shall not exceed, more than once every three years on the average, the following chronic ammonia criterion:

$$\left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times 1.45(10^{0.028(25-MAX)})$$

MAX = temperature in °C or 7, whichever is greater.

The default design flow for calculating steady state waste load allocations for this chronic ammonia criterion is the 30Q10, unless statistically valid methods are employed which demonstrate compliance with the duration and return frequency of this water quality criterion.

z. A site specific dissolved copper aquatic life criterion of 16.3 µg/l for protection from acute effects and 10.5 µg/l for protection from chronic effects applies in the following area:

Little Creek to the Route 60 (Shore Drive) bridge including Little Channel, Desert Cove, Fishermans Cove and Little Creek Cove.

Hampton Roads Harbor including the waters within the boundary lines formed by I-664 (Monitor-Merrimac Bridge Tunnel) and I-64 (Hampton Roads Bridge Tunnel), Willoughby Bay and the Elizabeth River and its tidal tributaries.

This criterion reflects the acute and chronic copper aquatic life criterion for saltwater in 9 VAC 25-260-140 B X a water effect ratio. The water effect ratio was derived in accordance with 9 VAC 25-260-140 F.

aa. Reserved.

bb. Reserved.

cc. For Mountain Lake in Giles County, chlorophyll a shall not exceed 6 µg/L at a depth of 6 meters and orthophosphate-P shall not exceed 8 µg/L at a depth of one meter or less.

dd. For Lake Drummond, located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp, chlorophyll a shall not exceed 35 µg/L and total phosphorus shall not exceed 40 µg/L at a depth of one meter or less.

PART VIII.
NUTRIENT ENRICHED WATERS.

9 VAC 25-260-350. Designation of nutrient enriched waters.

A. The following state waters are hereby designated as "nutrient enriched waters":

1. ~~Smith Mountain Lake and all tributaries* of the impoundment upstream to their headwaters;~~ *(Repealed.)*

2. ~~Lake Chesdin from its dam upstream to where the Route 360 bridge (Goodes Bridge) crosses the Appomattox River, including all tributaries to their headwaters that enter between the dam and the Route 360 bridge;~~ *(Repealed.)*

3. ~~South Fork Rivanna Reservoir and all tributaries of the impoundment upstream to their headwaters;~~ *(Repealed.)*

4. ~~New River and its tributaries, except Peak Creek above Interstate 81, from Claytor Dam upstream to Big Reed Island Creek (Claytor Lake).~~ *(Repealed.)*

5. Peak Creek from its headwaters to its mouth (confluence with Claytor Lake), including all tributaries* to their headwaters;

* When the word "tributaries" is used in this standard, it does not refer to the mainstem of the water body that has been named.

6. (Repealed.)

7. (Repealed.)

8. (Repealed.)

9. (Repealed.)

10. (Repealed.)

11. (Repealed.)

12. (Repealed.)

13. (Repealed.)

14. (Repealed.)

15. (Repealed.)

16. (Repealed.)

17. (Repealed.)

18. (Repealed.)

19. (Repealed.)

20. (Repealed.)

21. Tidal freshwater Blackwater River from the Norfolk and Western railway bridge at Burdette, Virginia, and tidal freshwater Nottoway River from the Norfolk and Western railway bridge at Courtland, Virginia, to the state line, including all tributaries to their headwaters that enter the tidal freshwater portions of the Blackwater River and the Nottoway River; and

22. Stony Creek from its confluence with the North Fork Shenandoah River to its headwaters including all named and unnamed tributaries to their headwaters.

B. Whenever any water body is designated as "nutrient enriched waters," the board shall modify the VPDES permits of point source dischargers into the "nutrient enriched waters" as provided in the board's Policy for Nutrient Enriched Waters (9 VAC 25-40).

* When the word "tributaries" is used in this standard, it does not refer to the mainstem of the water body that has been named.

9 VAC 25-260-415. Appomattox River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
5	II	NEW-18	Appomattox River and its tidal tributaries from its confluence with the James River to the end of tidal waters.
5a	II	PWS, NEW-18	Appomattox River and its tidal tributaries from its mouth to 5 miles upstream of the Virginia-American Water Company's raw water intake.
5b	III	PWS, NEW-18	Free flowing tributaries to section 2a.
5c	III	~~NEW-2~~	Appomattox River from the head of tidal waters, and free flowing tributaries to the Appomattox River, to their headwaters, unless otherwise designated in this chapter.
5d	III		Swift Creek and its tributaries from the dam at Pocahontas State Park upstream to Chesterfield County's raw water impoundment dam.
5e	III	PWS	Swift Creek and its tributaries from Chesterfield County's raw water impoundment dam to points 5 miles upstream.
5f	III	PWS~~,NEW-2~~	Appomattox River and its tributaries from Appomattox River Water Authority's raw water intake located at the dam at Lake Chesdin to the headwaters of the lake.
5g	III	PWS	The Appomattox River and its

			tributaries from Farmville's raw water intake (approximately 2.5 miles above the Route 15/45 bridge) to points 5 miles upstream.

9 VAC 25-260-420. James River Basin (Middle).

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
6	III		James River and its tributaries from the fall line at Richmond (Mayo's Bridge, 14th Street) to the Rockfish River unless otherwise designated in this chapter.
7	III	NEW-18	Free flowing tributaries to the James River from Brandon to the fall line at Richmond, unless otherwise designated in this chapter.
7a			(Deleted)
8	III		James River and its tributaries from the low water dam above 14th Street Bridge to Richmond's raw water intake at Williams Island Dam.
9	III	PWS,n	James River and its tributaries, unless otherwise designated in this chapter, from Richmond's raw water intake at Douglasdale Road, inclusive of the Williams Island Dam intake, the Henrico County raw water intake (at latitude 37°33'32"; longitude 77°37'16") and the Benedictine Society's raw water intake (latitude 37°34'33"; longitude 77°40'39") to river mile 127.26 (at latitude 37°35'24"; longitude 77°42'33") near public landing site.
9a	III	PWS,o	Tuckahoe Creek and its tributaries from its confluence with the James River to its headwaters.
10	III	~~NEW-3~~	James River and its tributaries from a point at latitude 37°40'32"; longitude 77°54'08" to, and including the Rockfish River, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 10
	vii		Lynch River from the upper Route 810 crossing near the intersection of Route 628 2.9 miles upstream (to Ivy Creek).
	***		Rockfish Creek from its confluence with the South Fork Rockfish River to its headwaters.
	VI		Natural Trout Waters in Section 10
	ii		Doyles River from 6.4 miles above its confluence with Moormans River above Browns Cove at Route 629 including all named and unnamed tributaries.
	iii		Fork Hollow from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Ivy Creek (Greene County) from its confluence with the Lynch River upstream including all named and unnamed tributaries.
	ii		Jones Falls Run from its confluence with Doyles River upstream including all named and unnamed tributaries.
	ii		Little Stony Creek (Nelson County) from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iv		Mill Creek (Nelson County) from its confluence with Goodwin Creek upstream including all named and unnamed tributaries.
	ii		Mutton Hollow from its confluence with Swift Run upstream including all named and unnamed tributaries.
	iv		Pauls Creek (Nelson County) from 1.3 miles above its confluence with the North Fork Rockfish River upstream including all named and unnamed tributaries.
	iv		Rodes Creek from its confluence with Goodwin Creek upstream including all named and unnamed tributaries.
	ii		South Fork Rockfish River from 8 miles above its confluence with the Rockfish River upstream including all named and unnamed tributaries.
	ii		Spruce Creek (Nelson County) from 1.5 miles above its confluence with the South Fork Rockfish River upstream including all named and unnamed tributaries.
	ii		Stony Creek (Nelson County) from 1 mile above its confluence with the South Fork Rockfish River upstream including all named and unnamed tributaries.
	ii		Swift Run from 14.5 miles above its confluence with the North Fork Rivanna River upstream including all named and unnamed tributaries.
10a	III	PWS	James River at river mile 127.26 near the public landing site and its tributaries from, and including, Little River to 5 miles above State Farm's raw water intake, including Beaverdam and Courthouse Creeks, to their headwaters.

10b			(Deleted.)
10c	III		Willis River and its tributaries within Cumberland State Forest.
10d	III	PWS	Johnson Creek above the Schuyler (Nelson County Service Authority) raw water intake to its headwaters.
10e	III	PWS	Totier Creek and its tributaries from the Scottsville (Rivanna Water and Sewer Authority) raw water intake to their headwaters (including the Reservoir).
10f	III		Powell Creek and its tributaries from its confluence with the Rivanna River upstream to their headwaters.
10g	III	PWS~~,NEW 3~~	Beaver Creek and its tributaries from the Crozet (Rivanna Water and Sewer Authority) raw water intake upstream to their headwaters (including the reservoir).
10h	III	PWS~~,NEW 3~~	Mechums River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake to points 5 miles upstream.
10i	III	PWS~~,NEW 3~~	Moormans River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake to points 5 miles upstream (including Sugar Hollow Reservoir).
	VI		Natural Trout Waters in Section 10i
	ii		North Fork Moormans River from its confluence with Moormans River upstream including all named and unnamed tributaries.
	ii		Pond Ridge Branch from its confluence with the North Fork Moormans River upstream including all named and unnamed tributaries.
	iii		South Fork Moormans River from its confluence with Moormans River upstream including all named and unnamed tributaries.
10j	III	PWS~~,NEW 3~~	South Fork Rivanna River and its tributaries to their headwaters; except Ivy Creek, from the Rivanna Water and Sewer Authority's South Fork Rivanna River Dam to its confluence with the Moormans River, and Ivy Creek to a point 5 miles above the dam.
10k	III	PWS	James River and its tributaries from Fork Union Sanitary District's raw water intake (just below the Route 15 bridge) to points 5 miles upstream, including the Slate River to a point 5 miles above the intake.
10l	III		Lake Monticello in Fluvanna County.
10m	III	PWS	Rivanna River and its tributaries from the raw water intake for Lake Monticello (about 2.76 miles above the Route 600 bridge in Fluvanna County) to points 5 miles upstream.
10n	III	PWS	Ragged Mountain Reservoir (intake for the Rivanna Water and Sewer Authority) including its tributaries to their headwaters.
10o	III	PWS	The North Fork Rivanna River and its tributaries from the Rivanna Water and Sewer Authority's raw water intake (approximately 1/4 mile upstream of the U. S. Route 29 bridge north of Charlottesville) to points 5 miles upstream.
10p	III	PWS	Troublesome Creek in Buckingham County from Buckingham County's raw water intake point at a flood control dam south of the Route 631 bridge to a point 5 miles upstream.
10q	III	PWS	Allen Creek and its tributaries from the Wintergreen Mountain Village's primary raw water intake at Lake Monocan at latitude 37°54'15"; longitude 78°52'10" to a point upstream at latitude 37°53'59"; longitude 78°53'14".
10r	III	PWS	Stony Creek from the diversion structure at latitude 37°54'00"; longitude 78°53'47" to its headwaters inclusive of the Stony Creek raw water intake just upstream of the Peggy's Pinch booster pump station.
10s	III	PWS	Mechunk Creek and its tributaries from the Department of Corrections raw water intake (at the US Route 250 bridge 37°58'57.6", 78°18'48.1") to points 5 miles upstream.

9 VAC 25-260-450. Roanoke River Basin (Roanoke River Subbasin).

Roanoke River Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	III	PWS	Lake Gaston and the John Kerr Reservoir in Virginia and their tributaries in Virginia, unless otherwise designated in this chapter (not including the Roanoke or the Dan Rivers). The Roanoke River Service Authority's water supply intake is in this section.
1a	III	s	Dockery Creek and its tributaries to

			their headwaters.
2	III		Dan River and its tributaries from the John Kerr Reservoir to the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line, unless otherwise designated in this chapter.
2a	III	PWS	Dan River from South Boston's raw water intake upstream to Paces (below Route 658 bridge).
2b	III	PWS	Banister River and its tributaries from Burlington Industries' inactive raw water intake (about 2000 feet downstream of Route 360) inclusive of the Town of Halifax intake at the Banister Lake dam upstream to the Pittsylvania/Halifax County Line (designation for main stem and tributaries ends at the county line).
2c			(Deleted)
2d	III	PWS	Cherrystone Creek from Chatham's raw water intake upstream to its headwaters.
2e	III	PWS	Georges Creek from Gretna's raw water intake upstream to its headwaters.
2f	III	PWS	Banister River and its tributaries from point below its confluence with Bearskin Creek (at latitude 36°46'15"; longitude 79°27'08") just east of Route 703, upstream to their headwaters.
2g	III	PWS	Whitethorn Creek and its tributaries from its confluence with Georges Creek upstream to their headwaters.
3	III		Dan River and its tributaries from the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line upstream to the state line just east of Draper, N. C., unless otherwise designated in this chapter.
3a	III	PWS	Dan River from the Schoolfield Dam including the City of Danville's main water intake located just upstream of the Schoolfield Dam, upstream to the Virginia-North Carolina state line.
3b	IV	PWS	Cascade Creek and its tributaries.
3c	IV	PWS	Smith River and its tributaries from the Virginia-North Carolina state line to, but not including, Home Creek.
3d	VI	PWS	Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
	VI	PWS	Natural Trout Waters in Section 3d
	ii		Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
3e	IV		Philpott Reservoir, Fairystone Lake and their tributaries.
	V		Stockable Trout Waters in Section 3e
	v		Otter Creek from its confluence with Rennet Bag Creek (Philpott Reservoir) to its headwaters.
	v		Smith River (Philpott Reservoir portion) from the Philpott Dam (river mile 46.80) to river mile 61.14, just above the confluence with Small Creek.
	v		Rennet Bag Creek from its confluence with the Smith River to the confluence of Long Branch Creek.
	VI		Natural Trout Waters in Section 3e
	ii		Brogan Branch from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
	ii		Rennet Bag Creek from the confluence of Long Branch Creek upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
3f	IV	PWS	North Mayo River and South Mayo River and their tributaries from the Virginia-North Carolina state line to points 5 miles upstream.
3g	IV		Interstate streams in the Dan River watershed above the point where the Dan crosses the Virginia-North Carolina state line just east of Draper, N. C., (including the Mayo and the Smith watersheds), unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3g
	vi		Dan River from the Virginia-North Carolina state line upstream to the Pinnacles Power House.
	***		Little Dan River from its confluence with the Dan River 7.8 miles upstream.
	v		Smith River from river mile 61.14 (just below the confluence of Small Creek), to Route 704 (river mile 69.20).

	VI		Natural Trout Waters in Section 3g
	ii		Dan River from Pinnacles Power House to Townes Dam.
	ii		Dan River from headwaters of Townes Reservoir to Talbott Dam.
	iii		Little Dan River from 7.8 miles above its confluence with the Dan River upstream including all named and unnamed tributaries.
	i		North Prong of the North Fork Smith River from its confluence with the North Fork Smith River upstream including all named and unnamed tributaries.
	ii		North Fork Smith River from its confluence with the Smith River upstream including all named and unnamed tributaries.
	iii		Smith River from Route 704 (river mile 69.20) to Route 8 (river mile 77.55).
	ii		Smith River from Route 8 (approximate river mile 77.55) upstream including all named and unnamed tributaries.
	ii		South Mayo River from river mile 38.8 upstream including all named and unnamed tributaries.
3h	IV	PWS	South Mayo River and its tributaries from the Town of Stuart's raw water intake 0.4 mile upstream of its confluence with the North Fork Mayo River to points 5 miles upstream.
	VI		Natural Trout Waters in Section 3h
	iii		Brushy Fork from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		Lily Cove Branch from its confluence with Rye Cove Creek upstream including all named and unnamed tributaries.
	iii		Rye Cove Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		South Mayo River from river mile 33.8 upstream including all named and unnamed tributaries.
3i	IV	PWS	Hale Creek and its tributaries from the Fairy Stone State Park's raw water intake 1.7 miles from its confluence with Fairy Stone Lake upstream to its headwaters.
3j	VI	PWS	Smith River and its tributaries from the Henry County Public Service Authority's raw water intake about 0.2 mile upstream of its confluence with Town Creek to points 5 miles upstream.
4	III		Intrastate tributaries to the Dan River above the Virginia-North Carolina state line just east of Draper, North Carolina, to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 4
	vi		Browns Dan River from the intersection of Routes 647 and 646 to its headwaters.
	vi		Little Spencer Creek from its confluence with Spencer Creek to its headwaters.
	vi		Poorhouse Creek from its confluence with North Fork South Mayo River upstream to Route 817.
	***		Rock Castle Creek from its confluence with the Smith River upstream to Route 40.
	VI		Natural Trout Waters in Section 4
	ii		Barnard Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Big Cherry Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	~~iii~~		~~Ivy Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.~~
	iii		Camp Branch from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Haunted Branch from its confluence with Barnard Creek upstream including all named and unnamed tributaries.
	ii		Hookers Creek from its confluence with the Little Dan River upstream including all named and unnamed tributaries.
	iii		Ivy Creek from Coleman's Mill Pond upstream to Route 58 (approximately 2.5 miles).
	iii		*Ivy Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.*
	iii		Little Ivy Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Little Rock Castle Creek from its confluence with Rock Castle Creek upstream including all named and unnamed tributaries.

ii			Maple Swamp Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
iii			Mayberry Creek from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
ii			Mill Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
iii			North Fork South Mayo River from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
vi**			Patrick Springs Branch from its confluence with Laurel Branch upstream including all named and unnamed tributaries.
iii			Polebridge Creek from Route 692 upstream including all named and unnamed tributaries.
ii			Poorhouse Creek from Route 817 upstream including all named and unnamed tributaries.
ii			Rhody Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
iii			Rich Creek from Route 58 upstream including all named and unnamed tributaries.
ii			Roaring Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
i			Rock Castle Creek from Route 40 upstream including all named and unnamed tributaries.
iii			Round Meadow Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
ii			Sawpit Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
ii			Shooting Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
vi**			Spencer Creek from Route 692 upstream including all named and unnamed tributaries.
iii			Squall Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
ii			Tuggle Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
ii			Widgeon Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
	4a	III	PWS	Intrastate tributaries (includes Beaver Creek, Little Beaver Creek, and Jones Creek, for the City of Martinsville) to the Smith River from DuPont's (inactive) raw water intake to points 5 miles upstream from Fieldcrest Cannon's raw water intake.
	4b	III	PWS	Marrowbone Creek and its tributaries from the Henry County Public Service Authority's raw water intake (about 1/4 mile upstream from Route 220) to their headwaters.
	4c	III	PWS	Leatherwood Creek and its tributaries from the Henry County Public Service Authority's raw water intake 8 miles upstream of its confluence with the Smith River to points 5 miles upstream.
	5	IV	PWS	Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam unless otherwise designated in this chapter.
	5a	III		Tributaries to the Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam, unless otherwise designated in this chapter.
		V		Stockable Trout Waters in Section 5a
		vi		Day Creek from Route 741 to its headwaters.
		VI		Natural Trout Waters in Section 5a
		iii		Gunstock Creek from its confluence with Overstreet Creek upstream including all named and unnamed tributaries.
		ii		Overstreet Creek from its confluence with North Otter Creek upstream including all named and unnamed tributaries.
	5b	III	PWS	Spring Creek from Keysville's raw water intake upstream to its headwaters.
	5c	III	PWS	Falling River and its tributaries from a point just upstream from State Route 40 (the raw water source for Dan River, Inc.) to points 5 miles upstream and including the entire Phelps Creek watershed which

			contains the Brookneal Reservoir.
5d	III		Falling River and its tributaries from 5 miles above Dan River, Inc. raw water intake to its headwaters.
5e	III	PWS	Reed Creek from Altavista's raw water intake upstream to its headwaters.
5f	III	PWS	Big Otter River and its tributaries from Bedford's raw water intake to points 5 miles upstream, and Stony Creek and Little Stony Creek upstream to their headwaters.
	VI	PWS	Natural Trout Waters in Section 5f
	ii		Little Stony Creek from 1 mile above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Stony Creek from the Bedford Reservoir upstream including all named and unnamed tributaries.
5g	III		Big Otter River and its tributaries from 5 miles above Bedford's raw water intake upstream to their headwaters.
5h	III		Ash Camp Creek and that portion of Little Roanoke Creek from its confluence with Ash Camp Creek to the Route 47 bridge.
5i	III	PWS	The Roanoke River and its tributaries from the Town of Altavista's raw water intake, 0.1 mile upstream from the confluence of Sycamore Creek, to points 5 miles upstream.
5j	III	PWS	Big Otter River and its tributaries from the Campbell County Utilities and Service Authority's raw water intake to points 5 miles upstream.
6	IV	pH-6.5-9.5	Roanoke River from a point (at latitude 37°15'53"; longitude 79°54'00") 5 miles above the headwaters of Smith Mountain Lake upstream to Salem's #1 raw water intake.
	V	pH-6.5-9.5	Stockable Trout Waters in Section 6
	***		Roanoke River from its junction from Routes 11 and 419 to Salem's #1 raw water intake.
6a	III	~~NEW 1~~	Tributaries of the Roanoke River from Leesville Dam to Niagra Reservoir, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6a
	vi		Gourd Creek from 1.3 miles above its confluence with Snow Creek to its headwaters.
	vi		Maggodee Creek from Boones Mill upstream to Route 862 (approximately 3.8 miles).
	vii		South Fork Blackwater River form its confluence with the Blackwater River upstream to Roaring Run.
	vi		South Prong Pigg River from its confluence with the Pigg River to its headwaters.
	VI		Natural Trout Waters in Section 6a
	iii		Daniels Branch from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
	ii		Green Creek from Roaring Run upstream including all named and unnamed tributaries.
	ii		Pigg River from 1 mile above the confluence of the South Prong Pigg River upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
6b			(Deleted)
6c	III	PWS	Falling Creek Reservoir and Beaverdam Reservoir.
6d	IV		Tributaries of the Roanoke River from Niagra Reservoir to Salem's #1 raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6d
	vii		Tinker Creek from its confluence with the Roanoke River north to Routes 11 and 220.
	VI		Natural Trout Waters in Section 6d
	iii		Glade Creek from its junction with Route 633 to the Bedford County line.
6e	IV	PWS	Carvin Cove Reservoir and its tributaries to their headwaters.
6f	IV	PWS~~, NEW 1~~	Blackwater River and its tributaries from the Town of Rocky Mount's raw water intake (just upstream of State Route 220) to points 5 miles upstream.
6g	IV	PWS	Tinker Creek from the City of Roanoke's raw water intake (about 0.4 mile downstream from Glebe Mills) upstream 5 miles.
6h	IV	PWS	Roanoke River from Leesville Dam to Smith Mountain Dam (Gap of Smith Mountain), excluding all tributaries to Leesville Lake.
6i	IV	PWS	Roanoke River from Smith

			Mountain Dam (Gap of Smith Mountain) upstream to a point (at latitude 37°15'53"; longitude 79°54'00" and its tributaries to points 5 miles above the 795.0 foot contour (normal pool elevation) of Smith Mountain Lake.
7	IV	pH-6.5-9.5	Roanoke River and its tributaries, unless otherwise designated in this chapter, from Salem's #1 raw water intake to their headwaters.
	V	pH-6.5-9.5	Stockable Trout Waters in Section 7
	vi		Elliott Creek from the confluence of Rocky Branch to its headwaters.
	vi		Goose Creek from its confluence with the South Fork Roanoke River to its headwaters.
	vi		Mill Creek from its confluence with Bottom Creek to its headwaters.
	***		Roanoke River from 5 miles above Salem's #2 raw water intake to the Spring Hollow Reservoir intake (see section 7b).
	vi		Smith Creek from its confluence with Elliott Creek to its headwaters.
	vi		South Fork Roanoke River from 5 miles above the Spring Hollow Reservoir intake (see section 7b) to the mouth of Bottom Creek (river mile 17.1).
	VI	pH-6.5-9.5	Natural Trout Waters in Section 7
	ii		Big Laurel Creek from its confluence with Bottom Creek upstream including all named and unnamed tributaries.
	ii		Bottom Creek from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
	ii		Lick Fork (Floyd County) from its confluence with Goose Creek upstream including all named and unnamed tributaries.
	ii		Mill Creek from its confluence with the North Fork Roanoke River upstream including all named and unnamed tributaries.
	iii		Purgatory Creek from Camp Alta Mons upstream including all named and unnamed tributaries.
	ii		Spring Branch from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
7a	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from Salem's #1 raw water intake to points 5 miles upstream from Salem's #2 raw water intake.
	V	PWS pH-6.5-9.5	Stockable Trout Waters in Section 7a
	***		Roanoke River from Salem's #1 raw water intake to a point 5 miles upstream from Salem's #2 raw water intake.
7b	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from the Spring Hollow Reservoir intake (37°14'2.59"/80°10'39.61") upstream to points 5 miles upstream.
	V	PWS, pH 6.5-9.5	Stockable Trout Waters in Section 7b
	***		Roanoke River from the Spring Hollow Reservoir intake to the Montgomery County line.
	vi		South Fork Roanoke River from its confluence with the Roanoke River to 5 miles above the Spring Hollow Reservoir intake.

9 VAC 25-260-480. Chowan and Dismal Swamp (Albemarle Sound Subbasin).

Albemarle Sound Subbasin

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	II		Back Bay and its tributaries in the City of Virginia Beach to the Virginia-North Carolina state line and the Northwest River and its tidal tributaries from the Virginia-North Carolina state line to the free flowing portion, unless otherwise designated in this chapter and North Landing River and its tidal tributaries from the Virginia-North Carolina state line to the Great Bridge Lock.
1a	III		The free flowing portions of streams in Section 1 and tributaries of Stumpy Lake.
1b	III	PWS	Stumpy Lake (raw water supply for the City of Norfolk) and feeder streams to points 5 miles upstream.
1c	II	PWS	Northwest River and its tributaries from the City of Chesapeake's raw water intake to points 5 miles upstream and points 5 miles downstream.
2	III		Intracoastal Waterway (portions not described in Section 1).
3	III	*dd*	Lake Drummond, including feeder ditches, and all interstate tributaries of the Dismal Swamp between Virginia and North Carolina.

9 VAC 25-260-540. New River Basin.

SEC.	CLASS	SP. STDS	SECTION DESCRIPTION
1	IV	u	New River and its tributaries, unless otherwise designated in this chapter, from the Virginia-West Virginia state line to the Montgomery-Giles County line.
	V		Stockable Trout Waters in Section 1
	***		Laurel Creek (a tributary to Wolf Creek in Bland County) from Rocky Gap to the Route 613 bridge one mile west of the junction of Routes 613 and 21.
	viii		Laurel Creek (Bland County) from its confluence with Hunting Camp Creek 3.2 miles upstream.
	viii		Little Wolf Creek (Bland County) from its confluence with Laurel Creek 2.6 miles upstream.
	v		Sinking Creek from 5.1 miles above its confluence with the New River 10.8 miles upstream (near the Route 778 crossing).
	vi		Sinking Creek from the Route 778 crossing to the Route 628 crossing.
	vi		Spur Branch from its confluence with Little Walker Creek to its headwaters.
	v		Walker Creek from the Route 52 bridge to its headwaters.
	***		Wolf Creek (Bland County) from Grapefield to its headwaters.
	VI		Natural Trout Waters in Section 1
	ii		Bear Spring Branch from its confluence with the New River upstream including all named and unnamed tributaries.
	iii		Clear Fork (Bland County) from river mile 8.5 upstream including all named and unnamed tributaries.
	ii		Cove Creek (Tazewell County) from its confluence with Clear Fork upstream including all named and unnamed tributaries.
	ii		Cox Branch from its confluence with Clear Fork to Tazewell's raw water intake (river mile 1.6).
	iii		Ding Branch from its confluence with Nobusiness Creek upstream including all named and unnamed tributaries.
	ii		Dry Fork (Bland County) from 4.8 miles above its confluence with Laurel Creek upstream including all named and unnamed tributaries.
	ii		East Fork Cove Creek (Tazewell County) from its confluence with Cove Creek upstream including all named and unnamed tributaries.
			Hunting Camp Creek from its confluence with Wolf Creek upstream including all named and unnamed tributaries.
	***		Hunting Camp Creek from its confluence with Wolf Creek 8.9 miles upstream.
	iii		Hunting Camp Creek from 8.9 miles above its confluence with Wolf Creek 3 miles upstream.
	ii		Laurel Creek (tributary to Wolf Creek in Bland County) from Camp Laurel in the vicinity of Laurel Fork Church, upstream including all named and unnamed tributaries.
	ii		Laurel Creek from a point 0.7 mile from its confluence with Sinking Creek upstream including all named and unnamed tributaries.
	ii		Little Creek (Tazewell County) from 1.5 miles above its confluence with Wolf Creek above the Tazewell County Sportsmen's Club Lake upstream including all named and unnamed tributaries.
	ii		Mercy Branch from its confluence with Mill Creek upstream including all named and unnamed tributaries.
	ii		Mill Creek from the Narrows Town line upstream including all named and unnamed tributaries.
	ii		Mudley Branch from its confluence with the West Fork Cove Creek upstream including all named and unnamed tributaries.
			Nobusiness Creek from its confluence with Kimberling Creek upstream including all named and unnamed tributaries.
	***		(Nobusiness Creek from its confluence with Kimberling Creek 4.7 miles upstream.)
	iii		(Nobusiness Creek from 4.7 miles above its confluence with Kimberling Creek upstream including all named and unnamed tributaries.)
	ii		Oneida Branch from its confluence with the West Fork Cove Creek upstream including all named and unnamed tributaries.
	iii		Panther Den Branch from its confluence with Nobusiness Creek upstream including all named and unnamed tributaries.

	ii		Piney Creek from its confluence with the New River upstream including all named and unnamed tributaries.
	ii		Wabash Creek from its confluence with Walker Creek upstream including all named and unnamed tributaries.
	ii		West Fork Cove Creek from its confluence with Cove Creek upstream including all named and unnamed tributaries.
1a			(Deleted)
1b	IV	u	Wolf Creek and its tributaries in Virginia from its confluence with Mill Creek upstream to the Giles-Bland County line.
1c			(Deleted)
1d	IV	u	Stony Creek and its tributaries, unless otherwise designated in this chapter, from its confluence with the New River upstream to its headwaters, and Little Stony Creek and its tributaries from its confluence with the New River to its headwaters.
	V		Stockable Trout Waters in Section 1d
	vi		Stony Creek (Giles County) from its confluence with the New River to its confluence with Laurel Branch.
	VI		Natural Trout Waters in Section 1d
	iii		Dismal Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Dixon Branch from its confluence with North Fork Stony Creek upstream including all named and unnamed tributaries.
	ii		Hemlock Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Laurel Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Laurel Creek from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii	*cc*	Little Stony Creek from its confluence with the New River upstream including all named and unnamed tributaries.
	ii		Maple Flats Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		Meredith Branch from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iii		Nettle Hollow from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	ii		North Fork Stony Creek from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	iii		Pine Swamp Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Pond Drain from its confluence with Little Stony Creek upstream including all named and unnamed tributaries.
	iii		Stony Creek (Giles County) from the confluence of Laurel Branch at Olean upstream including all named and unnamed tributaries.
	ii		White Rock Branch from its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Wildcat Hollow from its confluence with Stony Creek upstream including all named and unnamed tributaries.
1e	IV	PWS,u	Kimberling Creek and its tributaries from Bland Correctional Farm's raw water intake to points 5 miles upstream.
	VI	PWS	Natural Trout Waters in Section 1e
	iii		Dismal Creek from its confluence with Kimberling Creek upstream including all named and unnamed tributaries.
	iii		Pearis Thompson Branch from its confluence with Dismal Creek upstream including all named and unnamed tributaries.
	iii		Standrock Branch from its confluence with Dismal Creek upstream including all named and unnamed tributaries.
1f			(Deleted)
1g	IV	u	Bluestone River and its tributaries, unless otherwise designated in this chapter, from the Virginia-West Virginia state line upstream to their headwaters.

1h	IV	PWS,u	Bluestone River and its tributaries from Bluefield's raw water intake upstream to its headwaters.
	VI	PWS	Natural Trout Waters in Section 1h
	iii		Bluestone River from a point adjacent to the Route 650/460 intersection to a point 5.7 miles upstream.
1i	IV	PWS	Big Spring Branch from the Town of Pocahontas' intake, from the Virginia-West Virginia state line, including the entire watershed in Abbs Valley (the Town of Pocahontas' intake is located in West Virginia (at latitude 37°18'23" and longitude 81°18'54").
1j			(Deleted)
1k	IV	PWS	Walker Creek and its tributaries from the Wythe-Bland Water and Sewer Authority's raw water intake (for Bland) to points 5 miles upstream.
1l	VI ii	PWS	Cox Branch and its tributaries from Tazewell's raw water intake at the Tazewell Reservoir (river mile 1.6) to headwaters.
2	IV	v, NEW-5	New River and its tributaries, unless otherwise designated in this chapter, from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line (to include Peach Bottom Creek from its confluence with the New River to the mouth of Little Peach Bottom Creek).
	V		Stockable Trout Waters in Section 2
	v		Beaverdam Creek from its confluence with the Little River to its headwaters.
	v		Big Indian Creek from its confluence with the Little River to a point 7.4 miles upstream.
	vi		Boyd Spring Run from its confluence with the New River to its headwaters.
	***		Brush Creek from the first bridge on Route 617 south of the junction of Routes 617 and 601 to the Floyd County line.
	vi		Camp Creek from its confluence with the Little River to its headwaters.
	vi		Cove Creek (Wythe County) from Route 77, 8.1 miles above its confluence with Reed Creek, 10.5 miles upstream.
			Dodd Creek from its confluence with the West Fork Little River to its headwaters.
	***		Dodd Creek from its confluence with the West Fork Little River 4 miles upstream.
	vi		Dodd Creek from 4 miles above its confluence with the West Fork Little River to its headwaters.
	vi		East Fork Stony Fork from its confluence with Stony Fork 4 miles upstream.
	***		Elk Creek from its confluence with Knob Fork Creek to the junction of State Routes 611 and 662.
	vi		Gullion Fork from its confluence with Reed Creek 3.3 miles upstream.
	vi		Little Brush Creek from its confluence with Brush Creek 1.9 miles upstream.
	vi		Lost Bent Creek from its confluence with the Little River to its headwaters.
	vi		Middle Creek from its confluence with Little River to its headwaters.
	vi		Middle Fox Creek from its confluence with Fox Creek 4.1 miles upstream.
	vi		Mill Creek (Wythe County) from its confluence with the New River 3.7 miles upstream.
	v		North Fork Greasy Creek from its confluence with Greasy Creek to its headwaters.
	vi		Oldfield Creek from its confluence with the Little River to its headwaters.
	vi		Peach Bottom Creek from the mouth of Little Peach Bottom Creek to its headwaters.
	vi		Pine Branch from its confluence with the Little River to its headwaters.
	vi		Pine Creek (Carroll County) from its confluence with Big Reed Island Creek to its headwaters.
	vi		Piney Fork from its confluence with Greasy Creek to its headwaters.
	vi		Poor Branch from its confluence with the New River to its headwaters.
	vi		Poverty Creek (Montgomery County) from its confluence with Toms Creek to its headwaters.

vi	Reed Creek (Wythe County) within the Jefferson National Forest from 57 miles above its confluence with the New River 6.8 miles upstream, unless otherwise designated in this chapter.
vi	Shady Branch from its confluence with Greasy Creek to its headwaters.
vi	Shorts Creek from 6.2 miles above its confluence with the New River in the vicinity of Route 747, 3 miles upstream.
vi	South Fork Reed Creek from river mile 6.8 (at Route 666 below Groseclose) 11.9 miles upstream.
vi	St. Lukes Fork from its confluence with Cove Creek 1.4 miles upstream.
vi	Stony Fork (Wythe County) from 1.9 miles above its confluence with Reed Creek at the intersection of Routes 600, 682, and 21/52 at Favonia 5.7 miles upstream.
***	Toms Creek from its confluence with the New River to its headwaters.
vi	West Fork Big Indian Creek from its confluence with Big Indian Creek to its headwaters.
***	West Fork Peak Creek from the Forest Service Boundary to its headwaters.
vi	Wolf Branch from its confluence with Poor Branch 1.2 miles upstream.
VI	Natural Trout Waters in Section 2
ii	Baker Branch from its confluence with Cabin Creek upstream including all named and unnamed tributaries.
ii	Baldwin Branch from 0.2 mile above its confluence with Big Horse Creek at the Grayson County - Ashe County state line upstream including all named and unnamed tributaries.
ii	Bear Creek (Carroll County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Beaver Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Beaverdam Creek (Carroll County) from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	Big Branch from its confluence with Greasy Creek upstream including all named and unnamed tributaries.
iii	Big Horse Creek from 12.8 miles above its confluence with the North Fork New River (above the state line below Whitetop) upstream including all named and unnamed tributaries.
ii	Big Indian Creek from a point 7.4 miles upstream of its confluence with the Little River upstream including all named and unnamed tributaries.
ii	Big Laurel Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Big Laurel Creek from its confluence with Pine Creek upstream including all named and unnamed tributaries.
iii	Big Reed Island Creek from Route 221 upstream including all named and unnamed tributaries.
iii	Big Run from its confluence with the Little River upstream including all named and unnamed tributaries.
	Big Wilson Creek from its confluence with the New River upstream including all named and unnamed tributaries.
***	Big Wilson Creek from its confluence with the New River 8.8 miles upstream.
ii	Big Wilson Creek from 8.8 miles above its confluence with the New River 6.6 miles upstream.
iii	Blue Spring Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
ii	Boothe Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
ii	Bournes Branch from its confluence with Brush Creek upstream including all named and unnamed tributaries.
iii	Brannon Branch from its confluence with Burks Fork upstream including all named and unnamed tributaries.
ii	Brier Run from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.

ii	Buffalo Branch from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Burgess Creek from its confluence with Big Horse Creek upstream including all named and unnamed tributaries.
iii	Burks Fork from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
ii	Byars Creek from its confluence with Whitetop Creek upstream including all named and unnamed tributaries.
	Cabin Creek from its confluence with Helton Creek upstream including all named and unnamed tributaries.
ii	Cabin Creek from its confluence with Helton Creek 3.2 miles upstream.
i	Cabin Creek from 3.2 miles above its confluence with Helton Creek upstream including all named and unnamed tributaries.
ii	Cherry Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
ii	Chisholm Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iv	Crigger Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
***	Cripple Creek from the junction of the stream and U. S. Route 21 in Wythe County upstream including all named and unnamed tributaries.
iii	Crooked Creek (Carroll County) from Route 707 to Route 620.
ii	Crooked Creek from Route 620 upstream including all named and unnamed tributaries.
iii	Daniel Branch from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
iii	Dobbins Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
iv	Dry Creek from 1.9 miles above its confluence with Blue Spring Creek upstream including all named and unnamed tributaries.
iii	Dry Run (Wythe County) from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
iii	Earls Branch from its confluence with Beaver Creek upstream including all named and unnamed tributaries.
iii	East Fork Crooked Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	East Fork Dry Run from its confluence with Dry Run upstream including all named and unnamed tributaries.
ii	East Prong Furnace Creek from its confluence with Furnace Creek upstream including all named and unnamed tributaries.
ii	Elkhorn Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	Fox Creek from junction of the Creek and Route 734 upstream including all named and unnamed tributaries.
iii	Francis Mill Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
ii	Furnace Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
***	Glade Creek (Carroll County) from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
iii	Grassy Creek (Carroll County) from its confluence with Big Reed Island Creek at Route 641, upstream including all named and unnamed tributaries.
vi**	Grassy Creek (Carroll County) from its confluence with Little Reed Island Creek at Route 769, upstream including all named and unnamed tributaries.
iii	Greasy Creek from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
iii	Greens Creek from its confluence with Stone Mountain Creek upstream including all named and unnamed tributaries.

iii	Guffey Creek from its confluence with Fox Creek upstream including all named and unnamed tributaries.
ii	Helton Creek from the Virginia-North Carolina state line upstream including all named and unnamed tributaries.
ii	Howell Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
ii	Jerry Creek (Grayson County) from its confluence with Middle Fox Creek upstream including all named and unnamed tributaries.
iii	Jones Creek (Wythe County) from its confluence with Kinser Creek upstream including all named and unnamed tributaries.
ii	Killinger Creek from its confluence with Cripple Creek and White Rock Creek upstream including all named and unnamed tributaries.
iii	Kinser Creek from 0.4 mile above its confluence with Crigger Creek above the National Forest Boundary at Groseclose Chapel upstream including all named and unnamed tributaries.
iii	Laurel Branch (Carroll County) from its confluence with Staunton Branch upstream including all named and unnamed tributaries.
iii	Laurel Creek (Grayson County) from its confluence with Fox Creek upstream including all named and unnamed tributaries.
ii	Laurel Fork from the Floyd-Carroll County line upstream including all named and unnamed tributaries.
iii	Laurel Fork (Carroll County) from its confluence with Big Reed Island Creek to the Floyd-Carroll County line.
i	Lewis Fork from its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Little Cranberry Creek from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
ii	Little Helton Creek from the Grayson County-Ashe County state line upstream including all named and unnamed tributaries.
***	Little Reed Island Creek from the junction of the stream and State Routes 782 and 772 upstream including all named and unnamed tributaries, unless otherwise designated in this chapter.
***	Little River from its junction with Route 706 upstream including all named and unnamed tributaries.
ii	Little Snake Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
ii	Little Wilson Creek from its confluence with Wilson Creek (at Route 16 at Volney) upstream including all named and unnamed tributaries.
ii	Long Mountain Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Meadow Creek (Floyd County) from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Meadow View Run from its confluence with Burks Fork upstream including all named and unnamed tributaries.
iii	Middle Creek from its confluence with Crigger Creek upstream including all named and unnamed tributaries.
ii	Middle Fork Helton Creek from its confluence with Helton Creek 2.2 miles upstream.
i	Middle Fork Helton Creek from 2.2 miles above its confluence with Helton Creek upstream including all named and unnamed tributaries.
iii	Middle Fox Creek from 4.1 miles above its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Mill Creek (Carroll County) from its confluence with Little Reed Island Creek upstream including all named and unnamed tributaries.
ii	Mill Creek (Grayson County) from its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Mira Fork from its confluence with Greasy Creek upstream including all named and unnamed tributaries.
ii	North Branch Elk Creek from its confluence with Elk Creek upstream including all named and unnamed tributaries.
iii	North Prong Buckhorn Creek from its confluence with Buckhorn Creek upstream including all named and unnamed tributaries.

ii	Oldfield Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
ii	Opossum Creek from its confluence with Fox Creek upstream including all named and unnamed tributaries.
iii	Payne Creek from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Peak Creek from 19 miles above its confluence with the New River above the Gatewood Reservoir upstream including all named and unnamed tributaries.
iii	Pine Creek (Carroll County) from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Pine Creek (Floyd County) from its confluence with Little River upstream including all named and unnamed tributaries.
iii	Pipestem Branch from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
i	Quebec Branch from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.
iv	Raccoon Branch from its confluence with White Rock Creek upstream including all named and unnamed tributaries.
***	Reed Creek (Wythe County) from 5 miles above Wytheville's raw water intake upstream including all named and unnamed tributaries.
ii	Ripshin Creek from its confluence with Laurel Creek upstream including all named and unnamed tributaries.
iii	Road Creek (Carroll County) from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
ii	Roads Creek (Carroll County) from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iv	Rock Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Silverleaf Branch from its confluence with the Little River upstream including all named and unnamed tributaries.
iii	Snake Creek from Route 670 (3.2 miles above its confluence with Big Reed Island Creek) upstream including all named and unnamed tributaries.
ii	Solomon Branch from its confluence with Fox Creek upstream including all named and unnamed tributaries.
vi**	South Branch Elk Creek from its confluence with Elk Creek upstream including all named and unnamed tributaries.
iii	Spurlock Creek from its confluence with the West Fork Little River upstream including all named and unnamed tributaries.
iii	Staunton Branch from its confluence with Crooked Creek upstream including all named and unnamed tributaries.
iii	Stone Mountain Creek from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Straight Branch (Carroll County) from its confluence with Greens Creek upstream including all named and unnamed tributaries.
ii	Sulphur Spring Branch from its confluence with Big Reed Island Creek upstream including all named and unnamed tributaries.
iii	Tory Creek from its confluence with Laurel Fork upstream including all named and unnamed tributaries.
iii	Tract Fork from the confluence of Fortnerfield Branch upstream including all named and unnamed tributaries.
ii	Trout Branch from its confluence with Little Reed Island creek upstream including all named and unnamed tributaries.
iii	Turkey Fork from 2.6 miles above its confluence with Elk Creek upstream including all named and unnamed tributaries.
ii	Venrick Run from its confluence with Reed Creek upstream including all named and unnamed tributaries.
iii	West Fork Comers Rock Branch from its confluence with Comers Rock Branch upstream including all named and unnamed tributaries.
iii	West Fork Dodd Creek from its confluence with Dodd Creek upstream including all named and unnamed tributaries.

	iii		West Fork Dry Run from its confluence with Dry Run 2 miles upstream.
	iii		West Fork Little Reed Island Creek (Carroll County) from its confluence with Little Reed Island Creek upstream including all named and unnamed tributaries.
	***		West Fork Little River from its confluence with Little River upstream including all named and unnamed tributaries.
	iii		West Prong Furnace Creek from its confluence with Furnace Creek upstream including all named and unnamed tributaries.
			White Rock Creek from its confluence with Cripple Creek upstream including all named and unnamed tributaries.
	***		White Rock Creek from its confluence with Cripple Creek 1.9 miles upstream.
	iv		White Rock Creek from 1.9 miles above its confluence with Cripple Creek upstream including all named and unnamed tributaries.
	ii		Whitetop Creek from its confluence with Big Horse Creek upstream including all named and unnamed tributaries.
	i		Wilburn Branch from its confluence with Big Wilson Creek upstream including all named and unnamed tributaries.
2a	IV	PWS,v	New River from Radford Army Ammunition Plant's raw water intake (that intake which is the further downstream), upstream to a point 5 miles above the Blacksburg-Christiansburg, V.P.I. Water Authority's raw water intake and including tributaries in this area to points 5 miles above the respective raw water intakes.
2b	IV	PWS,v	New River from Radford's raw water intake upstream to Claytor Dam and including tributaries to points 5 miles above the intake.
2c	IV	v~~, NEW-4~~	New River and its tributaries, except Peak Creek above Interstate Route 81, from Claytor Dam to Big Reed Island Creek (Claytor Lake).
	V		Stockable Trout Waters in Section 2c
	vi		Chimney Branch from its confluence with Big Macks Creek to its headwaters.
	vi		White Oak Camp Branch from its confluence with Chimney Branch to its headwaters.
	VI		Natural Trout Waters in Section 2c
	ii		Bark Camp Branch from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
	ii		Big Macks Creek from Powhatan Camp upstream including all named and unnamed tributaries.
	iii		Little Macks Creek from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
	ii		Puncheoncamp Branch from its confluence with Big Macks Creek upstream including all named and unnamed tributaries.
2d	IV	PWS,v,NEW-5	Peak Creek and its tributaries from Pulaski's raw water intake upstream, including Hogan Branch to its headwaters and Gatewood Reservoir.
2e			(Deleted)
2f	IV	PWS,v	Little Reed Island Creek and its tributaries from Hillsville's upstream raw water intake near Cranberry Creek to points 5 miles above Hillsville's upstream raw water intake, including the entire watershed of the East Fork Little Reed Island Creek.
	VI	PWS	Natural Trout Waters in Section 2f
	iii		East Fork Little Reed Island Creek from its confluence with West Fork Little Reed Island Creek upstream including all named and unnamed tributaries.
	***		Little Reed Island Creek from Hillsville's upstream raw water intake to a point 5 miles upstream.
	Iii		Mine Branch from its confluence with the East Fork Little Reed Island Creek 2 miles upstream.
2g	IV	PWS,v	Reed Creek and its tributaries from Wytheville's raw water intake to 5 miles upstream.
	VI	PWS,v	Natural Trout Waters in Section 2g
	***		Reed Creek from the western town limits of Wytheville to 5 miles upstream.
2h	IV	PWS,v	Chestnut Creek and its tributaries from Galax's raw water intake upstream to their headwaters or to the Virginia-North Carolina state line.
	VI	PWS	Natural Trout Waters in Section 2h

	***		Coal Creek from its confluence with Chestnut Creek upstream including all named and unnamed tributaries.
	ii		East Fork Chestnut Creek (Grayson County) from its confluence with Chestnut Creek upstream including all named and unnamed tributaries.
	iii		Hanks Branch from its confluence with the East Fork Chestnut Creek upstream including all named and unnamed tributaries.
	iii		Linard Creek from its confluence with Hanks Branch upstream including all named and unnamed tributaries.
2i	IV		Fries Reservoir section of the New River.
2j	IV	PWS	Eagle Bottom Creek from Fries' raw water intake upstream to its headwaters.
2k	IV		Stuart Reservoir section of the New River.
2l	IV	PWS	New River and its tributaries inclusive of the Wythe County Water Department's Austinville intake at latitude 36°51'8.47" and longitude 80°55'29.31", and the Wythe County Water Department's Ivanhoe intake on Powder Mill Branch at latitude 36°49'15.96" and longitude 80°58'11.28" to points 5 miles above the intakes.
	V	PWS	Stockable Trout Waters in Section 2l
	vi		Powder Mill Branch (from 0.6 mile above its confluence with the New River) 2.1 miles upstream.
2m	IV	PWS, NEW-4,5	New River (Claytor Lake) from the Klopman Mills raw water intake to the Pulaski County Public Service Authority's raw water intake and tributaries to points 5 miles upstream of each intake.
2n			(Deleted)

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Regulations: **Smiles for Children.**

12 VAC 30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12 VAC 30-50-190).

12 VAC 30-120. Waivered Services (amending 12 VAC 30-120-380).

12 VAC 30-141. Family Access to Medical Insurance Security (FAMIS) Plan (amending 12 VAC 30-141-200 and 12 VAC 30-141-500).

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

Public Hearing Date: N/A -- Public comments may be submitted until March 24, 2006.
(See Calendar of Events section for additional information)

Agency Contact: Sandra Brown, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-1567, FAX (804) 786-1680, or e-mail sandra.brown@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services. With regard to the changes in the FAMIS regulations contained in this package, § 32.1-351 of the Code of Virginia, grants the board the authority to administer and amend the Title XXI Plan (FAMIS) and authorizes the Director of DMAS to "adopt, promulgate and enforce such regulations pursuant to the Administrative Process Act (§ 2.2-4000 et. seq.) as may be necessary for the implementation and administration of the Family Access to Medical Insurance Security Plan."

Purpose: The purpose of this regulatory action is to reshape the prior authorization regimen for dental services. Currently, the majority of dental services require prior authorization or prepayment review. These regulations will lead to fewer prior authorization requirements and enhance access to dental services for pediatric Medicaid recipients and for participants in the Family Access to Medical Insurance Security (FAMIS) program.

Substance: 12 VAC 30-50-190 describes Medicaid dental services. This section contains a list of dental services that require prior authorization. Because DMAS is restructuring the prior authorization of these services, this list was deleted. Other aspects of this section were changed to reflect change in the prior authorization regimen. 12 VAC 30-120-380

contains the list of services for which managed care organizations are not responsible because these services are reimbursed directly by DMAS. This section is amended to include dental services in the list of services reimbursed directly by DMAS. 12 VAC 30-141-200 describes the benefit packages available within the Title XXI FAMIS program. This section is revised to note that services directly reimbursed by DMAS include dental services, school health services and community mental health services. It should be noted that other changes are currently being made to 12 VAC 30-141-200 via a separate regulatory process concerning a new FAMIS subprogram entitled "FAMIS Select." Finally, 12 VAC 30-141-500 addresses FAMIS benefits reimbursement; this section currently contains no description of the prior authorization of dental services. This proposed regulation adds a sentence that prior authorization for dental services in FAMIS will match the prior authorization of dental services in the Medicaid program.

Issues: Inadequate dental care access and low utilization of dental services by Medicaid/FAMIS clients continues to be a critical concern for the Department of Medical Assistance Services (DMAS). In fiscal year 2004, only about 25% of the 420,000 children enrolled received services. In response, DMAS has restructured the way that dental benefits are administered through a new dental program known as Smiles For Children.

Dental services are a mandatory Medicaid benefit for children under age 21. Section 1902(a)(43) of the Social Security Act specifically requires that state Medicaid plans provide or arrange for such services. Covered services are defined as any medically necessary diagnostic, preventive, restorative, and surgical procedures, as well as orthodontic procedures, administered by, or under the direct supervision of, a dentist. Dental services are currently covered for approximately 358,000 Medicaid children. Approximately 230,000 of these children receive care through managed care organizations (MCOs). Approximately 128,000 of these children receive dental care through the department's fee-for-service (FFS) program. In addition, dental services also are provided to approximately 68,000 children enrolled in the Family Access to Medical Insurance Security (FAMIS) program. Most of these children are enrolled in an MCO.

The department contracts with eight MCOs for the provision of most covered services for Medicaid/FAMIS children under the Medallion II program. Prior to the Smiles for Children program, the MCOs handled the provision of dental services as part of the benefit package administered under the Medallion II contract. As directed in the 2005 Appropriation Act, DMAS consolidated the administration of dental services under a single dental benefits administrator and carved-out the dental benefit from the MCO benefit package.

DMAS is paying the dental benefits administrator approximately $4.3 million under an Administrative Services Only (ASO) contract to administer the program, with the state covering the cost of the actual claims by pass-through payment to Doral. Because the MCOs no longer oversee enrollee dental benefits, payments to them were reduced proportionately and redirected to cover Doral contract costs. The state also expects to avoid costs associated with medical treatment stemming from poor dental hygiene and lack of dental treatment by providing access to timely and appropriate dental care.

The primary goal of Smiles for Children is to increase access and utilization of dental services. In order to do this, dental provider participation needs to improve. Previously only 16% of Virginia-licensed dentists participated in the Medicaid and FAMIS programs. The new Smiles for Children program addresses the top concerns as expressed by dental providers about the prior program. Among those concerns include the need to streamline the administrative processes and increase provider rates. These regulations allow dental services to be carved out of the MCO contracts for streamlined administration under a single vendor administrator. Additionally, these regulations will further reduce barriers to provider participation by allowing for the removal of unnecessary prior authorization requirements. There are no disadvantages to the public or the Commonwealth with these regulation changes.

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

Summary of the proposed regulation. The Department of Medical Assistance Services (DMAS) proposes to combine, and make permanent, two separate emergency regulatory actions that have changed the system through which dental services are delivered to children residing in low income households. One of these emergency actions removed dental services for children and eligible adults from both Medicaid and Family Access to Medical Insurance Security (FAMIS) managed care and combined these services in the new program called Smiles for Children. The other emergency action recategorized the state's prior authorization regimen for dental services so that the publicly funded dental insurance requirements were more in line with private insurance requirements.

Estimated economic impact. Prior to the emergency actions that this proposed regulatory change will replace, dental services were bundled with other healthcare services and offered through the Medicaid and FAMIS programs. All offered services were delivered in the same way; eligible individuals in most areas of the state were signed up for, and had services delivered through, one of five managed care organizations (MCOs). In areas of the state that have no MCO coverage, services for eligible individuals were reimbursed on a fee-for-service basis. Going forward, this proposed regulatory change removes dental services from the service

bundles offered by MCOs to Medicaid and FAMIS recipients and converts these services into a completely fee-for-service system that will be administered by one company. Doral, a company based in Wisconsin, currently holds the contract with the DMAS; they will administer the fee-for-service dental program and will process bills from dentists and payments for those bills from DMAS.

DMAS is changing the delivery system for publicly funded dental care because they want to improve currently low service usage rates and dentist participation rates. At present, 25% of eligible Medicaid and FAMIS recipients use the dental services that are available to them. Only 620 of the 5347 dentists licensed in the Commonwealth participate in MCO or fee-for-service plans. It is likely that part of the reason Medicaid and FAMIS recipients do not use the dental benefits for which they are eligible is that so few dentists will accept them as patients. DMAS wants recipients to increase usage of dental services because, according to their research, improving dental health can improve the overall health of individuals. This being the case, it is reasonable to work toward increasing dentist participation as a means to increase recipient usage. Fee-for-service rates, where increased services mean increased revenue, offer dentists more incentive to care for Medicaid and FAMIS recipients than do flat rate MCO reimbursements; if DMAS's goal is to increase dentist participation rates, it is logical to make the switch from reliance on MCOs to a strictly fee-for-service system.

DMAS estimates that this switch will be a cost neutral move for the Commonwealth. DMAS currently pays out about $3.5 million per year total to the five MCOs for administration of dental services. Doral will receive about $4.3 million per year for administering the Smiles for Children program. Doral's administration fee is based on the total number of eligible individuals rather than the number of eligible individuals who actually use dental services because DMAS does not currently have sufficient data to know how many users there will be. As this data becomes available, negotiating a fee based on the number of service users may save the Commonwealth money and will certainly offer whatever company has the administrative contract at that point an incentive to increase the number of eligible individuals who actually use available dental services.

In the short run, the state may pay out less for fee-for-service dental services than they have historically paid MCOs. MCOs received, on average during FY 2005, $7.76 per eligible MCO member per month specifically as payment for dental services. Before Smiles for Children was implemented, about 71% of eligible children were enrolled in MCOs. Assuming that the same percentage of eligible adults received managed care dental services, total state expenditures to MCOs would have been around $40 million. DMAS expects to pay out about $36 million in fee-for-service payments this year. In the long run, if this program change increases dental service usage, state expenditures will likely increase beyond what would have been paid out under a MCO system. Any increased cost associated with better utilization of dental care may be mitigated if better dental care leads to better overall health for Medicaid and FAMIS recipients since healthier people will likely seek general health care less often. In any case, Virginia splits both cost savings and cost increases for Medicaid and FAMIS with the federal government; the federal government reimburses Virginia for 50% of all eligible Medicaid expenditures and 65% of all eligible FAMIS expenditures.

This regulatory change will certainly decrease revenue for the MCOs that will no longer be providing dental services but, again, the negative effect that this decrease in revenue has on MCO profits may be mitigated. If members who get more dental care reduce the amount of other health care services that they use, and per member per month payments from DMAS to the MCOs do not change, MCOs will see increased profits that will partially or wholly replace the loss of revenue from the removal of dental care from their management. Dental care payments have accounted for 2-3% of total payments made to MCOs for Medicaid and FAMIS members.

Before emergency regulations changed the authorization regimen for Medicaid and FAMIS plan dental services, DMAS had listed in regulation all services that did not require prior authorization so that all services that were not listed did require patients to seek authorization before services were rendered. Emergency and this proposed regulatory change will reverse this pattern and bring DMAS regulation in line with common practice in the private insurance industry: services that require prior authorization will now be explicitly listed in regulation, and any services that are not listed, but are covered, will not require prior authorization. This approach will help eligible individuals to better understand what is required of them before they seek dental care and will make billing slightly less complicated for dentists' offices.

Businesses and entities affected. Approximately 420,000 children and 200,000 adults in the Commonwealth are eligible to receive dental services through either Medicaid or FAMIS; five MCOs have been managing services for the majority of these individuals. One company will now administer dental services for all Medicaid and FAMIS recipients under the new, separate, fee-for-service plan. Currently, 620 dentists in the Commonwealth provide services for Medicaid and FAMIS recipients either through one of the five MCOs or on a fee-for-service basis; 5,347 dentists are licensed in Virginia. All of these individuals and businesses are affected by or, for dentists who are capable of providing covered services but do not do so right now, could potentially be affected by this proposed regulatory change.

Localities particularly affected. All localities in the Commonwealth will be affected by the proposed regulatory change.

Projected impact on employment. The MCOs that have been managing all services for the majority of Medicaid and FAMIS recipients may need fewer employees when dental services are removed and administered elsewhere. Since only 25% of eligible recipients have been using dental services, and the money paid to MCOs specifically for dental services has been only 2-3% of their total fees, the number of employees who would be affected is probably comparatively small. The new fee-for-service dental coverage will be administered, for the time being at least, by a company that is not located in Virginia. The net effect of the proposed regulation on employment in the field of health care administration is likely to be negative.

Effects on the use and value of private property. To the extent that the proposed regulation increases the income of dentists who provide services to Medicaid and FAMIS recipients, the net worth of dentists and the value of dental practices will increase. The net value of the affected MCOs will likely decrease by an amount equal to the 2-3% of total fees that they will no longer be paid minus the labor and other costs associated with administering dental services that they will no longer incur.

Small businesses: costs and other effects. The dentists who choose to provide services for Medicare and FAMIS recipients are not likely to see an increase in their administrative costs; they may even see these costs decline. Since the company who will be administering the fee-for-service dental plan will be actively recruiting new dentists, they have every incentive to minimize any administrative costs and bureaucratic hassles that would discourage dentists from participating. In addition, changes in the prior authorization regimen for Medicaid and FAMIS recipients will make the work of filing claims slightly easier and less time consuming.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Smiles for Children Dental Program.

Summary:

The proposed amendments create a new dental program for Medicaid and FAMIS enrollees, known as Smiles for Children. The first component carves dental services for children out of managed care in both Medicaid and FAMIS, making all dental services reimbursed on a fee-for-service basis. The second component reshapes the prior authorization regimen for dental services in order to bring the Medicaid and FAMIS dental prior authorization system more in line with commercial insurance.

12 VAC 30-50-190. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

~~B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.~~

~~C. All covered dental services not referenced above~~ *B. Certain dental services as described in the agency's Office Reference Manual (Smiles for Children, copyright 2005), prepared by DMAS' dental benefits administrator,* require preauthorization or prepayment review by the state agency *or its designee*. ~~The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations and inhalation analgesia.~~

~~D.~~ *C.* The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once /five years); extractions, orthodontics, tooth guidance appliances, permanent crowns and bridges, endodontics, patient education and sealants (once).

~~E.~~ *D.* Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and ~~also~~ require preauthorization *or prepayment review* by the state agency *or its designee as described in the agency's Office Reference Manual located on the DMAS website at:*

(http://www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).

DOCUMENTS INCORPORATED BY REFERENCE

Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R).

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 (www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).

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.

2. Services that shall be provided outside the MCO network shall include those services identified and defined by the

contract between DMAS and the MCO. Services reimbursed by DMAS include *dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12 VAC 30-50-190),* school health 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 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 records as 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 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. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not 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 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 30-141-200. Benefit packages.

A. The Commonwealth's Title XXI State Plan utilizes two benefit packages within FAMIS as set forth in the FAMIS State Plan, as may be amended from time to time. One package is a modified Medicaid look-alike component offered through a fee-for-service program and a primary care case management (PCCM) program; the other package is modeled after the state employee health plan and delivered by contracted ~~MCHIPs~~ *managed care entities. Services directly reimbursed by DMAS include dental and orthodontic services for children up to age 19, school health services, and community mental health rehabilitative services*.

B. The Medicaid look-alike plan is also used as a benchmark for the ESHI of FAMIS.

12 VAC 30-141-500. Benefits reimbursement.

A. Reimbursement for the services covered under FAMIS fee-for-service and PCCM and MCHIPs shall be as specified in this section.

B. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, medical transportation, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical therapy/occupational therapy/speech-language therapy services, hospice services, school-based health services, and certain community-based mental health services shall be based on the Title XIX rates.

C. Reimbursement to MCHIPs shall be determined on the basis of the estimated cost of providing the MCHIP benefit package and services to an actuarially equivalent population. MCHIP rates will be determined annually and published 30 days prior to the effective date.

D. Exceptions.

1. Prior authorization is required after five visits in a fiscal year for physical therapy, occupational therapy and speech therapy provided by home health providers and outpatient rehabilitation facilities and for home health skilled nursing visits. Prior authorization is required after five visits for outpatient mental health visits in the first year of service and

prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging, Computer Axial Tomography scans, or Positron Emission Tomography scans. *Prior authorization for dental services will be based on the Title XIX prior authorization requirements for dental services.*

2. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

3. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for inpatient mental health services other than by free standing psychiatric hospitals will be based on the Title XIX rates in effect for each hospital. Reimbursement will not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

5. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency. Payments made will be final and there will be no retrospective cost settlements.

6. Reimbursement for outpatient substance abuse treatment services will be based on rates determined by DMAS for children ages 6 through 18. Payments made will be final and there will be no retrospective cost settlements.

7. Reimbursement for prescription drugs will be based on the Title XIX rates in effect. Reimbursements for Title XXI do not receive drug rebates as under Title XIX.

8. Reimbursement for covered prescription drugs for noninstitutionalized FAMIS recipients receiving the fee-for-service or PCCM benefits will be subject to review and prior authorization when their current number of prescriptions exceeds nine unique prescriptions within 180 days, and as may be further defined by the agency's guidance documents for pharmacy utilization review and the prior authorization program. The prior authorization process shall be applied consistent with the process set forth in 12 VAC 30-50-210 A 7.

VA.R. Doc. No. R05-196 and R05-248; Filed December 30, 2005, 3:25 p.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Title of Regulation: **18 VAC 50-30. Individual License and Certification Regulations (amending 18 VAC 50-30-10 through 18 VAC 50-30-50, 18 VAC 50-30-70, 18 VAC 50-30-90 through 18 VAC 50-30-150, 18 VAC 50-30-190, and 18 VAC 50-30-200; adding 18 VAC 50-30-185 and 18 VAC 50-30-210 through 18 VAC 50-30-260; repealing 18 VAC 50-30-60, 18 VAC 50-30-80, and 18 VAC 50-30-180).**

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Hearing Date: February 16, 2006 - 1 p.m.
Public comments may be submitted until March 24, 2006.
(See Calendar of Events section for additional information)

Agency Contact: Eric Olson, Executive Director, Board for Contractors, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, or e-mail contractor@dpor.virginia.gov.

Basis: Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of tradesman and certified backflow prevention device workers in the Commonwealth. As provided in Chapter 188 of the 2004 Acts of Assembly, § 54.1-1142 A of the Code of Virginia provides the authority for the board to issue certificates to practice as an elevator mechanic in the Commonwealth. Section 54.1-1143 A of the Code of Virginia requires the board to establish in the regulations requirements for the completion of continuing education as a prerequisite to renewal as a "certified elevator mechanic."

The content of the regulations is up to the discretion of the board, but shall not be in conflict with the purposes of the statutory authority.

Purpose: The Board for Contractors seeks to amend its current Tradesman Rules and Regulations to add certified elevator mechanics to the regulations as required by Chapter 188 of the 2004 Acts of Assembly.

Amending the definitions in these regulations is essential to maintain consistency in the administration of the statutory licensing requirements for tradesman and certified backflow prevention device workers assigned to the Board for Contractors. Many of these definitions duplicate language already contained in the statutes. Removing these duplicative sections of the regulations eliminates confusion, which can occur when the statutes and regulations conflict during that period of time after a statutory amendment becomes effective and the regulations "catch-up" through the regulatory review process. The confusion caused during this lag time can be detrimental to the health, safety and welfare of citizens, as the two sources of authority (law and regulation) contain different provisions.

Other proposed "clean-up" amendments are essential to remove sections of the regulations that are no longer in effect, such as special time-sensitive licensing provisions that have expired and to clarify sections of the regulation that are confusing. This streamlining and clarification of the regulations make them easier to understand and serve both the regulant population and the public by making it easier to determine if a tradesman is in compliance with the regulations that were promulgated to protect the health, safety and welfare of citizens.

The rapid changes in the construction industry and the reaction to a number of those changes reflected in amendments to the building code, specifically those governing trade-related work (National Electrical Code, International Plumbing Code, International Mechanical Code, Fuel-Gas Code), is the primary purpose for proposing the implementation of a continuing education requirement. These building codes are continuously developed and amended as technology changes to ensure that citizens who are rapidly incorporating these technological changes into their homes and businesses are protected as much as possible from injury or property damage due to improper installation, repair or maintenance of trade-related equipment.

The overall goal of these proposed regulations is to simplify existing regulations through the elimination of duplicative sections and clarification of sections that had been the subject of questions from both the public and licensees, and to increase the level of protection afforded to the citizens of Virginia, with the least amount of burden placed on the regulant population.

The Board for Contractors staff has seen an increase in the number of telephone calls, e-mails and other forms of correspondence from citizens and government officials regarding tradesmen who are having difficulty with the ever-changing provisions of the various building codes associated with trade-related work. Since January 2003, the board has adjudicated 1,240 disciplinary cases. Approximately 20% of those cases involved situations where some requirement of the building code was not followed properly, such as obtaining a permit, getting an inspection, or failing to abate a violation found as a part of an inspection. Over half of those violations involved trade-related work. Additionally, in that same time period eight tradesmen have been brought before the board for violation of the Tradesman Rules and Regulations, with three of those cases resulting in revocation. The tradesman program was transferred from the Department of Housing and Community Development to the Board for Contractors in 1995 and from that transfer until January 2003, not a single tradesman license was revoked. Amending the regulations to require that licensed tradesman attend code-based continuing education classes is anticipated to have a positive affect by reducing the number of disciplinary actions against tradesmen.

Substance: The primary substantive changes to the definitions found in 18 VAC 50-30-10 are to remove definitions that (i) are duplicates of what already appear in statute, such as the definition of "tradesman"; (ii) are confusing and require additional clarification language, such as the definition of "journeyman"; or (iii) need to be amended to bring them into agreement with language in place in the Board for Contractors Regulations, such as the definition of "supervisor" and the addition of "supervision."

Substantive changes to Part II (Entry) of the regulations remove sections that are obsolete based on date requirements listed or duplicates of what already appear in statute. These changes were included as a result of public comment received during the NOIRA comment period and to the board at other times through the course of regularly scheduled meetings.

The requirement of the completion of three hours of building code-related continuing education for each trade specialty (a single hour for the gas-related trades) as a prerequisite for renewal is the major substantive change to Part III (Renewal and Reinstatement) and can be found in 18 VAC 50-30-120.

In Part V, Standards of Conduct, the proposed regulations provide for a new section (18 VAC 50-30-185), which provides specific language regarding the board's authority to revoke a license or a certificate. Also outlined are the sanctions authorized by statute that may be imposed by the board.

Substantive changes to Part VI of the regulations include the proposed name change to Vocational Training and Continuing Education. The proposed changes to this section include the clarification of vocational training course requirements and the addition of the proposed administrative side of the addition of continuing education to the requirements for renewal. This section outlines proposed requirements for approval of courses by the Board for Contractors and the requirements in place for the providers, as well as other administrative requirements such as reporting of course completion, reporting of changes and others.

Chapter 188 of the 2004 Acts of Assembly added Article 4 (§ 54.1-1140 et seq.) to Chapter 11 of Title 54.1 of the Code of Virginia. This amendment to the statutes introduces "Certified Elevator Mechanics" to the regulatory authority of the Board for Contractors. These regulations will define entry requirements, list fees and set certificate maintenance procedures for this new program. Since this is a new program all changes made to the existing regulations are substantive.

Many of these changes are administrative in nature and merely add the term "elevator mechanic" to existing language that includes all of the individual regulatory programs referenced in these regulations. This would include definitions and references to administrative actions, such as renewal and reinstatement, that are common to the other programs.

Other changes outline entry and testing requirements for those individuals applying for certification as elevator mechanics, including formal education hours, acceptable levels of experience and apprenticeship information. Along with the entry and testing requirements, fees applicable for this new certification program are incorporated into the regulations.

Since continuing education is a statutory requirement of this program, provisions are added to the regulations regarding those requirements in the sections involving renewal and vocation training/continuing education. This includes references to programs developed by nationally affiliated providers as well as approval requirements for individuals not affiliated with a national program.

Issues: In amending these regulations, the Board for Contractors is complying with the provisions of legislation establishing a program to certify elevator mechanics and is continuing to provide necessary public protection tasked to them through existing statutes, with amendments that are the least burdensome to their licensees. Further protection will be afforded the public by ensuring that those performing work requiring a tradesman license maintain adequate training levels to safely complete the work. The proposed

amendments will, without compromising that level of protection, clarify existing regulations and implement a program to ensure that licensed tradesmen maintain their proficiency with the applicable building code for their trade. There are no anticipated disadvantages to the public, including private citizens or businesses.

After studying data relative to accident rates, inspection reports and the licensing/education requirements in other states, the General Assembly determined a need for this level of regulation in order to protect the public. The primary advantage of the program is to ensure that work done on elevators and escalators is performed by individuals who have received sufficient training and demonstrated enough experience to reasonably assume competency in the repairs they will be completing. At the same time, the legislation takes the step to require ongoing education of those individuals in an effort to ensure that safety issues that arise as a result of technological advances, are passed on to those who are responsible for repairing the devices.

The only possible disadvantage to the program will involve the availability of continuing education classes in those areas geographically located far from population centers, but that still have devices that will require repairs by a certified elevator mechanic. It is likely that there will be difficulties that occur during the first renewal cycle, but should become less of a disadvantage as more training programs are approved by the board and the physical location of the regulant population is identified.

The amendment of these regulations will be advantageous to the agency by removing obsolete language from the regulations, which has been the source of numerous contacts with both regulants and members of the general public and efforts by staff to explain provisions in the regulations that are no longer applicable. Additionally, regulatory language that duplicates statute poses a significant problem when those statutes are amended and the regulations "lag" behind because of the time factor involved in the regulatory review process. The implementation of building code-based continuing education will result in a decrease in complaints received against tradesmen from both local building inspectors and consumers regarding difficulty with tradesmen whose knowledge of code changes is not current. These complaints, time consuming to investigate and adjudicate, can be costly to consumers who often have to pay extra money to have these discrepancies abated.

The establishment of the certified elevator mechanic regulations is predicted to have a relatively small impact on the total regulant population of the Board for Contractors. The development and implementation of data base software that will track continuing education requirements will be unfamiliar territory for the board and its licensing staff. While certainly not an insurmountable obstacle, it will still require significant training of staff and modification to existing software.

The development of the elevator mechanic certification program was supported by many of the localities that will be the most affected by its implementation, which are those located in areas with a large amount of development that includes elevators and escalators. Testimony provided at legislative committee meetings indicated that the majority of those individuals currently employed as elevator mechanics already belong to organizations that have in place substantive training programs (including continuing education), and many would welcome a requirement that all individuals performing this type of work meet those same standards of training and education.

The amendments to the definitions will provide needed clarification to the building officials of the various localities throughout the Commonwealth who, along with their permitting staff, are often on the front line for questions from tradesmen regarding the licensing requirements.

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.

CONTINUING EDUCATION PROPOSAL

Summary of the proposed regulation. The Board of Contractors (board) proposes to introduce a three-hour building code-related continuing education requirement for the biennial renewal of licensure and for the reinstatement of licensure. The remaining changes clarify definitions and requirements, remove requirements that are duplicative or no longer applicable, and add references to existing statutes.

Estimated economic impact. These regulations apply to the licensure of tradesmen who perform electrical, mechanical, plumbing, or gas-related work in Virginia. The board proposes to introduce a three-hour (one hour for the gas-related trades) building code-related continuing education requirement for the biennial renewal of licensure and for the reinstatement of licensure. Currently, the board has no continuing education requirements. Continuing education is a common standard required in many states and many types of professions. A survey done by the department shows that of the 39 states that regulate tradesmen, 31 have continuing education requirements for at least one of the professions regulated by the board. The number of hours required varies from two hours to 11 hours per year depending on the state and the profession.

The compliance costs of this requirement generally include tuition for classes, costs of educational materials, travel expenses if travel is necessary, and the wages forgone when fulfilling this requirement. Statewide the total tuition costs would be about $1.1 million assuming that 50% of the 31,000 tradesmen already take some form of continuing education and that the tuition varies from $65 to $75. Moreover, the department plans to hire a full-time classified employee to process applications, monitor records, and verify compliance

with this requirement. The estimated cost of this position is $42,888 for fiscal year 2006 in salary and benefits and $3,200 for other operating expenses.

The expected benefits are an improvement in the quality of services provided and, therefore, an improvement in public health and safety. Licensed tradesmen could also benefit from up-to-date knowledge of building codes by avoiding disciplinary action and potential liability. Also, this proposal will be beneficial for continuing education providers, as they will see an increase in their revenues. Because there are no continuing education requirements at this time, the proposed three-hour of requirement will provide the highest possible returns (as discussed in the context of the classroom education requirement). In addition, there seems to be significant evidence indicating lack of competency with the building codes. According to the department, the board has seen an increase in the number of complaints from citizens and government officials about licensees having difficulty complying with evolving building codes. The department reports that of the 753 disciplinary cases adjudicated since January 2003, approximately 150 cases, or 20%, involved situations where a requirement of the building code was not properly implemented. The problems ranged from administrative issues such as failing to obtain a permit or get an inspection done to practical issues such as failing to abate a violation found in an inspection. More than one half of the violations occurred in a trade-related work. In addition, eight tradesmen were brought before the board for violations of tradesman regulations, which resulted in revocation of three licenses. This compares unfavorably to the period from when the board's purview started in 1995 until January 2003, during which there had been no revocations. Thus, the proposed continuing education requirement appears to have the potential of providing net benefits to the Commonwealth.

The remaining changes clarify existing definitions, remove definitions that are duplicative of statutory language or obsolete, improve consistency of the proposed regulation with other regulations, and incorporate existing statutes by reference. None of these changes appear to be significant. To the extent that they improve the clarity of the regulation and reduce the potential for confusion among the public, the regulated community, and building officials, a positive effect should occur.

Businesses and entities affected. The proposed regulations apply to approximately 31,000 tradesmen regulated by the board.

Localities particularly affected. The proposed regulations should not affect any locality any more than others.

Projected impact on employment. The proposed continuing education requirement is not expected to create a significant disincentive for entry into this profession. There is likely to be an increase in demand for continuing education instructors.

Effects on the use and value of private property. To the extent that continuing education is offered by private businesses, the proposed change should increase their profits and, hence, their asset values. Also, to the extent that the continuing education requirement increases compliance with building codes, the value of real estate served by more competent tradesmen may increase.

ELEVATOR MECHANICS PROPOSAL

Summary of the proposed regulation. Pursuant to Chapter 188 of the 2004 Acts of Assembly, the Board of Contractors (board) proposes to introduce entry requirements, fees, and certificate maintenance procedures for certified elevator mechanics into these regulations.

Estimated economic impact. Virginia regulations do not currently directly regulate elevator mechanics. The Board for Contractors Regulations, 18 VAC 50-22, do specify that "A firm holding an EEC (elevator/escalator contracting) license is responsible for meeting all applicable tradesman licensure standards." But neither the Board for Contractors Regulations nor these regulations include licensure standards for elevator mechanics.

Pursuant to Chapter 188 of the 2004 Acts of Assembly, the board proposes to introduce elevator mechanic certification. Chapter 188 does not make clear whether certification will be required for elevator mechanic practice. Section 54.1-1140 of the Code of Virginia defines "elevator mechanic" as follows:

> "Elevator mechanic" means an individual who is certified by the Board in accordance with this article who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code. However, a person not certified as an elevator mechanic may perform maintenance that is not related to the operating integrity of an elevator, escalator, or related conveyance, as provided in the regulations of the board.

The latter sentence implies that certification is required for the performance of maintenance that is related to the operating integrity of an elevator, escalator, or related conveyance; but the Code of Virginia does not explicitly specify that certification is required.

These proposed regulations, 18 VAC 50-30, also do not specify that certification is required in order for an individual to perform any particular type of elevator mechanic work. The proposed language in these regulations does explicitly provide title protection for certified elevator mechanics. 18 VAC 50-30-130 states that "any person who holds himself out as a … certified elevator mechanic, as defined in § 54.1-1140 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia."

The Department of Professional and Occupational Regulation (department) believes that it was the legislature's intent to require certification for the performance of maintenance that is related to the operating integrity of an elevator, escalator, or related conveyance. The department believes that if a noncertified person performs maintenance that is related to the operating integrity of an elevator, he is subject to criminal charges detailed in § 54.1-111 of the Code of Virginia. Section 54.1-111 states that it is unlawful for any person to engage in "Performing any act or function which is restricted by statute or regulation to persons holding a professional or

occupational license or certification, without being duly certified or licensed." Further, "Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6 felony."

Under the proposed regulations, elevator mechanics can gain certification by either having three years of practical experience, completing 144 hours of formal vocational training, and passing a board-approved examination, or alternatively by successfully completing an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours. In order to maintain certification, elevator mechanics must complete eight hours of continuing education per two-year period. Proposed fees are $75 for initial certification and $35 for certification renewal every two years.

Testimony provided at legislative committee meetings indicated that the majority of those individuals currently employed as elevator mechanics already belong to organizations that have in place substantive training programs that include continuing education.[1] The department believes that the majority of those individuals currently employed as elevator mechanics already satisfy the requirements for certification. For those elevator mechanics that must change their actions in order to satisfy certification criteria, the following costs apply. According to the National Elevator Industry Education Program, the cost for a program that covers 144 hours of formal vocational training would be approximately $2,000, and eight hours of continuing education would cost about $200. An individual who has more than four years of experience or has completed some vocational training could meet the certification requirement with less than 144 hours of formal training and less than $2,000 in payment.

As discussed above, it is not clear whether elevator mechanic certification will in practice be solely title protection, or will it be required for certain types of elevator mechanic work. In its use as title protection, certification will likely produce a net benefit. Hiring firms and the rest of the public will be assured that certified individuals have substantial relevant experience, training, and knowledge. This saves hiring firms and the public the time and expense of obtaining this information for themselves.

It seems reasonable to expect that the risk of injury on elevators that have been worked on by elevator mechanics who have gained the experience, training, and knowledge required for certification is to some degree less than the risk of injury on elevators that have been worked on by individuals who have not gained the experience, training, and knowledge required for certification. No estimate of the difference in this risk is currently available. The Virginia Housing Study Commission reports in their 2003 Annual Report to the Governor and the General Assembly that there were two fatal incidents related to elevator safety in the previous 15 years. In order to estimate the benefit of requiring certification for elevator mechanic work, we would need to know the reduction in probability of fatal and non-fatal incidents[2] occurring due to more elevator mechanic jobs being performed by those with greater experience, training, and knowledge. Since this data is not available, an accurate estimate of the benefit of required certification cannot be made at this time.

Businesses and entities affected. The department estimates that approximately 300 to 400 individuals will seek elevator mechanic certification. Their employers and the public will be affected.

Localities particularly affected. Localities that contain many tall buildings with elevators, such as Fairfax, Arlington, Richmond, Norfolk, and other more urbanized areas, will be particularly affected.

Projected impact on employment. Demand for elevator mechanic training and continuing education courses will likely increase. Employment for providers of these services may consequently increase as well.

Effects on the use and value of private property. As stated above, there is reason to believe that the majority of elevator mechanics in Virginia already meet certification requirements. If certification is to be required for certain types of elevator mechanic work, then those individuals who do not already meet the requirements for certification will need to acquire the additional experience, training, or knowledge that they need to meet the requirements. Even if certification will serve only for title protection, there will likely be some additional demand for elevator mechanic training and continuing education courses in order to achieve certification. The value of providers of these services will consequently increase.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with both reports.

Summary:

The proposed amendments (i) introduce a three-hour building code-related continuing education requirement for the biennial renewal of licensure and for the reinstatement of licensure; (ii) establish entry requirements, fees, and certificate maintenance procedures for certified elevator mechanics in accordance with Chapter 188 of the 2004 Acts of Assembly; (iii) clarify definitions and requirements; (iv) remove requirements that are duplicative or no longer applicable; and (v) add references to existing statutes.

CHAPTER 30.
~~TRADESMAN RULES AND~~ *INDIVIDUAL LICENSE AND CERTIFICATION* REGULATIONS.

18 VAC 50-30-10. Definitions.

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

[1] Source: Department of Professional and Occupational Regulation

[2] The Virginia Housing Study Commission did not report on non-fatal incidents.

~~"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.~~

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§ 40.1-117 et seq. of the Code of Virginia).

~~"Approved" means approved by the Department of Professional and Occupational Regulation.~~

~~"Backflow prevention device testing" means performing functional procedures to ascertain that the device is still providing the necessary backflow protection in accordance with the Virginia Uniform Statewide Building Code.~~

"Backflow prevention device work" ~~consists of and is limited to the following: (i) maintenance; (ii) repair; (iii) testing; or (iv) periodic inspection of cross connection control devices, including but not limited to reduced pressure principle backflow preventors, double check valve assemblies, double detector check valve assemblies, pressure type vacuum breaker assemblies, and other such devices designed, installed, and maintained in such a manner so as to prevent the contamination of the potable water supply by the introduction of nonpotable liquids, solids, or gases, thus ensuring that the potable water supply remains unaltered and free from impurities, odor, discoloration, bacteria, and other contaminants which would make the potable water supply unfit or unsafe for consumption and use~~ *means work performed by a backflow prevention device worker as defined in § 54.1-1128 of the Code of Virginia*.

~~"Backflow prevention device worker" means any individual who engages in, or offers to engage in, the maintenance, repair, testing or periodic inspection of cross connection control devices.~~

~~"Board" means the Board for Contractors.~~

"Building official/inspector" is an employee of the state, a local building department or other political subdivision who enforces the Virginia Uniform Statewide Building Code.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

~~"Department" means the Department of Professional and Occupational Regulation.~~

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, the military, correspondence schools or other similar training organizations.

"Gas fitter" means ~~a tradesman~~ *an individual* who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman *and who is not an apprentice as defined in this chapter*.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

"Incidental" means work that is necessary for that particular repair or installation.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment *and supervise the work of installing, repairing and maintaining specific types of materials and equipment*, utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

~~"Licensed tradesman" means an individual who meets the requirements for licensure that relate to the trade which he practices.~~

"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems that require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its proper operation. This does not include the actions of removing, replacing or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia Uniform Statewide Building Code.

"Plumber" means ~~a tradesman~~ *an individual* who does plumbing work in accordance with the Virginia Uniform Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;
3. Domestic sprinklers;
4. Hot water baseboard heating systems;
5. Hydronic heating systems;
6. Process piping;
7. Public/private water supply systems within or adjacent to any building, structure or conveyance;
8. Sanitary or storm drainage facilities;
9. Steam heating systems;
10. Storage tanks incidental to the installation of related systems;
11. Venting systems; or
12. Water heaters.

These plumbing tradesmen may also install, maintain, extend or alter the following:

1. Liquid waste systems;
2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Regulant" means ~~a tradesman license or backflow prevention device certification card holder~~ *an individual licensed as a tradesman, liquefied petroleum gas fitter, natural gas fitter provider or certified as a backflow prevention device worker or elevator mechanic*.

"Reinstatement" means having a ~~tradesman~~ license or ~~backflow prevention device worker~~ certification card restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a ~~tradesman~~ license or ~~a backflow prevention device worker~~ certification card for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code~~, one of whom must be on the job site at all times during installation~~ *and provides supervision as defined in this chapter to helpers and laborers*.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

~~"Tradesman" means a person who engages in or offers to engage in, for the general public for compensation, any of the trades covered by this chapter.~~

"Water distribution systems" include fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

18 VAC 50-30-20. Requirements for licensure ~~as a journeyman or master tradesman engaging in the trades of electrical, gas fitting, HVAC (heating, ventilation and air conditioning), liquefied petroleum gas fitting, natural gas fitting, and plumbing~~ or certification ~~as a backflow prevention device worker~~.

Each ~~individual who engages in, or offers to engage in, electrical, gas fitting, HVAC, liquefied petroleum gas fitting, natural gas fitting, plumbing or backflow prevention device work for the general public for compensation~~ *applicant* shall meet or exceed the requirements set forth in this section prior to issuance of the license or certification card.

The applicant shall be required to take an ~~oral or written~~ examination to determine his general knowledge of the ~~trade~~ *regulated activity* in which he desires licensure or certification.

If the applicant successfully completes the examination, an application furnished by the department shall be completed. The application shall contain the applicant's name, home address, place of employment, and business address; information on the knowledge, skills, abilities and education or training of the applicant; and ~~an affidavit stating~~ *a statement certifying* that the information on the application is correct. If the application is satisfactory to the board, a license or certification card shall be issued.

18 VAC 50-30-30. General qualifications for licensure or certification.

Every applicant to the Board for Contractors for licensure ~~as a tradesman~~ or certification ~~as a backflow prevention device worker~~ shall meet the requirements and have the qualifications provided in this section.

1. The applicant shall be at least 18 years old.

2. Unless otherwise exempted, the applicant shall meet the current educational requirements by passing all required courses prior to the time the applicant sits for the examination and applies for licensure or certification.

3. Unless exempted, the applicant shall have passed the applicable ~~written~~ examination provided by the board or by a testing ~~service~~ *organization* acting on behalf of the board.

4. The applicant shall meet the experience requirements as set forth in 18 VAC 50-30-40 ~~or 18 VAC 50-30-50~~.

5. In those instances where the applicant is required to take the license or certification examination, the applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and the testing ~~service~~ *organization* with regard to conduct at the examination shall be grounds for denial of application.

6. The applicant shall disclose his physical home address; a post office box alone is not acceptable.

7. Each nonresident applicant for a ~~tradesman~~ license or certification card shall file and maintain with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth. In those instances where service is required, the director of the department will mail the court document to the individual at the address of record.

8. The applicant shall sign, as part of the application, ~~an affidavit~~ *a statement* certifying that the applicant has read and understands ~~the Virginia tradesmen law,~~ Article 3 (§ 54.1-1128 et seq.) of Chapter 11 of Title 54.1 of the Code of Virginia~~,~~ and this chapter.

9. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview with the applicant. ~~Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.~~

10. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.

11. The applicant shall report any suspensions, revocations, or surrendering of a certificate~~/~~ *or* license in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure or certification in Virginia. The board, at its discretion, may deny licensure or certification to any applicant based on prior suspensions, revocations, or surrender of certifications~~/~~ *or* licenses based on disciplinary action by any jurisdiction.

18 VAC 50-30-40. Evidence of ability and proficiency.

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;

2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;

3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;

4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or

5. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or

2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or

2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in ~~an approved~~ *a* school *approved by the board*.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;

2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

18 VAC 50-30-50. Exemptions from examination~~; exemptions from licensure~~.

A. An individual certified or licensed by any one of the following agencies shall not be required to fulfill the examination requirement:

1. The Department of Housing and Community Development prior to July 1, 1995;

2. Any local governing body prior to July 1, 1978; or

3. Any Virginia locality backflow prevention device worker certification issued prior to July 1, 1998.

B. Other methods of exemption from *the journeyman* examination are as follows:

1. Successful completion of an apprenticeship program which is approved by the Virginia Apprenticeship Council *for exemption from examination,* as evidenced by providing a certificate of completion or other official document.

2. Any tradesman who had a Class B registration in the trade prior to January 1, 1991, and has been continuously licensed as a Class B contractor. ~~Candidates for this exemption must submit documentation from the Board for Contractors.~~

~~3. Individuals applying for certification as backflow prevention device workers between July 1, 1998, and July 1, 1999, shall be deemed to have fulfilled the examination requirements if they are able to demonstrate the required years of discipline free experience and education or training set forth in 18 VAC 50-30-40 D 2. These individuals shall provide the following with their application:~~

~~a. An affidavit from a building official, building inspector or Virginia water purveyor attesting to at least seven years of experience and competency in the field on a form provided by the department; and~~

~~b. A certificate or other documentation that an appropriate course of instruction of at least 16 hours at an approved school has been successfully completed prior to July 7, 1999.~~

~~4. a. Individuals applying for licensure as a liquefied petroleum gas fitter by November 1, 2002, who are able to demonstrate that they have at least five years' experience as a liquefied petroleum gas fitter, are exempted from the examination requirements. This item refers to master tradesmen.~~

~~b. Individuals applying for licensure as a liquefied petroleum gas fitter between July 1, 2000, and July 1, 2005, shall be deemed to have fulfilled the examination requirements if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter. This item refers to journeymen tradesmen.~~

~~5. a. Individuals applying for a natural gas fitter provider license by November 1, 2002, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have five years' prior experience as a~~

~~natural gas fitter provider. This item refers to master tradesmen.~~

~~b. Individuals applying for a natural gas fitter provider license between July 1, 1999, and July 1, 2004, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter. This item refers to journeymen tradesmen.~~

~~C. Exemptions from licensure are as follows:~~

~~1. Helpers or laborers who assist licensed tradesmen;~~

~~2. Any person who performs electrical, gas fitting, HVAC, liquefied petroleum gas fitting, natural gas fitting, or plumbing work not for the general public for compensation;~~

~~3. Any person who installs television or telephone cables, lightning arrestor systems, or wiring or equipment operating at less than 50 volts;~~

~~4. Installers of wood stove equipment, masonry chimneys or prefabricated fireplaces shall be exempt from certification as a HVAC tradesman; and~~

~~5. Any person who is performing work on any ship, boat, barge or other floating vessel.~~

18 VAC 50-30-60. ~~Application and issuance of tradesman licenses or backflow prevention device worker certifications.~~ *(Repealed.)*

~~A. All applicants for licensure as a tradesman or certification as a backflow prevention device worker must make application with the department to obtain the required tradesman license or backflow prevention device worker certification.~~

~~B. Unless otherwise exempted, an applicant must successfully complete an examination to be issued a tradesman license or backflow prevention device worker certification and deemed qualified.~~

~~C. The board shall receive and review applications and forward approved applications to the national testing organizations designated by the board. At its discretion, the board may delegate the application receipt and review process to the testing organization.~~

~~D. The applicant shall present to the board evidence of successful completion of a board-approved examination.~~

18 VAC 50-30-70. Other recognized programs.

Individuals certified or licensed as a journeyman or master by governing bodies located outside the Commonwealth of Virginia shall be considered to be in compliance with this chapter if the board or its designee has determined the certifying system to be substantially equivalent to the Virginia system. *In addition to the requirements set forth in 18 VAC 50-30-30,* these individuals must meet the following requirements:

~~1. The applicant shall be at least 18 years of age.~~

~~2.~~ *1.* The applicant shall have received the tradesman certification or license by virtue of having passed in the jurisdiction of original certification or licensing a written or oral examination deemed to be substantially equivalent to the Virginia examination.

~~3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia tradesmen law, Article 3 (§ 54.1-1128 et seq.) of Chapter 11 of Title 54.1 of the Code of Virginia, and this chapter.~~

~~4.~~ *2.* The applicant shall be in good standing as a certified or licensed tradesman in every jurisdiction where certified or licensed, and the applicant shall not have had a certificate or a license as a tradesman which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

~~5. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution or physical injury, or any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.~~

~~6. Applicants for licensure who do not meet the requirements set forth in subdivisions 4 and 5 of this section may be approved for licensure following consideration by the board.~~

~~7.~~ *3.* Individuals certified or licensed by governing bodies other than the Commonwealth of Virginia may sit for the same level of tradesman examination by completing the required application and providing a copy of a currently valid journeyman or master license or certification.

~~8.~~ *4.* Individuals certified or licensed as backflow prevention device workers by governing bodies located outside the Commonwealth of Virginia may sit for the Virginia backflow prevention device worker examination upon presentation of a currently valid certificate or card from such jurisdictions with their completed examination application and fee. Upon successful completion of this examination, the applicant will be provided with the proper application for certification as a backflow prevention device worker in the Commonwealth of Virginia.

18 VAC 50-30-80. ~~Revocation of licensure or certification.~~ *(Repealed.)*

~~A. Licensure or certification may be revoked for misrepresentation or a fraudulent application, or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.~~

~~B. Any building official, building inspector or water purveyor who finds that an individual is practicing as a tradesman without a tradesman license as required by state law or as a backflow prevention device worker without a backflow prevention device certification card if such a card is required by the locality shall file a report on a form provided by the~~

~~board to such effect with the Board for Contractors, 3600 West Broad Street, Richmond, Virginia 23230-4917.~~

~~C. Any building official, building inspector or water purveyor who has reason to believe that a tradesman or a backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code shall file a report on a form provided by the board to such effect with the board.~~

~~D. The department shall have the power to require remedial education and to suspend, revoke or deny renewal of the tradesman license or the backflow prevention device worker certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen or backflow prevention device workers in the Commonwealth.~~

18 VAC 50-30-90. Fees for licensure~~,~~ *and* certification ~~and examination~~.

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and *shall not be prorated.* The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

~~B. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department.~~

~~C. Tradesman license original fee by examination. The fee for an initial tradesman license shall be $90.~~

~~D. Tradesman license original fee without an examination, through successful completion of an appropriate apprenticeship program offered through the Virginia Voluntary Apprenticeship Act. The fee for an initial tradesman license shall be $90.~~

~~E. Commencing July 1, 1995, the Department of Professional and Occupational Regulation will institute a program of issuing tradesmen's cards. Those tradesmen who hold valid tradesmen cards issued by local governing bodies prior to July 1, 1978, or by the Department of Housing and Community Development prior to July 1, 1995, must replace the old cards with new cards issued by the Board for Contractors.~~

~~In order to obtain the tradesman card issued by the Board for Contractors, the individual must use the current application form provided by the Department of Professional and Occupational Regulation. The fee for card exchange application and processing is $40. As a matter of administrative necessity, the department will assign expiration dates in a manner that will stagger renewals for these applicants. Once the initial period ends, all renewals will be for a period of 24 months.~~

~~F. Commencing July 1, 1998, the Department of Professional and Occupational Regulation will institute a voluntary program of issuing backflow prevention device worker certification cards. Those individuals who hold valid backflow prevention device worker certifications issued by local governing bodies or the Virginia Department of Health prior to that date may replace those cards with new cards issued by the board.~~

~~In order to obtain the backflow prevention device worker certification card issued by the board, the individual must use the current application form provided by the department. The fee for the card exchange application and processing is $40. The term of certification will be for a period of 24 months.~~

~~G. Backflow prevention device worker certification through the "grandfather" clause of § 54.1-1131 B 2 of the Code of Virginia expired on July 1, 1999.~~

~~H. Commencing on November 1, 2001, the Department of Professional and Occupational Regulation will add the trades of liquefied petroleum gas fitter and natural gas fitter provider to the trades regulated by the Board for Contractors. The fee for the initial licensure shall be $90.~~

B. Fees are as follows:

Original tradesman license by examination	*$90*
Original tradesman license without examination	*$90*
Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license)	*$40*
Liquefied petroleum gas fitter	*$90*
Natural gas fitter provider	*$90*
Backflow prevention device worker certification	*$90*
Elevator mechanic certification	*$90*

18 VAC 50-30-100. Fees for examinations.

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. 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 current examination shall not exceed a cost of $100 for the journeyman exam, $125 for the master exam for any of the trades, or $100 for the backflow prevention device worker *or elevator mechanic* exam.

18 VAC 50-30-110. Fees for duplicate cards.

The fee for a duplicate card shall be as follows:

First request	$30
Second request	$30
Third request	$45 ~~*and a report sent to the Enforcement Section.*~~

Any request for the issuance of such a card must be in writing to the board. *Requests for a third or subsequent duplicate card may be referred for possible disciplinary action.*

18 VAC 50-30-120. Renewal.

A. ~~Tradesman~~ Licenses ~~or backflow prevention device worker~~ *and* certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the ~~tradesman~~ license or ~~the backflow prevention~~ device worker certification card.

B. ~~The fee for renewal of a tradesman license is $40. The fee for renewal of a backflow prevention device worker certification card is $40. All fees required by the board are nonrefundable and shall not be prorated.~~ *Effective with all licenses issued or renewed after July 1, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter.*

C. Certified elevator mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code pertaining to elevators, escalators and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Renewal fees are as follows:

Tradesman license	*$40*
Liquefied petroleum gas fitter license	*$40*
Natural gas fitter provider license	*$40*
Backflow prevention device worker certification	*$40*
Elevator mechanic certification	*$40*

All fees are nonrefundable and shall not be prorated.

E. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

F. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

G. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

18 VAC 50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the tradesman license ~~or~~*,* backflow prevention device worker certification card*, or elevator mechanic certification card*.

B. ~~The fee for reinstatement of a tradesman license (all designations) is $90 (this is in addition to the $40 renewal fee, which makes the total fee for reinstatement $130). The reinstatement fee for a backflow prevention device worker certification card is $90 (this is in addition to the $40 renewal fee, which makes the total reinstatement fee $130).~~ *Reinstatement fees are as follows:*

Tradesman license	*$130**
Liquefied petroleum gas fitter license	*$130**
Natural gas fitter provider license	*$130**
Backflow prevention device worker certification	*$130**
Elevator mechanic certification	*$130**

**Includes renewal fee listed in 18 VAC 50-30-120.*

All fees required by the board are nonrefundable and shall not be prorated.

C. Applicants for reinstatement shall meet the requirements of 18 VAC 50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen ~~or~~*, liquefied petroleum gas fitters, natural gas fitter providers,* backflow prevention device workers *or elevator mechanics*, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new ~~tradesman~~ license or ~~backflow prevention device worker~~ certification card and meet the then current entry requirements.

F. Any tradesman*, liquefied petroleum gas fitter, or natural gas fitter provider* activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, *or as a certified elevator mechanic, as defined in § 54.1-1140 of the Code of Virginia,* without the appropriate certification, may be subject to ~~persecution~~ *prosecution* under Title 54.1 of the Code of Virginia. *Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.*

~~C.~~ *G.* The board may deny reinstatement of a ~~tradesman~~ license or ~~a backflow prevention device worker~~ certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

18 VAC 50-30-140. Status of regulant during the period prior to reinstatement.

A. When a regulant is reinstated, the individual shall continue to have the same number and shall be assigned an expiration date two years from the previous expiration date.

B. A regulant who reinstates his ~~tradesman~~ license or ~~backflow prevention device worker~~ certification card shall be regarded as having been continuously licensed or certified without interruption. Therefore, the regulant shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period. Nothing in this chapter shall divest the board of its authority to discipline a regulant for a violation of the law or regulations during the period of licensure or certification.

18 VAC 50-30-150. ~~Changes, additions, or deletions to~~ *Adding or deleting* trade designations.

A. A regulant may ~~change a designation or obtain additional~~ *add* designations *to a license* by demonstrating, on a form provided by the board, acceptable evidence of experience, and examination if appropriate, in the designation sought. The experience, and successful completion of examinations, must be demonstrated by meeting the requirements found in Part II (18 VAC 50-30-20 et seq.) of this chapter.

B. The fee for each ~~change or~~ addition is ~~$30~~ *$40*. All fees required by the board are nonrefundable.

C. While a regulant may have multiple trade designations on his license, the renewal date will be based upon the date the card was originally issued to the individual by the board, not the date of the most recent trade designation addition.

D. If a regulant is seeking to delete a designation, then the individual must provide a signed statement listing the designation to be deleted. There is no fee for the deletion of a designation. If the regulant only has one trade or level designation, the deletion of that designation will result in the termination of the license.

18 VAC 50-30-180. ~~Filing of complaints.~~ *(Repealed.)*

~~All complaints against regulants may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.~~

18 VAC 50-30-185. Revocation of licensure or certification.

A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. The board shall have the power to require remedial education and to suspend, revoke or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers or elevator mechanics in the Commonwealth of Virginia.

18 VAC 50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a tradesman license or backflow prevention device worker certification card;

3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman*, liquefied petroleum gas fitter or natural gas fitter provider* license, certificate or card, or backflow prevention device worker certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;

4. Gross negligence in the practice of a ~~trade or~~ *tradesman, liquefied petroleum gas fitter, natural gas fitter provider,* backflow prevention device ~~work~~ *worker or elevator mechanic*;

5. Misconduct in the practice of a ~~trade or~~ *tradesman, liquefied petroleum gas fitter, natural gas fitter provider,* backflow prevention device ~~work~~ *worker or elevator mechanic*;

6. A finding of improper or dishonest conduct in the practice of ~~the trade or~~ *a tradesman, liquefied petroleum gas fitter, natural gas fitter provider,* backflow prevention device ~~work~~ *worker or elevator mechanic* by a court of competent jurisdiction;

7. For licensed tradesmen*, liquefied petroleum gas fitters or natural gas fitter providers* performing jobs under $1,000, or backflow prevention device workers *or elevator mechanics* performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local

government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade or backflow prevention device work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Uniform Statewide Building Code, as amended; and

15. Practicing in a classification or specialty service for which the ~~tradesman~~ *regulant* is not licensed or certified.

PART VI.
~~SCHOOL/PROFESSIONAL~~ *VOCATIONAL TRAINING AND CONTINUING EDUCATION PROVIDERS*.

18 VAC 50-30-200. ~~Professional education.~~ *Vocational training.*

A. ~~Pursuant to s 54.1-1130 of the Code of Virginia, unless certified through exemption, candidates for licensure as journeymen are required to (i) complete 240 hours classroom hours of tradesman educational courses in their specialty or 80 classroom hours of training for liquefied petroleum gas fitters and natural gas fitter providers and four years of practical experience in the trade for which licensure is desired to qualify to sit for the licensing examination, (ii) have an associate degree or a certificate of completion from at least a two year program in a trade related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired, or (iii) have a bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired (see Part II, 18 VAC 50-30-20 et seq., of this chapter). Tradesman~~ *Vocational training* courses must be completed through accredited colleges, universities, junior and community colleges; adult distributive, marketing and formal vocational training as defined in this chapter; Virginia Apprenticeship Council programs; or proprietary schools approved by the Virginia Department of Education.

B. Backflow prevention device worker courses must be completed through schools approved by the board. The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

C. Elevator mechanic courses must be completed through schools approved by the board. The board accepts training programs approved by the National Elevator Industry Education Program (NEIEP). Other programs could be approved after board review.

18 VAC 50-30-210. Continuing education providers.

A. Application requirements for continuing education providers.

1. Each provider of a building code-related continuing education course shall submit an application for approval on a form provided by the board. The application shall include but is not limited to:

a. The name of the provider;

b. Provider contact person, address and telephone number;

c. Course contact hours;

d. Schedule of courses, if established, including dates, time and locations;

e. Name(s) of instructor(s).

B. Continuing education providers shall have their subject(s) approved by the board prior to initially offering the course. Correspondence and other distance learning courses must include appropriate testing procedures to verify completion of the course.

C. All providers must establish and maintain a record for each student. The record shall include the student's name and address, social security number or current license number, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, the date of successful completion and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Providers must maintain class records for a minimum of five years.

18 VAC 50-30-220. Continuing education courses.

A. All courses offered by continuing education providers must be approved by the board and shall cover articles of the current edition of the building code for the applicable license specialty. For tradesmen with the electrical specialty the National Electrical Code; for tradesmen with the plumbing specialty, the International Plumbing Code; for tradesmen with HVAC specialty, the International Mechanical Code; for gas fitters, liquefied petroleum gas fitters, and natural gas fitters, the International Fuel Gas Code. Courses offered by continuing education providers for elevator mechanics shall cover articles of the current edition of the building code and

other applicable laws governing elevators, escalators, or related conveyances.

B. Approved providers shall submit an application for course approval on a form provided by the board. The application shall include but is not limited to:

1. The name of the provider and the approved provider number;

2. The name of the course;

3. The date(s), time(s), and location(s) of the course;

4. Instructor information, including name, license number(s) if applicable, and a list of other appropriate trade designations;

5. Course and material fees;

6. Course syllabus.

C. Courses may be approved retroactively; however, no regulant will receive credit toward the continuing education requirements of renewal until such approval is received from the board.

18 VAC 50-30-230. Reporting of course completion.

All continuing education providers shall electronically transmit course completion data to the board in an approved format within seven days of the completion of each individual course. The transmittal will include each student's name, social security number or current license number; the date of successful completion of the course; and the board's course code.

18 VAC 50-30-240. Posting continuing education provider and course certificates of approval.

Copies of continuing education provider and course certificates of approval must be available at the location a course is taught.

18 VAC 50-30-250. Reporting of changes.

Any change in the information provided in 18 VAC 50-30-210 A 1 must be reported to the board within 30 days of the change with the exception of changes in the schedule of courses, which must be reported within 10 days of the change. Failure to report the changes as required may result in the withdrawal of approval of a continuing education provider by the board.

18 VAC 50-30-260. Withdrawal of approval.

The board may withdraw approval of any continuing education provider for the following reasons:

1. The courses being offered no longer meet the standards established by the board.

2. The provider, through an agent or otherwise, advertises its services in a fraudulent or deceptive way.

3. The provider, instructor, or designee of the provider falsifies any information relating to the application for approval, course information, or student records or fails to produce records required by 18 VAC 50-30-210 C.

NOTICE: The forms used in administering 18 VAC 50-30, Individual License and Certification Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulations, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Tradesman License Application, 2710LIC (rev. 8/05).

Backflow Prevention Device Worker Certification Application, 2710BPD (rev. 8/05).

Elevator Mechanic Certification Application, 2710ELE (eff. 8/05).

Individual Experience Form 2710EXP (eff. 7/05).

Vocational Training Form, 2710VOTR (eff. 7/05).

VA.R. Doc. Nos. R04-107 and R04-257; Filed December 22, 2005, 2:46 p.m.

BOARD OF DENTISTRY

Title of Regulation: **18 VAC 60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18 VAC 60-20-10, 18 VAC 60-20-20, 18 VAC 60-20-105, 18 VAC 60-20-106, 18 VAC 60-20-210, and 18 VAC 60-20-230; adding 18 VAC 60-20-71).**

Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: March 3, 2006 - 9 a.m.
Public comments may be submitted until March 24, 2006.
(See Calendar of Events section for additional information)

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

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system.

The legal authority to license and regulate dentists and dental hygienists may be found in Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The intent of the regulatory action is to comply with the requirements of Chapters 505 and 587 of the 2005 Acts of Assembly for regulations to implement licensure by credentials for dentists and to modify other sections of regulations in accordance with revisions to the Dental Practice Act. Since the criteria for licensure by credentials and for the restricted volunteer license are so specifically stated in the Code of Virginia, the regulatory action does not need to expand or extend the requirements. It does offer clarity for provisions that were likely to generate questions and for which there was not clear guidance.

The proposed regulation will allow dentists from other states to be licensed based on their credentials but also include sufficient safeguards to ensure that practitioners who have had disciplinary action can be denied licensure. Amended regulations are also proposed with the health and safety of patients receiving services from dentist or hygienist with a volunteer restricted license in mind.

Substance: The proposed action (i) eliminates an unnecessary definition and clarifies others; (ii) states the qualifications for licensure by credentials for dentists; (iii) sets out the criteria for licensure and practice of restricted volunteer dentists and dental hygienists; and (iv) establishes the requirements for delegation of duties of a dental assistant who is practicing under the direction of a hygienist while the hygienist is under the general supervision of a dentist.

Issues: With passage of legislation and adoption of regulations to implement licensure by credentials, the primary advantage to the public would be the potential increased availability of dentists who could be licensed. Proposed regulations do not impose requirements beyond those already set out in law, so the board seeks to facilitate such licensure to the extent possible. Over the years, some areas of the state have sought to recruit dentists in specialty practice who are retiring from the military or want to relocate. When the dentist being recruited learned that he could not be licensed based on his credentials but would be required to take a clinical examination in basic dentistry, he has declined to come to Virginia. Amendments to this chapter should make it somewhat easier for underserved areas to recruit new dentists.

In addition, the change in the law and regulations allowing retired Virginia dentists and hygienists to have a restricted volunteer license to practice in free clinics has the potential for increasing the supply of practitioners for those settings. There are a significant number of Virginians who cannot afford regular dental care, so the services of free clinics are the only alternative available, and have been limited by the number of practitioners willing to volunteer.

There are no disadvantages to the public; sufficient qualifications have been incorporated to ensure that persons being licensed by credentials have practiced safely in other states and are qualified to practice in Virginia.

There are no specific advantages or disadvantages to the agency or the Commonwealth. Agencies of the Commonwealth that provide dental services may find it possible to hire dentists who have been practicing out of state or in the military who would now be willing to relocate to Virginia.

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

Summary of the proposed regulation. The Board of Dentistry (board) proposes to: 1) establish licensure by credentials within the regulations, and 2) include language on the restricted volunteer license.

Estimated economic impact.

Licensure by Credentials. Pursuant to Chapter 587 of the 2005 Virginia Acts of Assembly, the board proposes to permit individuals licensed as dentists in other U.S. jurisdictions to obtain Virginia licensure by credentials. In order to obtain licensure by credentials, individuals must:

1. Be of good moral character and not have committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia;

2. Be a graduate of a dental program, school or college, or dental department of a university or college currently accredited by the Commission on Dental Accreditation of the American Dental Association;

3. Have passed Part I and Part II of the examination given by the Joint Commission on National Dental Examinations;

4. Have successfully completed a clinical examination that involved live patients;

5. Have not failed a clinical examination required by the board in the five years immediately preceding his application;

6. Hold a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; and

7. Have been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.

The proposal to permit licensure by credentials, combined with the board's earlier decision to accept examination results from other regional testing agencies (described below), will likely result in significant benefits for Virginians.

Up until January 2005, the board only accepted passing scores on clinical dental examinations administered by the Southern Regional Testing Agency (SRTA).[1] This limited the opportunity for skilled dentists from non-SRTA states to practice in the Commonwealth. In addition to Virginia, the states of Arkansas, Georgia, Kentucky, South Carolina, and

[1] Ibid

Tennessee are members of SRTA.[2] Dentists from all other states (non-SRTA states), including the neighboring states of Maryland and North Carolina, had to take the SRTA examinations in order to obtain licensure in Virginia, regardless of their accomplishments and the content of the licensure-qualifying examinations they had passed in their home states. This discouraged the potential entry of highly skilled dentists into Virginia. For example, excellent dentists based in the Maryland suburbs of Washington, D.C. may have considered opening offices in Northern Virginia, but were discouraged from doing so due to the time and costs associated with taking additional licensure examinations in order to obtain Virginia licensure. Or for another example, say an outstanding dentist who had passed very rigorous licensure examinations in her home non-SRTA state contemplated a move to the Commonwealth and practicing here because her spouse received an interesting employment offer in Virginia. The time and costs required for preparation, as well as perhaps annoyance at being required to take unnecessary examinations, may have discouraged this highly qualified dentist from seeking licensure and providing dental services in Virginia.

Besides SRTA, there are three other regional examining boards: 1) the North East Regional Board (NERB), with member states Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia, and the District of Columbia, 2) the Central Regional Dental Testing Service (CRDTS), with member states Colorado, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Wyoming, and 3) the Western Regional Examining Board (WREB), with member states Alaska, Arizona, Idaho, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, and Washington. The remaining ten states, Alabama, California, Delaware, Hawaii, Florida, Indiana, Louisiana, Mississippi, Nevada, and North Carolina do not belong to a regional board. Unless the NERB, CRDTS, and WREB exams, and the licensing exams for the unaligned states, are significantly less stringent than the SRTA exams, there is no health and safety justification for mandating that licensed dentists from these states who have passed their state's licensing exams take and pass the SRTA exams for Virginia licensure. By discouraging non-SRTA state dentists from seeking licensure in Virginia, the quantity and perhaps quality of dental services in Virginia were lower than they otherwise would be, while the costs of dental services were higher.

Discouraging highly skilled dentists from practicing in Virginia clearly reduced the supply of dental services in Virginia. If there are fewer suppliers of a good or service and the demand for the good or service has not changed, then it can be expected that the market price will increase.[3] Thus, by discouraging highly skilled dentists who have passed licensure examinations in other states that are at least as rigorous as Virginia's from providing dental services in the Commonwealth, the prices paid for dental services in Virginia were likely higher than they would otherwise be. If the cost of dental services is increased, fewer people are able to afford dental care; consequently fewer people will receive the health benefits of dental care. The overall average quality of dental services may have been reduced as well. When there is greater competition in the supply of a good or service, suppliers are under greater pressure to produce high quality in order to keep and obtain customers. Thus, the proposal to permit licensure by credentials together with the board's earlier decision to accept examination results from other regional testing agencies will likely increase the quantity and perhaps quality of dental services in Virginia. More Virginians will likely be able to receive dental care at an affordable cost.

Restricted volunteer license. Section 54.1-2712.1 of the Code of Virginia has provided for a restricted volunteer license for out-of-state dentists to volunteer at free clinics in the Commonwealth. Chapter 587 of the 2005 Virginia Acts of Assembly broadened eligibility for the restricted volunteer license to include retired dentists who held unrestricted licensure in good standing in Virginia or another state at the time their license expired or became inactive. The current regulations do not include language concerning the restricted volunteer license. The board proposes to include language in these regulations that essentially duplicates the language in the Code. Including this language in the regulations will be beneficial in that more interested individuals may become aware of the opportunity to provide volunteer services. More underprivileged Virginians may receive free dental services as a result.

Businesses and entities affected. The proposed regulations affect individuals interested in obtaining licensure by credentials or a restricted volunteer license, as well as those individuals who will potentially be treated by these dentists. All licensed dentists will potentially be affected by the possible small increase in new licensed dentists in Virginia. According to the Department of Health Professions, there are currently 5,032 dentists with active licenses in the Commonwealth.

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

Projected impact on employment. The proposed amendments will likely result in a small increase in the number of licensed dentists in Virginia.

Effects on the use and value of private property. The proposed amendments will likely result in a small increase in the number of private dental practices in the Commonwealth. The total value of all practices in aggregate will likely increase. The value of some practices may decrease due to increased competition.

Small businesses: costs and other effects. Licensure by credentials and the board's earlier decision to accept examination results from other regional testing agencies will reduce the costs for dentists from non-SRTA states to become licensed in the Commonwealth. Costs will not increase for dental practices, but some practices may lose revenue due to increased competition.

Small businesses: alternative method that minimizes adverse impact. Licensure by credentials is required by Chapter 587

[2] Source: the Southern Regional Testing Agency Website, www.srta.org

[3] The U.S. Department of Justice, Federal Trade Commission report "Improving Health Care: A Dose of Competition," July 2004, points out "that limits on entry increase health care costs."

of the 2005 Virginia Acts of Assembly. There are no alternative methods that would minimize adverse impact.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, related to licensure by credentials and other changes implementing legislation from the 2005 General Assembly.

Summary:

The proposed amendments (i) establish requirements for licensure by credentials for dentists consistent with new provisions in the Dental Practice Act; (ii) extend the voluntary practice license to include dentists and hygienists who held an unrestricted license in Virginia at the time it expired or became inactive and eliminate the supervision requirement for dentists out of practice less than five years; and (iii) clarify certain terms and rules for consistency.

The proposed regulation will replace an "emergency" regulation adopted by the Board of Dentistry in compliance with amendments to Chapter 27 of Title 54.1 and the third enactment clause of HB 2368 and SB 1127 enacted by the 2005 General Assembly.

18 VAC 60-20-10. Definitions.

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

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

~~"Approved schools" means those dental or dental hygiene programs currently accredited by the Commission on Dental Accreditation of the American Dental Association.~~

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Direction" means the dentist ~~evaluates~~ *examines* the patient and is present for observation, advice, and control over the performance of dental services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that the dentist has ~~evaluated~~ *examined* the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18 VAC 60-20-20. License renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license~~,~~ *or* a full-time faculty license~~, or a restricted volunteer license to practice dentistry or dental hygiene~~ shall, on or before March 31, renew his license. Every person holding a teacher's license, temporary resident's license*, a restricted volunteer license to practice dentistry or dental hygiene,* or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, ~~renew~~ *request renewal of* his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be $150, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be $50.

2. The fee for renewal of an inactive license shall be $75 for dentists and $25 for dental hygienists.

3. The fee for renewal of a restricted volunteer license shall be $15.

4. The application fee for temporary resident's license shall be $55. The annual renewal fee shall be $35 a year. An additional fee for late renewal of licensure shall be $15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of $50 for dentists and $20 for dental hygienists. The board shall renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dentistry/dental hygiene shall be illegal.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application, the renewal fee and the reinstatement fee of $225 for dentists and $135 for dental hygienists.

2. *With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia,* practicing in Virginia with an expired license may subject the licensee to disciplinary action ~~and additional fines~~ by the board.

3. The executive director may reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18 VAC 60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid renewal fee, the reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18 VAC 60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license previously revoked or indefinitely suspended. Any person whose license has been revoked shall submit to the board for its approval a reinstatement application and fee of $750 for dentists and $500 for dental hygienists. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of $350 for dentists and $250 for dental hygienists.

18 VAC 60-20-71. Licensure by credentials for dentists.

In accordance with § 54.1-2709 of the Code of Virginia, an applicant for licensure by credentials shall:

1. Be of good moral character and not have committed any act that would constitute a violation of § 54.1-2706 of the Code of Virginia;

2. Be a graduate of a dental program, school or college, or dental department of a university or college currently accredited by the Commission on Dental Accreditation of the American Dental Association;

3. Have passed Part I and Part II of the examination given by the Joint Commission on National Dental Examinations;

4. Have successfully completed a clinical examination that involved live patients;

5. Have not failed a clinical examination required by the board in the five years immediately preceding his application;

6. Hold a current, unrestricted license to practice dentistry in another jurisdiction in the United States and be certified to be in good standing by each jurisdiction in which he currently holds or has held a license; and

7. Have been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.

18 VAC 60-20-105. Inactive license.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. *With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia,* the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

18 VAC 60-20-106. ~~Registration for~~ Voluntary practice ~~by out-of-state licensees~~.

A. Restricted volunteer license.

1. In accordance with § 54.1-2712.1 or 54.1-2726.1 of the Code of Virginia, the board may issue a restricted volunteer license to a dentist or a dental hygienist who:

a. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;

b. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

c. Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

d. Has not failed a clinical examination within the past five years; and

e. Has had at least five years of clinical practice.

2. A person holding a restricted volunteer license under this section shall:

a. Only practice in public health or community free clinics that provide dental services to underserved populations;

b. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

c. Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and

d. Not be required to complete continuing education in order to renew such a license.

3. The restricted volunteer license shall specify whether supervision is required, and if not, the date by which it will be required. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days. If supervision is required, the supervising dentist shall directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision shall be noted in patient charts and maintained in accordance with 18 VAC 60-20-15.

4. A dental hygienist with a restricted volunteer license shall be sponsored by and practice only under the direction of a dentist who holds an unrestricted license in Virginia.

5. A restricted voluntary license granted pursuant to this section shall expire on June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship.

6. A dentist or dental hygienist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations that apply to all licensees practicing in Virginia.

B. Registration for voluntary practice by out-of-state licensees. Any dentist or dental hygienist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of § 54.1-2701 of the Code of Virginia.

18 VAC 60-20-210. Requirements for direction and general supervision.

A. In all instances, a licensed dentist assumes ultimate responsibility for determining, on the basis of his diagnosis, the specific treatment the patient will receive and which aspects of treatment will be delegated to qualified personnel in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18 VAC 60-20-200. Persons acting within the scope of a license issued to them by the board under § 54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to § 54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

C. Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and ~~available to evaluate~~ *examines* the patient during the time services are being provided.

D. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed seven months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have ~~evaluated~~ *examined* the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that no dentist will be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

E. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist, such direction is necessary to meet the individual needs of the patient.

18 VAC 60-20-230. Delegation to dental assistants.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction *or under general supervision* required in 18 VAC 60-20-210, with the exception of those listed as nondelegable in 18 VAC 60-20-190 and those which may only be delegated to dental hygienists as listed in 18 VAC 60-20-220.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.

NOTICE: The forms used in administering 18 VAC 60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

~~Outline and Explanation of Documentation Required for Dental Licensure by Exam, Teacher's License, Restricted License, Full Time Faculty License, and Temporary Permit~~ *Application Requirements for Dentists* (rev. ~~12/02~~ *8/05*).

Application for Licensure to Practice Dentistry (rev. ~~12/02~~ *8/05*).

Application for Restricted Volunteer Licensure to Practice Dentistry and Dental Hygiene (eff. 7/98).

Requirements and Instructions for a Temporary Resident's License to Persons Enrolled in Advanced Dental Education Programs (eff. 7/04).

Application for Temporary Resident's License (eff. 7/04).

Form A, Certification of Dental School for Temporary Resident's License (eff. 7/04).

Form B, Certification from Dean of Dental School or Director of Accredited Graduate Program, Temporary Resident's License (eff. 7/04).

Form C, Certification of Dental Licensure, Temporary Resident's License (eff. 7/04).

Form D, Chronology, Temporary Resident's License (eff. 7/04).

Form A, Certification of Dental/Dental Hygiene School (rev. ~~12/02~~ *8/05*).

Form AA, Sponsor Certification for Dental/Dental Hygiene Volunteer License (eff. 7/98).

Form B, Chronology (rev. ~~12/02~~ *8/05*).

Form C, Certification of Dental/Dental Hygiene Boards (rev. ~~12/02~~ *8/05*).

Outline and Explanation of Documentation Required for Dental Hygiene Licensure by Exam, Teacher's License, Dental Hygiene by Endorsement, and Dental Hygiene Temporary Permit (rev. 12/02).

Application for Licensure to Practice Dental Hygiene (rev. 12/02).

Instructions for Reinstatement (rev. 12/02).

Reinstatement Application for Dental/Dental Hygiene Licensure (rev. 12/02).

Radiology Information for Dental Assistants (rev. 7/97).

Renewal Notice and Application, 0401 Dentist (rev. 12/02).

Renewal Notice and Application, 0402 Dental Hygienist (rev. 12/02).

Renewal Notice and Application, 0404 Dental Teacher (rev. 12/02).

Renewal Notice and Application, 0406 Dental Hygiene Teacher (rev. 12/02).

Renewal Notice and Application, 0411 Full-time Faculty (rev. 12/02).

Renewal Notice and Application, 0438 Cosmetic Procedure Certification (rev. 12/02).

Renewal Notice and Application, 0439 Oral and Maxillofacial (rev. 12/02).

Application for Certification to Perform Cosmetic Procedures (rev. 12/02).

Rhinoplasty/similar Procedures (rev. 7/02).

Bletharoplasty/similar Procedures (rev. 7/02).

Rhytidectomy/similar Procedures (rev. 7/02).

Submental liposuction/similar Procedures (rev. 7/02).

Browlift/either open or endoscopic technique/similar Procedures (rev. 7/02).

Otoplasty/similar Procedures (7/02).

Laser Resurfacing or Dermabrasion/similar Procedures (rev. 7/02).

Platysmal muscle plication/similar Procedures (rev. 7/02).

Application Review Worksheet (rev. 7/02).

Practitioner Questionnaire (rev. 12/02).

Oral and Maxillofacial Surgeon Registration of Practice (rev. 12/02).

Application for Registration for Volunteer Practice (eff. 12/02).

Sponsor Certification for Volunteer Registration (eff. 1/03).

VA.R. Doc. No. R05-290; Filed January 4, 2006, 10:00 a.m.

DEPARTMENT OF HEALTH PROFESSIONS

Title of Regulation: **18 VAC 76-20. Regulations Governing the Prescription Monitoring Program (amending 18 VAC 76-20-10, 18 VAC 76-20-20, 18 VAC 76-20-30, 18 VAC 76-20-50, and 18 VAC 76-20-60; adding 18 VAC 76-20-70).**

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Public Hearing Date: February 3, 2006 - 2 p.m.
Public comments may be submitted until March 24, 2006.
(See Calendar of Events section for additional information)

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9921, FAX (804) 662-9943, or e-mail ralph.orr@dhp.virginia.gov.

Basis: Section 54.1-2505 of the Code of Virginia establishes the powers and duties of the Director of the Department of Health Professions to promulgate regulations. Section 54.1-2520 of the Code of Virginia requires the director to promulgate such regulations as are necessary to implement the prescription monitoring program.

Purpose: The purpose of the regulatory action is to comply with the changes in the Code of Virginia related to the Prescription Monitoring Program (PMP). Legislation passed by the 2005 Session of the General Assembly expanded the schedules of drugs required to be reported to the PMP, included nonresident pharmacies among the required reporters and provided access to disclosure of information to pharmacists and other authorized persons and entities.

The Code of Virginia requires the Director of the Department of Health Professions to promulgate regulations establishing the criteria for reporting and disclosure to include information to ensure the identity of the requester and his authorization for the disclosure. For prescribers and dispensers, there are requirements for consent or notification to ensure that patients are aware that information maintained in the PMP on their prescriptions may be subject to disclosure for the purpose of establishing a treatment history or a bona fide patient/practitioner/pharmacist relationship.

Regulations implement the intent and provisions of Chapters 637 and 678 of the 2005 Acts of Assembly and were required within 280 days of enactment. This proposed action will replace the emergency regulations currently in effect.

The intent for the promulgation of this regulation is implementation of the statute, specifically Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia. The purpose of the regulatory action is to promulgate such regulations as necessary for expansion of the Prescription Monitoring Program in accordance with restrictions set forth in law. Given the recent history of abuse and illegal distribution of certain drugs, the director has an obligation to protect public health, safety and welfare by promulgating regulations in a timely manner.

Substance: Amendments are adopted to conform the regulations to changes in the law, which now provides for an expansion of the Prescription Monitoring Program to include reporting of dispensed Schedules III and IV drugs and disclosure of information to dispensers (pharmacies) as well as other additional entities such as the Health Practitioner Intervention Program, the Medical Examiner and the Department of Medical Assistance Services.

Issues: The primary advantages to the public of the Prescription Monitoring Program, as established by legislation in the Code of Virginia, is the potential for curtailment of abuse and diversion of Schedule II drugs. The impetus for such a program was precipitated by the problem in Southwest Virginia with the over-prescribing and abuse of Oxycontin with devastating results on families and communities. With the expansion to include Schedule III and IV drugs and all areas of the state, this program should be a deterrent to those who would engage in such practices. As adopted, the regulations should protect the public (those who are legitimately prescribing, dispensing and consuming scheduled drugs) by the requirements for mandatory or discretionary disclosure. Those who engage in law enforcement or Medicaid fraud investigation will have another tool available to detect illegal activity.

There are no advantages or disadvantages to the agency, as it is mandated to establish such a program. As stated above, there will be some advantage to the State Police, the Medicaid Fraud unit and other agencies charged with enforcement of laws related to prescription drugs.

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

Summary of the proposed regulation. The Department of Health Professions (DHP) proposes to amend the Regulations Governing the Prescription Monitoring Program (PMP) to:

1. Include reporting of dispensed Schedule III and IV drugs;

2. Expand the PMP to include reporting from all dispensers statewide as well as some dispensers located outside the Commonwealth;

3. Allow reporting to drug prescribers who are licensed in jurisdictions other than the Commonwealth;

4. Allow reporting of dispensed Schedule II, III and IV drugs to set nonprescribing entities;

5. Facilitate electronic requests and disclosures; and

6. Allow drug dispensers to submit queries to the PMP and establish notification of disclosure requirements to which drug dispensers must adhere.

Estimated economic impact. Under the most recent nonemergency PMP regulation, drug dispensers in Southwestern Virginia reported the dispensing of Schedule II drugs only. To reflect changes made to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia during the 2005 legislative session, current emergency, and this proposed, regulation expand both the geographic scope of the PMP and the number of drugs monitored. Drug dispensers statewide will be required to report dispensing of Schedule II, III and IV drugs[1].

Dispensers who were not part of the pilot PMP program will incur the same, very minimal, reporting costs as have the pilot program dispensers. The data system that they will use for prescription monitoring is the same system pharmacies now use for third party payments so dispensers will not have to put much effort at all into reporting to the PMP. In addition, dispensers who intend to request information from the PMP will be required to disclose this intention to their customers. The least expensive way that dispensers can meet this notification requirement is by posting a sign next to the counter where customers drop off their prescription. DHP estimates that this will cost dispensers less than five dollars. DPB estimates that since dispensers may print a sign on their in-store computer, costs associated with meeting disclosure requirements will likely be much less than one dollar per dispenser.

DHP estimates that they will incur one-time costs for expanding the PMP of approximately $225,000. This expenditure will pay for new software that can accommodate the vastly increased number of reports that are likely to arise because the number of dispensers covered by the proposed regulation is so much greater than the number that were part of the pilot program and because three classes of dispensed drugs, rather than one, will be reported by dispensers and queried by prescribers. Approximately 300 dispensers were part of the pilot program; DHP expects that approximately 2,000 dispensers will be submitting reports once the expanded PMP is fully implemented. Dispensers currently report 20,000 instances of dispensed Schedule II drugs every two weeks. DHP expects to get two million reports per year once the expanded PMP is fully implemented. Prescribers currently submit 150 queries per month to the PMP. DHP expects to receive 500 queries per day once the expanded PMP is fully implemented.

In addition to the fixed costs associated with software purchase and installation, DHP expects to incur ongoing costs associated with processing increasing numbers of reports from dispensers and answering increasing numbers of queries from prescribers; these costs will be approximately $125,000 per year. Software maintenance will cost DHP about 18% of their original software investment, about $40,500, per year. All of the fixed and ongoing expenses associated with the PMP are expected to be covered by federal grant money at least through 2010. The General Assembly has authorized DHP to fund the PMP with user fees if expected grants do not materialize and when grant money runs out.

Current regulation requires that prescribers who are querying the PMP submit their DHP-issued license number with the query. Because the pilot PMP program has almost certainly pushed drug abusers to seek prescriptions outside of the borders of the program in neighboring states, and prescribers who are licensed in neighboring states rather than by DHP have expressed interest in being able to submit queries to the Commonwealth's PMP, DHP proposes that a prescriber be allowed to submit his United States Drug Enforcement Administration (DEA) registration number with his PMP query. This regulatory change will make drug-abusing citizens of Virginia less able to thwart the intent of the PMP by obtaining prescriptions just over the state's border.

Pursuant to changes made to § 54-1.2523 during the 2005 legislative session, the proposed regulation will allow designated agents of the Virginia Department of Medical Assistance Services (DMAS) to query the PMP for "information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services." Designated agents of the Health Practitioners' Intervention Program (HPIP) will be able to query "Information relevant to an investigation or inspection of or allegation of misconduct by a specific person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health regulatory board; information relevant to a disciplinary proceeding before a health regulatory board or in any subsequent trial or appeal of an action or board". The Chief Medical Examiner will also be able to query the system. This will allow DMAS to better recognize and stop Medicaid fraud, HPIP to better monitor health care professionals who have abused drugs in the past and will allow the Medical Examiner's office to better determine a drug recipient's cause of death.

The proposed regulation will eliminate the need for prescribers to submit, with any PMP query, a signed form attesting that they have obtained signed consent from the potential drug recipient; this signed consent then would be kept in the drug recipient's patient file. Instead, amendments will allow for electronic attestation by prescribers that they have signed consent on file from the recipient whose information is being queried. In addition, the consent signed by potential drug recipients will no longer have to be on a separate, distinct form; the proposed regulation will allow the recipient's signed consent to be part of a more general privacy notice. This change will reduce the paperwork burden borne by providers in parts of the Commonwealth that were part of the pilot PMP program.

Authorized government employees of the State Police, the Medical Examiner's Office, DMAS, HPIP and other agencies that are allowed to access PMP information will also no longer have to submit queries in writing. The proposed regulation

[1] Schedule II drugs are drugs that have a high abuse risk, but that also have safe and accepted medical uses in the United States. These drugs can cause severe psychological or physical dependence. Schedule II drugs include certain narcotic, stimulant, and depressant drugs. Some examples are morphine, cocaine, oxycodone, methylphenidate and dextroamphetamine. Schedule III and IV drugs have an abuse risk that is high but less severe than Schedule II drugs. Schedule III drugs include Buprenorphine, anabolic steroids and combination drugs like hydrocodone plus acetaminophen and codeine plus acetaminophen. Schedule IV drugs include mood altering drugs like Valium, Xanax, Librium, Rohypnol and Klonopin.

allows DHP to more easily accept electronic queries from these agencies and from other authorized information recipients. Taken together, these changes will allow DHP to make the PMP more efficient and less costly.

The proposed regulation allows dispensers to query the PMP if they make customers aware that this query is possible in a way that is acceptable to DHP. Dispensers may post a sign prominently at the prescription intake counter, hand out written disclosures to individual pharmacy customers or obtain written consent. This will allow drug dispensers to check if a customer has a suspicious and potentially abusive pattern of dispensed prescriptions (for instance, a customer might have had many prescriptions for the same drug from different doctors). This will allow dispensers to judge whether they should fill prescriptions that are presented to them. Dispensers will then be part of a system that will hopefully reduce the abuse of prescription drugs within the Commonwealth.

Businesses and entities affected. The proposed regulation will affect drug dispensers who intend to query the PMP and who must comply with parts of the regulation that require notice to patients who are the subjects of those intended queries. This regulated community comprises 1576 pharmacies, 492 nonresident pharmacies and 198 physicians who dispense drugs.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. The proposed regulation may likely have a positive effect on the employment opportunities of health care professionals who are subject to monitoring by the Health Practitioners' Intervention Program (HPIP). Because this regulatory change will allow HPIP to reduce the possibility of program participants secretly obtaining and using drugs, employers are likely to be more confident that a formerly drug abusing health professional will stay sober, or will be unable to hide future drug abuse, and may be more likely to hire them.

Effects on the use and value of private property. Drug dispensers will have to pay the very small costs associated with notifying their patients of intended queries to the PMP. Dispensers may notify patients by posting a sign where prescriptions are accepted for dispensing, providing individual written material to patients, or obtaining written consent from the patient.

Small businesses: costs and other effects. Drug dispensers that qualify as small businesses will have to pay the very small costs associated with notifying their patients of intended queries to the PMP. Dispensers may notify patients by posting a sign where prescriptions are accepted for dispensing, providing individual written material to patients, or obtaining written consent from the patient.

Small businesses: alternative method that minimizes adverse impact. There are likely no alternative methods to accomplish DHP's goals that would be less costly than the methods mandated by the proposed regulation.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis of the Department of Planning and Budget on the proposed amended regulations for the Prescription Monitoring Program.

Summary:

The proposed amendments conform the rules of the Prescription Monitoring Program for reporting and disclosure to the changes made during the 2005 Session of the General Assembly in Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia. The law now provides for an expansion of the Prescription Monitoring Program to include reporting of dispensed Schedules III and IV drugs and disclosure of information to dispensers (pharmacies) as well as other additional entities such as the Health Practitioner Intervention Program, the Medical Examiner and the Department of Medical Assistance Services. The proposed amendments (i) eliminate provisions that may stand as a barrier to the adoption of electronic requests and disclosures; (ii) provide criteria for requests from prescribers who are not licensed in Virginia; and (iii) establish requirements for notification by a dispenser to his patients about requests for disclosure of prescription information in the program.

18 VAC 76-20-10. Definitions.

The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2519 of the Code of Virginia unless the context clearly indicates otherwise:

"Department"

"Director"

"Dispense"

"Dispenser"

"Prescriber"

"Recipient"

In addition, the following term when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

"Program" means the Prescription Monitoring Program.

18 VAC 76-20-20. General provisions.

In accordance with Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 of the Code of Virginia and this chapter, the Director of the Department of Health Professions shall establish and administer a program for monitoring the dispensing of ~~Schedule II~~ *Schedules II, III and IV* controlled substances.

18 VAC 76-20-30. Criteria for granting waivers of the reporting requirements.

A. The director may grant a waiver of all or some of the reporting requirements established in § 54.1-2521 of the Code of Virginia to an individual or entity who files a request in writing on a form provided by the department and who meets the criteria for such a waiver.

B. Criteria for a waiver of the reporting requirements shall include a history of compliance with laws and regulations by the ~~pharmacy, the pharmacist-in-charge, and other~~

~~pharmacists~~ *dispensers* regularly practicing at that location and may include, but not be limited to:

1. A substantial hardship created by a natural disaster or other emergency beyond the control of the ~~pharmacist or pharmacy~~ *dispenser*; or

2. Dispensing in a controlled research project approved by a regionally accredited institution of higher education or under the supervision of a governmental agency.

C. Consistent with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), a waiver may be granted by a subordinate designated by the director on a case-by-case basis, subject to terms and conditions stated in an order with a specified time period and subject to being vacated. An appeal of the initial decision may be filed with the director who shall appoint an informal fact-finding conference, which shall thereafter make a recommendation to the director. The decision of the director shall be final.

18 VAC 76-20-50. Criteria for mandatory disclosure of information by the director.

A. In order to request disclosure of information contained in the program, an individual shall be registered with the director as an authorized agent entitled to receive reports under § 54.1-2523 B of the Code of Virginia.

1. Such request for registration shall contain an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

B. An authorized agent shall *only* request ~~in writing, on a form provided by the department,~~ disclosure of information related to a specific investigation*, or in the case of a request from the Health Practitioners' Intervention Program (HPIP), disclosure of information related to a specific applicant for or participant in HPIP*. ~~The request~~ *Requests shall be made in a format designated by the department and* shall contain a case identifier number, a specified time period to be covered in the report, and the specific recipient, prescriber or dispenser for which the report is to be made~~, and an identifier number for the subject of the disclosure~~.

C. The request from an authorized agent shall ~~be signed with~~ *include* an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

18 VAC 76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in ~~writing on a form provided~~ *a format designated* by the department.

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the address on the license or delivered to the recipient at the department.

2. The prescriber for the purpose of establishing a treatment history *for a patient or prospective patient*, provided the request is accompanied by the prescriber's ~~license number issued by the department, the signature of the prescriber,~~ *registration number with the United States Drug Enforcement Administration (DEA)* and attestation of having obtained written consent *for such disclosure* from the recipient. Such written consent ~~shall be separate and distinct from any other consent documents required by the practitioner and~~ shall be maintained as part of the patient record.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

5. A dispenser for the purpose of establishing a prescription history for a specific person to assist in determining the validity of a prescription, provided the request is accompanied by the dispenser's license number issued by the relevant licensing authority in Virginia and an attestation that the dispenser is in compliance with patient notice requirements of 18 VAC 76-20-70. If the dispensing occurs in a pharmacy located outside Virginia, the request shall include the registration number issued by the Virginia Board of Pharmacy for a nonresident pharmacy.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient and/or dispenser. ~~Such request shall be submitted in writing by mail, private delivery service, in person at the department offices or by facsimile.~~

D. Except as provided in subdivision B 1 of this section, the request form shall ~~be signed with~~ *include* an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

E. In order to request disclosure of information contained in the program, a designated employee of the Department of Medical Assistance Services or of the Office of the Chief Medical Examiner shall register with the director as an authorized agent entitled to receive reports under § 54.1-2523 C of the Code of Virginia.

1. Such request for registration shall include an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

18 VAC 76-20-70. Notice of requests for information.

Any dispenser who intends to request information from the program for a recipient or prospective recipient of a Schedule II, III, or IV controlled substance shall post a sign that can be easily viewed by the public at the place where the prescription is accepted for dispensing and that discloses to the public that the pharmacist may access information contained in the program files on all Schedule II, III or IV prescriptions dispensed to a patient. In lieu of posting a sign, the dispenser may provide such notice in written material provided to the recipient, or may obtain written consent from the recipient.

NOTICE: The forms used in administering 18 VAC 76-20, Regulations Governing the Prescription Monitoring Program, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Request for Waiver of Reporting Requirements for Prescription Monitoring Program (eff. 11/03).

Request to Register as an Authorized Agent to Receive Information from the ~~Virginia~~ Prescription Monitoring Program (~~eff. 3/03~~ *rev. 8/05*).

Request for Disclosure of Information from Prescription Monitoring Program (~~eff. 3/04~~ *rev. 8/05*).

Patient Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 12/03).

Prescriber Request for Discretionary Disclosure of Information from Prescription Monitoring Program (~~eff. 9/04~~ *rev. 7/05*).

Regulatory Authority Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 12/03).

Investigation under Virginia Medicaid Program; Request for Discretionary Disclosure of Information from Prescription Monitoring Program (eff. 12/03).

VA.R. Doc. No. R05-261; Filed December 21, 2005, 1:54 p.m.

BOARD OF MEDICINE

Title of Regulation: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-122).**

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: February 23, 2006 - 8:15 a.m.
Public comments may be submitted until March 24, 2006.
(See Calendar of Events section for additional information)

Agency Contact: William L. Harp, M.D., Executive Director, Department of Health Professions, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Basis: The amendments are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

In addition, § 54.1-2935 of the Code of Virginia specifies at least two years of satisfactory postgraduate training for applicants from a nonaccredited educational program.

Purpose: In 2003, § 54.1-2935 of the Code of Virginia was amended to reduce the requirement for postgraduate training for graduates of nonapproved programs in medicine from three to two years. Accordingly, the board amended its regulations for satisfactory postgraduate training to require two years. Prior to 2003, the board allowed such a graduate to substitute other postgraduate training or study for up to two of the required three years, but required at least one year of training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program. With the reduction in total training to two years, it became possible for all of the postgraduate training to be met without any period of internship or residency. The board believes at least one year of supervised postgraduate training is essential to ensure that a graduate has the knowledge and skills necessary to practice medicine with safety and competency.

Substance: The proposed change amends 18 VAC 85-20-122 to specify that at least one year of the two years of postgraduate training must consist of training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program. The other year could be waived for a graduate who has secured an approved fellowship or teaching position.

Issues: The primary advantage to the public would be additional assurance that a graduate of a nonaccredited medical school is adequately prepared and sufficiently knowledgeable to be licensed as an independent doctor of medicine or osteopathic medicine. Without one year of supervised practice in a residency or internship, there is less assurance of minimal competency for persons who may have received their medical education in third-world countries. There are no disadvantages. The requirement for two years of post-graduate training has not been changed, only the alternatives for completion of the two years have been amended. There are no advantages or disadvantages to the agency or the Commonwealth.

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

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

Summary of the proposed regulation. The Board of Medicine (board) proposes to amend the licensure requirements for graduates of medical schools not approved by an accrediting agency recognized by the board. The proposed regulations will specify that at least one of the required two years of postgraduate training or study in the United States or Canada be as an intern or resident in a hospital or health care facility.

Estimated economic impact. The 2003 Session of the General Assembly amended § 54.1-2935 of the Code of Virginia to reduce the requirement for postgraduate training for graduates of nonapproved programs in medicine from three years to two years. Accordingly, the board amended its regulations for physician licensure to require two years of satisfactory postgraduate training. Prior to 2003, the board allowed such a graduate to substitute other postgraduate training or study for up to two of the required three years, but required at least one year of training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program. With the reduction in total required postgraduate training to two years, it became possible for all of the postgraduate training to be met without any period of internship or residency. According to the department, this was unintentional. The board believes at least one year of supervised postgraduate training is essential to ensure that a graduate has the knowledge and skills necessary to practice medicine with safety and competency. Thus, the board proposes to specify that at least one of the required two years of postgraduate training or study in the United States or Canada be as an intern or resident in a hospital or health care facility.

The regulations have continued to require one year of satisfactory postgraduate training as an intern or resident for graduates of approved programs of medicine. It makes little sense to require less supervised training for graduates of nonapproved programs. It seems likely that the proposed amendment will add significant benefit in terms of greater assurance of competency for licensed physicians who graduate from nonapproved programs. According to the department, the difference in reimbursement to a person serving in a residency versus in a fellowship varies, but at the Medical College of Virginia fellows earn approximately $800 more annually than do residents. Though, the department states that in some settings the salary for a fellow is actually less than that for a resident because the facility can bill for the resident's services. Thus, under the proposed amendment one or two individuals may potentially have their earnings reduced by an amount likely less than $1,000 per year. Overall, the proposed amendment will likely produce a net benefit.

Businesses and entities affected. The proposed amendment affects graduates of medical schools not approved by an accrediting agency recognized by the board who wish to satisfy the requirement for two years of postgraduate training without at least one year as a resident or intern. According to the Department of Health Professions (department), there are one or two such applicants per year.

Localities particularly affected. The proposed amendment does not disproportionately affect particular Virginia localities.

Projected impact on employment. One or two persons will likely seek employment as a resident or intern rather than a fellow or instructor each year.

Effects on the use and value of private property. According to the department the difference in reimbursement to a person serving in a residency versus in a fellowship varies, but at the Medical College of Virginia fellows earn approximately $800 more annually than do residents. Though, the department states that in some settings the salary for a fellow is actually less than that for a resident because the facility can bill for the resident's services. Thus, one or two individuals may potentially have their earnings reduced by an amount likely less than $1,000 per year.

Small businesses: costs and other effects. The proposed amendment will not likely significantly affect small businesses.

Small businesses: alternative method that minimizes adverse impact. Since the proposed amendment is not likely to significantly affect small businesses, there is no alternative method that minimizes adverse impact.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-20 on postgraduate training for graduates of nonapproved schools of medicine.

Summary:

The amendment changes the educational requirements for graduates and former students of institutions not approved by an accrediting agency recognized by the board to specify that at least one of the required two years of postgraduate training or study in the United States or Canada must be as an intern or resident in a hospital or health care facility.

18 VAC 85-20-122. Educational requirements: Graduates and former students of institutions not approved by an accrediting agency recognized by the board.

A. A graduate of an institution not approved by an accrediting agency recognized by the board shall present documentary evidence that he:

1. Was enrolled and physically in attendance at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled two consecutive academic years at the institution's principal site.

2. Has fulfilled the applicable requirements of § 54.1-2930 of the Code of Virginia.

3. Has obtained a certificate from the Educational Council of Foreign Medical Graduates (ECFMG), or its equivalent. Proof of licensure by the board of another state or territory of the United States or a province of Canada may be accepted in lieu of ECFMG certification.

4. Has had supervised clinical training as a part of his curriculum in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the clinical training received, if such training was received in the United States.

5. Has completed two years of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency.

a. The board may substitute other postgraduate training or study for *one year of* the two-year requirement when such training or study has occurred in the United States or Canada and is:

(1) An approved fellowship program; or

(2) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

b. The board may substitute continuous full-time practice of five years or more with a limited professorial license in Virginia and one year of postgraduate training in a foreign country in lieu of two years of postgraduate training.

6. Has received a degree from the institution.

B. A former student who has completed all degree requirements except social services and postgraduate internship at a school not approved by an accrediting agency recognized by the board shall be considered for licensure provided that he:

1. Has fulfilled the requirements of subdivisions A 1 through 5 of this ~~subsection~~ *section*;

2. Has qualified for and completed an appropriate supervised clinical training program as established by the American Medical Association; and

3. Presents a document issued by the school certifying that he has met all the formal requirements of the institution for a degree except social services and postgraduate internship.

VA.R. Doc. No. R05-235; Filed December 21, 2005, 1:55 p.m.

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Title of Regulation: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18 VAC 85-20-330).**

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public Hearing Date: February 23, 2006 - 8:15 a.m.
Public comments may be submitted until March 24, 2006.
(See Calendar of Events section for additional information)

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Basis: The amendment is promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the action is to ensure that 18 VAC 85-20-330 is clarified and does not prohibit the delivery of medical services that can and have been performed safely in Virginia by qualified physicians. A major conductive block includes procedures that many nonanesthesiologists perform for therapeutic and diagnostic purposes; such procedures are currently performed by interventional physiatrists and other specialties in medicine. In order for patients in Virginia to continue receiving such procedures without a concern that the doctor performing the block may be in violation of regulations of the board, the provisions for qualification of anesthesia providers are being clarified.

The intent of the current requirement for office-based anesthesia was to ensure that anesthesia was being administered by an anesthesiologist or certified registered nurse anesthetist while the operating doctor was focused on the surgical procedure. When a major conductive block is performed for diagnostic or therapeutic purposes, the administering physician, if appropriately qualified in such a procedure, is focused on the procedure and on patient response to the delivery of the anesthesia thus this amendment protects the health of citizens of the Commonwealth.

Substance: The proposed action amends 18 VAC 85-20-330 by differentiating between major conductive blocks performed for a surgical procedure, which shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist, and a major conductive block performed for diagnostic or therapeutic purposes, which may be administered for a nonsurgical procedure by a doctor qualified by training and scope of practice.

Issues: There are no disadvantages to the public of this amendment. Without a clarification of the rules, physicians who currently perform major conductive blocks for diagnostic or therapeutic purposes would be concerned about a violation of board rules or would need to hire an anesthesia provider to perform a procedure for which he is already qualified. Either alternative would be detrimental to the affordability of and access to necessary medical treatments and procedures. Failure to amend this regulation would create a disadvantage to the public.

There are no disadvantages to the agency or the Commonwealth; the proposed regulation will clarify office-based anesthesia regulations for consistency with the board's intent for the rules.

Other Information: An amendment was initially proposed as a fast-track regulation and was published in 21:19 VA.R. 2597 May 30, 2005. A 60-day comment period was provided with public comment to be received until July 29, 2005.

The fast-track regulation was intended to clarify that a major conductive block performed for diagnostic or therapeutic purposes could be administered by a doctor qualified by training and scope of practice or by a certified registered nurse anesthetist. The board received more than the requisite number of 10 objections to the inclusion of a certified registered nurse anesthetist. Therefore, it terminated the fast-track process and promulgated a restated amendment under the Administrative Process Act, utilizing the fast-track notice as its notice of intended regulatory action.

The board continued to receive public comment through July 29, 2005, most of which objected to the regulation allowing nurse anesthetists (CRNA) to perform major conductive blocks. At the Legislative Committee meeting of the board on August 19, 2005, it was explained that this set of regulations cannot restrict the current scope of practice for a CRNA; these are regulations for the practice of doctors of medicine, osteopathic medicine, podiatry and chiropractic. The issue in this action is whether doctors who are not specialists in anesthesia can perform major conductive blocks if they are specifically trained to do so in the scope of their practice.

Therefore, the Legislative Committee recommended and the board adopted an amendment that did not mention the practice of CRNAs, but only references doctors who perform major conductive blocks within their practice.

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

Summary of the proposed regulation. The Board of Medicine (board) proposes to clarify the intent of regulations for performance of office-based anesthesia.

Estimated economic impact. The current regulations state that "Deep sedation, general anesthesia or a major conductive block shall only be administered by an anesthesiologist or by a certified registered nurse anesthetist." The board did not intend to prohibit nonanesthetist physicians with appropriate training from performing major conductive blocks[1] for nonsurgical diagnostic or therapeutic purposes. To clarify this intent, the board proposes to eliminate the word "only" from the above quoted sentence and add another sentence. The proposed language is as follows: "Deep sedation, general anesthesia or a major conductive block shall be administered by an anesthesiologist or by a certified registered nurse anesthetist. If a major conductive block is performed for diagnostic or therapeutic purposes, it may be administered by a doctor qualified by training and scope of practice."

As far as the department knows, qualified physicians have not refrained from performing major conductive blocks for diagnostic or therapeutic purposes. The department has told inquiring physicians that it was not the board's intent to prohibit this, and that no punitive actions would be taken toward physicians who did these procedures.

If the board were to not amend the regulations and to enforce a prohibition on any major conductive block performed by anyone other than an anesthesiologist or a certified registered nurse anesthetist, then nonanesthetist physicians or their employers would be required to hire an anesthesia provider to perform major conductive blocks for nonsurgical diagnostic or therapeutic purposes. According to the Department of Health Professions (department), it would cost from $700 to $1,000 a day to hire a certified registered nurse anesthetist, or about $2,000 a day for an anesthetist. Since major conductive blocks for nonsurgical diagnostic or therapeutic purposes are done daily throughout the Commonwealth,[2] the annual cost of compliance would likely reach millions of dollars statewide.[3]

The proposal to continue to permit all doctors qualified by training and scope of practice to perform major conductive blocks for nonsurgical diagnostic or therapeutic purposes will not put the public at significantly greater risk than requiring anesthesiologists or a certified registered nurse anesthetists to perform all major conductive blocks, presuming that the nonanesthetists training is rigorous enough. Also, since requiring anesthesiologists or a certified registered nurse anesthetists to perform all major conductive blocks would significantly increase the cost of conductive blocks for nonsurgical diagnostic or therapeutic purposes, these procedures may be performed less often, potentially to some patients' detriment. Thus, the proposal to clarify that all doctors qualified by training and scope of practice are permitted to perform major conductive blocks for nonsurgical diagnostic or therapeutic purposes should produce a net benefit.

Businesses and entities affected. The proposed amendments potentially affect the 28,535 persons licensed as doctors of medicine and surgery, the 1,103 persons licensed as doctors of osteopathy and surgery, the 474 persons licensed as podiatrists, and their patients. Some of these doctors likely work for hospitals or universities with greater than 500 employees. Many others work for entities with far fewer than 500 employees. There are 4,206 offices of physicians (excepting mental health), 165 offices of podiatrists, and 50 general medical and surgical hospitals in the Commonwealth with fewer than 500 employees.

[1] A "conductive block" blocks all sensation to a specific part of the body. (Source: Department of Health Professions)

[2] Source: Department of Health Professions

[3] According to the department, well over a thousand such procedures are performed each year, and 1,000 x $1,000 = $1 million.

Localities particularly affected. The proposed amendment does not disproportionately affect particular Virginia localities.

Projected impact on employment. The proposed amendments are clarifications. The amendments will not significantly affect employment levels since the effective policy is not changing.

Effects on the use and value of private property. The proposed amendments are clarifications. The amendments will not significantly affect the use and value of private property since the effective policy is not changing.

Small businesses: costs and other effects. The proposed amendments are clarifications. The proposed amendments do not produce additional costs for small businesses.

Small businesses: alternative method that minimizes adverse impact. Since the proposed amendments do not produce additional costs for small businesses, there is no alternative method that minimizes adverse impact.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 85-20 for a clarification of the rules on use of major conductive blocks in office-based anesthesia.

Summary:

The proposed amendment clarifies that the intent of regulations for performance of office-based anesthesia is to address the administration of anesthesia in an office-based setting by stating that performance of a major conductive block for diagnostic or therapeutic purposes does not require the services of an anesthesiologist or a certified registered nurse anesthetist, but could be administered by a physician qualified by experience and training in such a procedure.

18 VAC 85-20-330. Qualifications of providers.

A. Doctors who utilize office-based anesthesia shall ensure that all medical personnel assisting in providing patient care are appropriately trained, qualified and supervised, are sufficient in numbers to provide adequate care, and maintain training in basic cardiopulmonary resuscitation.

B. All providers of office-based anesthesia shall hold the appropriate license and have the necessary training and skills to deliver the level of anesthesia being provided.

1. Deep sedation, general anesthesia or a major conductive block shall ~~only~~ be administered by an anesthesiologist or by a certified registered nurse anesthetist. *If a major conductive block is performed for diagnostic or therapeutic purposes, it may be administered by a doctor qualified by training and scope of practice.*

2. Moderate sedation/conscious sedation may be administered by the operating doctor with the assistance of and monitoring by a licensed nurse, a physician assistant or a licensed intern or resident.

C. Additional training.

1. On or after December 18, 2003, the doctor who provides office-based anesthesia or who supervises the administration of anesthesia shall maintain current certification in advanced resuscitation techniques.

2. Any doctor who administers office-based anesthesia without the use of an anesthesiologist or certified registered nurse anesthetist shall obtain four hours of continuing education in topics related to anesthesia within the 60 hours required each biennium for licensure renewal, which are subject to random audit by the board.

VA.R. Doc. No. R05-187; Filed December 21, 1:50 p.m.

BOARD OF PHYSICAL THERAPY

Title of Regulation: **18 VAC 112-20. Regulations Governing the Practice of Physical Therapy (amending 18 VAC 112-20-50 and 18 VAC 112-20-65).**

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

Public Hearing Date: January 27, 2006 - 9 a.m.
Public comments may be submitted until March 24, 2006.
(See Calendar of Events section for additional information)

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

Basis: Section 54.1-2400 of the Code of Virginia establishes the responsibility of the Board of Physical Therapy to promulgate regulations, levy fees, and administer a licensure and renewal program.

Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1 of the Code of Virginia establishes the specific powers and duties of the Board of Physical Therapy including the specific mandate in § 54.1-3477 for an applicant to submit evidence satisfactory to the board of graduation from a school acceptable to the board.

Purpose: The board proposes to amend 18 VAC 112-20-50 in order to allow applicants for licensure who are graduates of nonapproved physical therapy programs to submit their credentials to a credentialing organization that meets the criteria established by the board in regulation. In addition to determining equivalency in education and training, the credentialing body should also be able to verify licensure or authorization to practice in another country to ensure that the applicant does not have a history of unprofessional conduct or substandard practice. Verification of passage of English equivalency examinations will also be necessary in order to ensure that a person licensed as a physical therapist will be able to adequately communicate with patients in Virginia.

In addition, the board has created another pathway for a person who has been licensed in another U.S. jurisdiction and has actively practiced for at least five years without restriction or disciplinary action to be licensed in Virginia by endorsement. The board's primary function is to license persons as physical therapists who are minimally competent to provide care and treatment to patients. Adequate credentialing of persons who were educated in nonapproved

schools and practicing in other countries or evidence of an extended period of practice in providing patient care is necessary for the board to do its job to protect the public's health and safety in receiving physical therapy.

Substance: The proposed action will amend 18 VAC 112-20-50 and 18 VAC 112-20-65 to make it easier for foreign-trained applicants to obtain credentialing and for applicants for licensure by endorsement to meet the requirements. In amending 18 VAC 112-20-50, the board proposes to establish the criteria by which a credentialing body could be approved to validate a foreign-trained applicant's eligibility to be licensed and practice in Virginia with minimal competency. All of the criteria specified in regulation are currently performed by the Foreign Credentialing Commission on Physical Therapy (FCCPT). In amending 18 VAC 112-20-65, the board proposes to provide an alternative for an applicant for licensure by endorsement to substitute five years of active, clinical practice with an unrestricted license in another state for the required education and/or examination documentation. The goal of the proposed amendments is to provide options to applicants seeking to have their credentials reviewed and deemed equivalent to those of graduates of approved educational programs and to facilitate licensure of applicants for licensure by endorsement.

Issues: The primary advantage to the public would be to provide alternatives to current requirements for licensure that may have the benefit of increasing the number of licensees and the availability of physical therapy services in the Commonwealth. There are no disadvantages to the public; the board believes the alternatives adopted provide evidence of competency to practice at least equivalent to the current requirements.

There are no advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the proposed regulation. The Board of Physical Therapy (board) proposes to amend the Regulations Governing the Practice of Physical Therapy to recognize more than one credentialing organization through which graduates of nonapproved (foreign) physical therapy programs may gain approval for licensure. The board also proposes to add a new avenue to licensure for physical therapists that are licensed in other U.S. jurisdictions.

Estimated economic impact. Current regulation mandates that all physical therapists who graduate from nonapproved (foreign) physical therapy programs must have their credentials verified by the Foreign Credentialing Commission on Physical Therapy (FCCPT) before licensure. The FCCPT is required to verify that an applicant (i) has education and training equivalent to what he would have gotten from an approved program, (ii) has been prescreened for a work visa (iii) is proficient in English, and (iv) does not have a history of unprofessional conduct or substandard practice, if licensed in another country. Foreign applicants for licensure have experienced delays in their application process which can likely be attributed to there being only one recognized credentialing body. In addition, applicants have complained about the complexity of the credentialing process.

In response to these concerns, the board proposes to allow applicant evaluation by any credentialing agency who is approved by the board and who uses the performance criteria set out in the proposed regulation. According to the Department of Health Professions, there are between five and 10 credentialing agencies that are competent to evaluate applicants for licensure and that are not approved to do so under current regulation. The proposed regulatory change will allow foreign applicants for licensure to choose among competing credentialing agencies; the winners in this competition will likely be those agencies which shorten and simplify the licensing process for their applicants. This regulatory change will benefit foreign physical therapists who wish to be licensed in the Commonwealth and will also benefit citizens who will then have more options in choosing a physical therapist.

Current regulation allows physical therapists to be licensed by endorsement if they currently hold an unrestricted license from any territory of the United States or from Canada; they must, however, be able to document that they have the same education as other applicants for licensure. This requirement has proven to be difficult for physical therapists that graduated many years ago and cannot get transcripts and other documents from the schools that they attended.

The proposed regulation will allow a physical therapist who currently holds an unrestricted license from any territory of the United States or from Canada to get a license to practice his trade in Virginia if he has at least five years of active clinical experience in physical therapy prior to applying for a license in the Commonwealth. Proof of experience can be used in lieu of documentation of education. This regulatory change will benefit competent physical therapists who wish to be licensed by the Commonwealth but who cannot easily get school transcripts and will also benefit citizens who will then have more options in choosing a physical therapist.

Businesses and entities affected. There are 4,697 licensed physical therapists in the Commonwealth; of these, 351 hold licenses obtained in the last fiscal year. All currently licensed physical therapists and all physical therapists who will seek licensure from the Commonwealth in the future will be affected by the proposed regulation.

Localities particularly affected. The proposed regulation will affect all localities in the Commonwealth.

Projected impact on employment. To the extent the proposed regulatory change increases the number of physical therapists licenses issued, more physical therapists will be able to seek employment in their chosen field. The market for physical therapists is increasingly tight in the Commonwealth and employers of physical therapists are, consequently, fairly insensitive to labor costs. Because of this, allowing more physical therapists to be licensed is likely to have the near term effect of easing labor shortfalls without unduly affecting the wage that can be commanded. In the long run wages will likely fall, or at least increase less than they otherwise would have, as the market adjusts to an increased labor supply.

Effects on the use and value of private property. The net worth of physical therapists as a group is likely to increase due to the proposed regulatory change. Given the current market for physical therapists and an increasing population of senior citizens in the Commonwealth, the increase in the net worth of physical therapists that are licensed using the new avenues of licensure allowed by the proposed regulation is likely to overwhelm any possible decrease in the market wage of physical therapists.

Small businesses: costs and other effects. Physical therapists who apply for licensure under the new sections of the proposed regulation will likely find that the licensure process is less expensive and burdensome than it has been in the past.

Small businesses: alternative method that minimizes adverse impact. The proposed regulation will decrease the compliance burden on the regulated community.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget for amendments to 18 VAC 112-20 related to review of credentials for foreign applicants and licensure by endorsement.

Summary:

The proposed amendments establish criteria for acceptance of organizations other than the Foreign Credentialing Commission on Physical Therapy (FCCPT) for credentialing applicants for physical therapy licensure who are graduates of schools that are not approved or accredited and will allow an applicant for licensure by endorsement to substitute evidence of active, clinical practice with an unrestricted license in another U.S. jurisdiction for the past five years in lieu of documentation of having met the educational and examination requirements of these regulations.

18 VAC 112-20-50. Education requirements: graduates of schools not approved by an accrediting agency approved by the board.

A. An applicant for initial licensure as a physical therapist who is a graduate of a school not approved by an accrediting agency approved by the board shall submit the required application and fee and provide documentation of the physical therapist's certification by a report from the FCCPT *or of the physical therapist eligibility for licensure as verified by a report from any other credentialing agency approved by the board that substantiates that the physical therapist has been evaluated in accordance with requirements of subsection B of this section*.

B. The board shall only approve a credentialing agency that:

1. Utilizes the Coursework Evaluation Tool for Foreign Educated Physical Therapists of the Federation of State Boards of Physical Therapy and utilizes original source documents to establish substantial equivalency to an approved physical therapy program;

2. Conducts a review of any license or registration held by the physical therapist in any country or jurisdiction to ensure that the license or registration is current and unrestricted or was unrestricted at the time it expired or was lapsed; and

3. Verifies English language proficiency by passage of the TOEFL and TSE examination or by review of other evidence of English proficiency.

~~B.~~ *C.* An applicant for licensure as a physical therapist assistant who is a graduate of a school not approved by the board shall submit with the required application and fee the following:

1. Proof of proficiency in the English language by passing TOEFL and TSE by a score determined by the board or an equivalent examination approved by the board. TOEFL and TSE may be waived upon evidence of English proficiency.

2. A copy of the original certificate or diploma that has been certified as a true copy of the original by a notary public, verifying his graduation from a physical therapy curriculum.

If the certificate or diploma is not in the English language, submit either:

a. An English translation of such certificate or diploma by a qualified translator other than the applicant; or

b. An official certification in English from the school attesting to the applicant's attendance and graduation date.

3. Verification of the equivalency of the applicant's education to the educational requirements of an approved program for physical therapist assistants from a scholastic credentials service approved by the board.

~~C.~~ *D.* An applicant for initial licensure as a physical therapist or a physical therapist assistant who is not a graduate of an approved program shall also submit verification of having successfully completed a full-time 1,000-hour traineeship as a "foreign educated trainee" under the direct supervision of a licensed physical therapist. The traineeship shall be in a facility that serves as an education facility for students enrolled in an accredited program educating physical therapists in Virginia and is approved by the board.

1. It shall be the responsibility of the foreign educated trainee to make the necessary arrangements for his training with the director of physical therapy or the director's designee at the facility selected by the trainee.

2. The physical therapist supervising the foreign educated trainee shall submit a completed physical therapy or physical therapist assistant clinical performance instrument approved by the board.

3. If the traineeship is not successfully completed, the president of the board or his designee shall determine if a new traineeship shall commence. If it is determined by the board that a new traineeship shall not commence, then the application for licensure shall be denied.

4. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

5. The traineeship requirements of this part may be waived if the applicant for a license can verify, in writing, the successful completion of one year of clinical physical therapy practice as a licensed physical therapist or physical therapist assistant in the United States, its territories, the District of Columbia, or Canada, equivalent to the requirements of this chapter.

18 VAC 112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18 VAC 112-20-40 or 18 VAC 112-20-50*. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction*;

2. The required application, fees, and credentials to the board; and

3. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and active*, clinical* practice with a current, unrestricted license for at least ~~seven~~ *five* years prior to applying for licensure in Virginia.

For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.

C. A physical therapist or physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 160 hours within the two years immediately preceding his application for licensure shall first successfully complete a 480-hour traineeship as specified by subsection B of 18 VAC 112-20-140.

VA.R. Doc. No. R05-46; Filed December 27, 2005, 2:21 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The following regulations filed by the Marine Resources Commission are exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4 VAC 20-20. Pertaining to the Licensing of Fixed Fishing Devices (amending 4 VAC 20-20-20 and 4 VAC 20-20-50).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: December 22, 2005.

Agency Contact: Deborah Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendments incorporate the definition of the National Marine Fisheries Service Prohibited Pound Net Leader Area with a complete description, and exempt pound net fishermen affected by the federal rule that prohibits the use of all pound net leaders set with the inland end of the leader greater than 10 horizontal feet from the mean low water line from May 6 through July 15 from the priority rights requirements necessary for renewal of a pound net license.

4 VAC 20-20-20. Definitions.

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

"Fixed fishing device" means any fishing device used for the purpose of catching fish and requiring the use of more than two poles or stakes which have been pushed or pumped into the bottom.

"Fyke net" means a round stationary net distended by a series of hoops or frames, covered by web netting or wire mesh and having one or more internal funnel-shaped throats whose tapered ends are directed away from the mouth of the net. The net, leader or runner is held in place by stakes or poles which have been pushed or pumped into the bottom and has one or two wings and a leader or runner to help guide the fish into the net.

"National Marine Fisheries Service Prohibited Pound Net Leader Area" means the area where the National Marine Fisheries Service prohibits the use of all pound net leaders, set with the inland end of the leader greater than 10 horizontal feet from the mean low water line, from May 6 to July 15 each year in the Virginia waters of the mainstem Chesapeake Bay, south of 37º19.0' N. lat. and west of 76º13.0' W. long., and all waters south of 37º13.0' N. lat. to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the James and York Rivers downstream of the first bridge in each tributary.

"Officer" means the marine patrol officer in charge of the district within which the fixed fishing device is located.

"Pound net" means a stationary fishing device supported by stakes or poles which have been pushed or pumped into the bottom consisting of an enclosure identified as the head or pocket with a netting floor, a heart, and a straight wall, leader or runner to help guide the fish into the net.

"Staked gill net" means a fixed fishing device consisting of an upright fence of netting fastened to poles or stakes which have been pushed or pumped into the bottom.

4 VAC 20-20-50. Priority rights; renewal by current licensee.

A. Applications for renewal of license for existing fixed fishing devices may be accepted by the officer beginning at 9 a.m. on December 1 of the current license year through noon on January 10 of the next license year providing the applicant has met all requirements of law and this chapter. Any location not relicensed during the above period of time shall be considered vacant and available to any qualified applicant after noon on January 10.

B. Except as provided in ~~subsection~~ *subsections* C *and D* of this section, a currently licensed fixed fishing device must have been fished during the current license year~~, except as provided in subsection D of this section,~~ in order for the licensee to maintain his priority right to such location. It shall be mandatory for the licensee to notify the officer, on forms provided by the commission, when the fixed fishing device is ready to be fished in the location applied for, by a complete system of nets and poles, except as provided in subsection D of this section, for the purpose of visual inspection by the officer. Either the failure of the licensee to notify the officer when the fixed fishing device is ready to be fished or the failure by the licensee actually to fish the licensed device, by use of a complete system of nets and poles, except as provided in subsection D of this section, shall terminate his right or privilege to renew the license during the period set forth in subsection A of this section of this chapter, and he shall not become a qualified applicant for such location until 9 a.m. on February 1. Any application received from an unqualified applicant under this subsection shall be considered as received at 9 a.m. on February 1; however, in the event of the death of a current license holder, the priority right to renew the currently held locations of the deceased licensee shall not expire by reason of failure to fish said

locations during the year for which they were licensed, but one additional year shall be and is hereby granted to the personal representative or lawful beneficiary of the deceased licensee to license the location in the name of the estate of the deceased licensee for purposes of fishing said location or making valid assignment thereof.

C. During the effective period of 4 VAC 20-530, which establishes a moratorium on the taking and possession of American shad in the Chesapeake Bay and its tributaries, any person licensed during 1993 to set a staked gill net who chooses not to set that net during the period of the moratorium may maintain his priority right to the stake net's 1993 location by completing an application for a fixed fishing device and submitting it to the officer. No license fee shall be charged for the application.

D. During 2004, current pound net licensees shall not be required to fish their pound nets or establish a complete system of nets and poles in order to renew their licenses or maintain their priority rights to such locations for 2005. *Beginning in 2005, current pound net licensees with a licensed pound net located in the National Marine Fisheries Service Prohibited Pound Net Leader area shall not be required to fish their pound nets or establish a complete system of nets and poles in order to renew their licenses or maintain their priority rights to such locations for any subsequent year until such time that this prohibited area is no longer in effect.*

VA.R. Doc. No. R06-156; Filed December 22, 2005, 10:23 a.m.

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Title of Regulation: **4 VAC 20-720. Pertaining to Restrictions on Oyster Harvest (amending 4 VAC 20-720-40, 4 VAC 20-720-50, 4 VAC 20-720-70 and 4 VAC 20-720-75).**

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: January 1, 2006.

Agency Contact: Kathy Leonard, Administrative and Program Specialist, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2120, FAX (757) 247-8101, or e-mail kathy.leonard@mrc.virginia.gov.

Summary:

The amendments allow harvesting of oysters from certain public grounds in the Coan, Lower Machodoc, Nomini and Yeocomico rivers by hand scrape.

4 VAC 20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area and James River Jail Island and Point of Shoals Clean Cull Areas: October 1, 2005, through April 30, 2006.

2. Seaside of Eastern Shore: for clean cull oysters only, October 1, 2005, through January 31, 2006.

3. The following areas shall be opened from October 1, 2005, through January 31, 2006: the Rappahannock River Hand Tong Area; the Corrotoman River Hand Tong Area; the Rappahannock River Hand Scrape Area; the Drumming Ground Hand Scrape Area (Rappahannock River); the Temples Bay Hand Scrape Area (Rappahannock River); the Coan River *Area*; the Nomini River *Area*; the Lower Machodoc ~~River~~ *Area*; the Yeocomico River *Area*; the Piankatank River; the Little Wicomico River; the Great Wicomico River Hand Scrape Area; the James River Hand Scrape Area; the Blackberry Hangs Hand Scrape Area (Upper Chesapeake Bay); the York River Hand Scrape Area; the Thomas Rock Hand Scrape Area (James River); and the Deep Rock Dredge Area (Lower Chesapeake Bay).

4. Tangier Sound and Pocomoke Sound: December 1, 2005, through February 28, 2006.

4 VAC 20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except those areas listed in 4 VAC 20-720-40, are closed: October 1, 2005, through September 30, 2006.

2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area and the James River Jail Island and Point of Shoals Clean Cull Areas: May 1, 2006, through September 30, 2006.

3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, February 1, 2006, through September 30, 2006, and for seed oysters, all year. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the Marine Resources Commission as set forth in 4 VAC 20-720-90.

4. The following areas shall be closed from February 1, 2006, through September 30, 2006: the Rappahannock River Hand Tong Area; the Corrotoman River Hand Tong Area; the Rappahannock River Hand Scrape Area; the Temples Bay Hand Scrape Area (Rappahannock River); the Drumming Ground Hand Scrape Area (Rappahannock River); the Nomini River *Area*; the Lower Machodoc ~~River~~ *Area*; the Coan River *Area*; the Piankatank River; the Yeocomico River *Area*; the Little Wicomico River; the Great Wicomico River Hand Scrape Area; the James River Hand Scrape Area; the Thomas Rock Hand Scrape Area and the Blackberry Hangs Hand Scrape Area (Upper Chesapeake Bay); the York River; the Deep Rock Dredge Area (Lower Chesapeake Bay).

5. Tangier Sound and Pocomoke Sound: October 1, 2005 through November 30, 2005, and March 1, 2006, through September 30, 2006.

4 VAC 20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area~~;~~ the James River Jail Island and Point of Shoals Clean Cull Areas~~;~~, the Rappahannock River Hand Tong Area~~;~~, the Corrotoman River Hand Tong Area~~;~~, the Nomini ~~and~~ *River Area,* Lower Machodoc ~~Rivers;~~ *Area,* the Coan River~~;~~ *Area,* the Yeocomico River~~;~~ *Area,* the Piankatank River~~;~~, and Little Wicomico River, except by hand or ordinary tong*, or as described in subsection F of this section*. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong *except as described in subsection F of this section*.

B. It shall be unlawful to harvest oysters from the seaside of the Eastern Shore, except by hand.

C. It shall be unlawful to harvest oysters from the hand scrape areas in the Rappahannock River; James River, Great Wicomico River, Upper Chesapeake Bay, and York River, except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape*, except as described in subsection F of this section*.

E. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Management Area and Deep Rock Dredge Area except by a standard oyster dredge.

F. It shall be lawful to harvest oysters through January 31, 2006, from the Coan River Area, the Lower Machodoc Area, the Nomini River Area, and the Yeocomico River Area by hand scrape.

4 VAC 20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish from the hand scrape areas in the Rappahannock River, James River, Great Wicomico River, Upper Chesapeake Bay, ~~and~~ York River, *Coan River Area, Lower Machodoc Area, Nomini River Area, and Yeocomico River Area* York River who has not first obtained a current hand scrape license.

B. It shall be unlawful for any person to harvest shellfish with a dredge from the public oyster grounds in the PTSMA and the Deep Rock Dredge Area who has not first obtained a current dredge license.

VA.R. Doc. No. R06-158; Filed December 22, 2005, 10:21 a.m.

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Title of Regulation: **4 VAC 20-900. Pertaining to Horseshoe Crab (amending 4 VAC 20-900-25 and 4 VAC 20-900-30).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: December 22, 2005.

Agency Contact: Deborah R. Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendments to the horseshoe crab regulation (i) modify the quota allocation from a semiannual to a calendar year basis; (ii) increase the possession limit to 5,000 horseshoe crabs for those fishermen who meet the requirements of 4 VAC 20-900-30 D and who hold a valid horseshoe crab endorsement license, and allow these fishermen 2,500 horseshoe crabs once 85% of the calendar year quota is taken; (iii) establish a horseshoe crab possession limit of 2,000 horseshoe crabs for any person who meets the requirements of 4 VAC 20-900-30 E and who holds a valid horseshoe crab endorsement license, and allow these fishermen 1,000 horseshoe crabs once 85% of the calendar year quota is taken; (iv) raise the by-catch possession limit to 500; (v) make it lawful for any person to take, catch, harvest or attempt to take, catch or harvest horseshoe crabs with a dredge from the tidal waters of Virginia from May 1 through June 7; (vi) make it lawful for any person to possess horseshoe crabs taken by dredge from the tidal waters of Virginia from May 1 through June 7; (vii) provide an exception to the requirements for eligibility for a horseshoe crab endorsement license for those individuals who meet the stipulated requirements; and (viii) establish eligibility requirements for anyone applying for a horseshoe crab endorsement license that is restricted to using a crab dredge to harvest horseshoe crabs.

4 VAC 20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

C. The commercial landings quota of horseshoe crab for each calendar year shall be 152,495 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the landings quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs.

D. During each calendar year, 85% of Virginia's horseshoe crab quota ~~shall be divided equally between semiannual periods of January 1 through June 30 and July 1 through December 31. This portion of the annual quota~~ and any and all transfers from other jurisdictions shall be allocated to those

individuals who hold a valid horseshoe crab endorsement license as established in 4 VAC 20-900-30 C.

1. It shall be unlawful for any person who *meets the requirements of 4 VAC 20-900-30 D and* holds a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of ~~4,000~~ *5,000*, except that when it is projected and announced that 85% of ~~any semiannual~~ *the calendar year* quota is taken it shall be unlawful for any person who *meets the requirements of 4 VAC 20-900-30 D and* holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of ~~2,000~~ *2,500*.

2. It shall be unlawful for any person who meets the requirements of 4 VAC 20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,000, except that when it is projected and announced that 85% of any quota is taken, it shall be unlawful for any person who meets the requirements of 4 VAC 20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,000.

E. During each calendar year, 15% of Virginia's horseshoe crab quota shall be reserved for bycatch. This portion of the annual quota shall be allocated to those individuals who do not qualify for a horseshoe crab endorsement license as established in 4 VAC 20-900-30 C. It shall be unlawful for any person who does not hold a valid horseshoe crab endorsement license to possess aboard any vessel or to land any number of horseshoe crabs in excess of ~~100~~ *500*.

F. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

G. It shall be unlawful for any person to harvest from Virginia waters, to possess aboard any vessel, or to land in Virginia any horseshoe crab for commercial purposes after the landing quota described in subsection C, D or E of this section has been attained and announced as such.

H. It shall be unlawful for any buyer of seafood to receive any horseshoe crab after any commercial harvest or landing quota as described in this section has been attained and announced as such.

~~I. It shall be unlawful for any person to take, catch, harvest or attempt to take, catch or harvest horseshoe crabs with a dredge from the tidal waters of Virginia from May 1 through June 7.~~

~~J. It shall be unlawful for any person to possess horseshoe crabs taken by dredge from the tidal waters of Virginia from May 1 through June 7.~~

4 VAC 20-900-30. License requirements and exemption.

A. It shall be unlawful for any person to harvest horseshoe crabs by hand for commercial purposes without first obtaining a commercial fisherman registration license and a horseshoe crab hand harvester license.

B. The taking by hand of as many as five horseshoe crabs in any one day for personal use only shall be exempt from the above licensing requirement.

C. It shall be unlawful for any boat or vessel to land horseshoe crabs in Virginia for commercial purposes without first obtaining a horseshoe crab endorsement license as described in this section. The horseshoe crab endorsement license shall be required of each boat or vessel used to land horseshoe crabs for commercial purposes. Possession of any quantity of horseshoe crabs that exceeds the limit described in subsection B of this section shall be presumed for commercial purposes. There shall be no fee for the license.

D. To be eligible for a horseshoe crab endorsement license, the boat or vessel shall have landed and sold at least 500 horseshoe crabs in Virginia in at least one year during the period 1998-2000*, except as described in subsection E of this section*.

1. The owner shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of applicant's name, address, telephone number, boat or vessel name and its registration or documentation number.

2. The owner shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of landings data from the National Marine Fisheries Service.

E. Any Virginia registered commercial fisherman is eligible for a horseshoe crab endorsement license that is restricted to using a crab dredge to harvest horseshoe crabs provided his boat or vessel shall have landed at least 10,000 pounds of whelk in any one year from 2002 through 2005.

1. The Virginia registered commercial fisherman shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of the applicant's name, address, telephone number, boat or vessel name and its registration or documentation number.

2. The Virginia registered commercial fisherman shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of whelk landings data from the National Marine Fisheries Service.

VA.R. Doc. No. R06-157; Filed December 22, 2005, 10:23 a.m.

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Title of Regulation: **4 VAC 20-910. Pertaining to Scup (amending 4 VAC 20-910-45).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: December 30, 2005.

Agency Contact: Deborah R. Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendment reduces the possession limit of scup to 3,000 pounds from November 1 through December 31 of each year as required by the Atlantic States Marine Fisheries Commission.

4 VAC 20-910-45. Possession limits and harvest quotas.

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 30,000 pounds of scup.

2. Land in Virginia more than a total of 30,000 pounds of scup during each consecutive 14-day landing period, with the first 14-day period beginning on January 2.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more ~~3,500~~ *3,000* pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 7,862 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R06-155; Filed December 22, 2005, 10:24 a.m.

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Title of Regulation: **4 VAC 20-1040. Pertaining to Crabbing Licenses (amending 4 VAC 20-1040-20).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: January 1, 2006.

Agency Contact: Deborah R. Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendments (i) allow a family member to transfer a commercial crab license at any time, (ii) allow a license to be transferred at any time to a registered commercial fisherman in the case of death or incapacitation, (iii) place a cap of 100 crab license transfers from one registered commercial fisherman to another registered commercial fisherman in a year, and (iv) eliminate the requirement that the transfer of a commercial crab license must also include a transfer or sale of the licensee's boat or vessel and gear.

4 VAC 20-1040-20. License sales moratorium.

A. For the lawful crabbing seasons of 2004 through 2007, commercial licenses for crab pot, peeler pot, crab scrape, crab trap, ordinary trot line, patent trot line, and dip net shall be sold only to those registered commercial fishermen who have been determined by the commission to be eligible to purchase any of these licenses in 2004. Any person receiving a crab license by lawful transfer in 2004 through 2007 also establishes his eligibility to purchase that specific license through 2007; however, any person either failing to register as a commercial fisherman in any year or lawfully transferring his crab license to another person shall forfeit his eligibility to purchase that specific crab license through 2007.

B. Commercial licenses for crab pots, peeler pots, crab scrapes, crab traps, ordinary trot lines, patent trot lines, and crab dip nets may be transferred to an immediate family member of the licensee *at any time* and, in the case of death or incapacitation of the licensee, may be transferred to a registered commercial fisherman *at any time*. Crabbing licenses also may be transferred to another registered commercial fisherman ~~if the licensee's boat or vessel and gear used for crabbing are also transferred or sold to the registered commercial fisherman~~*, except that not more than 100 licenses shall be transferred in the current year*. All such transfers shall be documented on forms provided by the commission and shall be subject to the approval of the commissioner.

VA.R. Doc. No. R06-154; Filed December 22, 2005, 10:23 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

REGISTRAR'S NOTICE: Chapter 11 (§ 9.1-1110 et seq.) of Title 9.1 of the Code of Virginia (Chapters 868 and 881 of the 2005 Acts of Assembly) created the Department of Forensic Science, which formerly existed as the Division of Forensic Science within the Department of Criminal Justice Services. The following regulations are amended to change the Virginia

Administrative Code numbers to reflect the new agency number for the Department of Forensic Science and to change references from the "Division of Forensic Science" to the "Department of Forensic Science." Under the Department of Forensic Science, 6 VAC 20-190, Regulations for Breath Alcohol Testing, is renumbered 6 VAC 40-20; 6 VAC 20-210, Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for all Violent Felonies and Certain Burglaries, is renumbered 6 VAC 40-40; and 6 VAC 20-220, Regulations for the Approval of Field Tests for Detection of Drugs, is renumbered 6 VAC 40-30.

The Department of Forensic Science is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Forensic Science will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6 VAC 40-20. Regulations for Breath Alcohol Testing (formerly 6 VAC 20-190-10 through 6 VAC 20-190-200) (adding 6 VAC 40-20-10 through 6 VAC 40-20-200).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: February 22, 2006.

Agency Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or e-mail katya.herndon@dfs.virginia.gov.

Summary:

These regulations describe the process for approval of breath test devices, general methods of conducting breath tests, training and licensing procedures for operators, required forms and records, and the use of preliminary breath test devices. The amendments to the regulation reflect the agency's new status as a department in two ways. First the amendments change the citation for these regulations from 6 VAC 20-190 to 6 VAC 40-20 to reflect the new agency number assigned to the Department of Forensic Science. Second, the amendments change any reference in the regulations to the agency from the "Division of Forensic Science" to the "Department of Forensic Science."

CHAPTER ~~190~~ *20*.
REGULATIONS FOR BREATH ALCOHOL TESTING.

PART I.
DEFINITIONS.

~~6 VAC 20-190-10.~~ *6 VAC 40-20-10.* Definitions.

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

"Agency" means any law-enforcement agency under whose auspices breath tests are performed.

"Blood alcohol concentration" means percent by weight of alcohol in a person's blood based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

"Breath test device" means an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of a person subject to the provisions of §§ 18.2-268.1 through 18.2-268.3, 18.2-268.9, 29.1-738.2, 46.2-341.26:1 through 46.2-341.26:3 or 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

"Chemical test" or "chemical analysis" means a quantitative test for alcohol using infrared, or fuel cell methodologies or a combination thereof performed on a sample or samples of breath of a person subject to the provisions of §§ 18.2-267, 18.2-268.1 through 18.2-268.3, 18.2-268.9, 29.1-738.1, 29.1-738.2, 46.2-341.25, 46.2-341.26:1 through 46.2-341.26:3 or 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

"~~Division~~ *Department*" means the ~~Division~~ *Department* of Forensic Science.

"Licensee" means a person holding a valid license from the ~~division~~ *department* to perform a breath test of the type set forth within these regulations under the provisions of § 18.2-268.9, § 29.1-738.2 or § 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

"Preliminary breath test device" means an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of a person suspected of an offense subjecting such person to the provisions of § 18.2-267, 29.1-738.1 or 46.2-341.25 of the Code of Virginia.

"Supplies and accessories" means any item, device, chemical, reagent, tube, mouthpiece, replacement part, or glassware, whether or not reusable, which is used in conjunction with a breath test device to determine the blood alcohol concentration of any person subject to the provisions of §§ 18.2-268.1 through 18.2-268.3, 18.2-268.9, 29.1-738.2, 46.2-341.26:1 through 46.2-341.26:3 or 46.2-341.26:9 of the Code of Virginia or a parallel local ordinance.

~~6 VAC 20-190-20.~~ *6 VAC 40-20-20.* Substantial compliance.

These regulations and the steps set forth herein relating to the taking, handling, identification and disposition of breath samples, the testing of such samples, and the completion and filing of any form or record prescribed by these regulations are procedural in nature and not substantive. Substantial compliance therewith shall be deemed sufficient.

PART II.
BREATH TESTS UNDER §§ 18.2-268.9, 29.1-738.2, AND 46.2-341.26:9 OF THE CODE OF VIRGINIA.

Article 1.
Breath Test Administrative Procedures.

~~6 VAC 20-190-30.~~ *6 VAC 40-20-30.* Breath test devices.

Breath test devices shall be tested for accuracy by the ~~division~~ *department* at least once every six months. All new breath test devices or those having been repaired by the

manufacturer or the manufacturer's authorized repair service shall be tested for accuracy by the ~~division~~ *department* before their return to service.

~~6 VAC 20-190-40.~~ *6 VAC 40-20-40.* Storage.

The breath test device must be stored in a clean, dry location that is only accessible to licensees and to other authorized individuals.

~~6 VAC 20-190-50.~~ *6 VAC 40-20-50.* Care.

Proper care shall be taken to ensure that the breath test device is kept free from excessive moisture, heat and dust.

~~6 VAC 20-190-60.~~ *6 VAC 40-20-60.* Modifications.

No modifications shall be made to any breath test device by an agency without the written consent of the ~~division~~ *department*.

~~6 VAC 20-190-70.~~ *6 VAC 40-20-70.* Use.

The breath test device shall not be used for administration of tests for alcohol use pursuant to the Federal Omnibus Transportation Employees Testing Act of 1991, 49 CFR Part 40.

Article 2.
Approval of Breath Test Devices.

~~6 VAC 20-190-80.~~ *6 VAC 40-20-80.* Approval.

All breath tests as prescribed in §§ 18.2-268.9, 29.1-738.2 and 46.2-341.26:9 of the Code of Virginia shall be performed on a breath test device approved by the ~~division~~ *department*. Those breath test devices listed in the "Conforming Products List of Evidential Breath Measurement Devices" as established by the National Highway Traffic Safety Administration ("NHTSA"), United States Department of Transportation, or in such other list as may be established by NHTSA evidencing that such device meets criteria, standards or specifications promulgated by it, as published from time to time in the Federal Register, may be approved by the ~~division~~ *department* as a breath test device. In approving such devices, the ~~division~~ *department* will consider factors including, but not limited to, costs, maintenance, necessity of instruction and/or training by the ~~division~~ *department*, ease of operation, availability of parts and service facilities, reliability, maintenance instruction and the historical performance record of the device.

~~6 VAC 20-190-90.~~ *6 VAC 40-20-90.* Publishing list of devices.

The ~~division~~ *department* shall periodically publish in the Virginia Register of Regulations a list of any device(s) approved for use as breath test device(s). Such list shall be published forthwith after any addition or deletion of any device(s) to or from the ~~division's~~ *department's* approved list. The ~~division~~ *department* may, in addition, provide copies of its approved list to any agency subject to this chapter.

~~6 VAC 20-190-100.~~ *6 VAC 40-20-100.* Publishing list of supplies.

The ~~division~~ *department* shall periodically publish in the Virginia Register of Regulations a list of any supplies and accessories approved for use with breath test devices that may be purchased by an agency. Such list shall be published forthwith after any addition or deletion of any supplies or accessories to or from the ~~division's~~ *department's* approved list. The ~~division~~ *department* may, in addition, provide copies of its approved list to any agency subject to this chapter.

Article 3.
Methods of Conducting Breath Tests.

~~6 VAC 20-190-110.~~ *6 VAC 40-20-110.* Methods and procedures.

The ~~division~~ *department* shall approve such methods of performing breath tests as are demonstrated to the satisfaction of the ~~division~~ *department* to produce accurate and reliable determinations in a reasonable, convenient and effective manner. The ~~division~~ *department* approves the following breath test methods and procedures:

1. All breath test devices shall be operated in accordance with those sections of the instructional manual published by the ~~division~~ *department* that are applicable to the particular breath test device. Licensees shall follow any additional instructions or modifications of instructions published by the ~~division~~ *department* in supplements to the foregoing instructional manual.

2. The person to be tested shall be observed for at least 20 minutes prior to collection of the breath specimen, during which period the person must not have ingested fluids, regurgitated, vomited, eaten, or smoked. Should any of these actions occur, an additional 20-minute observation period must be performed.

3. The licensee shall verify that the breath test device is properly calibrated and in proper working order by conducting a room air blank analysis prior to analysis of the breath of the person and by conducting a validation test with a control sample as part of the test protocol.

4. The licensee must use only supplies and accessories issued by or approved by the ~~division~~ *department* in conducting breath tests on approved breath test devices.

Article 4.
Licensing Procedures.

~~6 VAC 20-190-120.~~ *6 VAC 40-20-120.* Licensing procedures.

A. The ~~division~~ *department* shall issue, renew, terminate and revoke licenses for individuals to perform breath alcohol tests on the basis of standards set forth in this chapter.

B. Application for an initial license to perform breath tests shall be made in writing to the ~~division~~ *department*. The applicant shall have the endorsement of the appropriate supervisory law-enforcement officer or designated representative unless an exception is granted by the ~~division~~ *department*.

C. The initial licenses shall be granted to individuals who demonstrate the ability to perform breath tests accurately and reliably in accordance with the methods approved by the ~~division~~ *department*.

D. Only individuals successfully completing a basic course of instruction shall be deemed to have demonstrated competence to qualify for the issuance of an initial license. Further instruction may be required by the ~~division~~ *department* to qualify a licensee to perform tests using additional breath test devices.

E. Licenses shall be limited in scope to those breath test devices on which the individual applying for an initial or renewal license has demonstrated competence.

F. Licenses shall state the date upon which they are to expire, which date shall, in no event, be later than 24 months after the date of issuance. Licenses shall be subject to renewal at expiration or at such time prior to expiration as is convenient for the ~~division~~ *department* on demonstration by the licensee of continuing competency to perform accurate and reliable breath tests. The ~~division~~ *department* may at any time examine licensees to determine such continuing competency. Licenses may be terminated or revoked by the ~~division~~ *department* at any time upon its finding that the licensee no longer meets the qualifications necessary for the issuance of a license.

G. Any individual whose license has expired may renew his license within one year after its expiration date by successfully completing a recertification class and by demonstrating his competence in the performance of breath tests. Any individual (i) who fails the recertification class or (ii) whose license has expired and who does not renew his license within one year after its expiration date may renew his license by again attending and successfully completing the basic course of instruction referred to in subsection D of this section and demonstrating competence in the performance of breath tests as otherwise required.

H. The failure of a licensee to comply with this chapter may be grounds for revocation of such individual's license.

~~6 VAC 20-190-130.~~ *6 VAC 40-20-130.* Certificates.

The ~~division~~ *department* shall issue, terminate and revoke instructor certificates for individuals to teach breath alcohol testing on the basis of the following standards:

1. The instructor certificate shall be granted only to individuals who (i) demonstrate the ability to teach the breath test method or methods approved by the ~~division~~ *department*, (ii) possess a valid breath test license, and (iii) satisfactorily complete a course for Breath Alcohol Instructors. The ~~division~~ *department* may issue instructor certificates to persons who have acquired the necessary ability by past experience or formal education.

2. Instructor certificates shall be limited in scope to the methods or devices for which the individual has demonstrated competence.

3. The ~~division~~ *department* may at any time examine instructors to determine continuing ability.

4. Instructor certificates shall be terminated or revoked by the ~~division~~ *department* upon its finding that the instructor no longer meets the necessary qualifications.

~~6 VAC 20-190-140.~~ *6 VAC 40-20-140.* Revocation.

Any revocation of a license or instructor certificate shall be by notice sent by registered or certified mail from the ~~division~~ *department* to the licensee or instructor.

Article 5.
Forms and Records.

~~6 VAC 20-190-150.~~ *6 VAC 40-20-150.* Records.

The ~~division~~ *department* shall download by modem, at least once each month, data from each breath test device assigned to an agency. The ~~division~~ *department* shall keep this data on file for at least three years.

~~6 VAC 20-190-160.~~ *6 VAC 40-20-160.* Checklist.

A preventive maintenance checklist provided by the ~~division~~ *department* shall be completed at least once each month for each breath test device assigned to an agency. A copy of this preventive maintenance checklist shall be submitted to the ~~division~~ *department* to be kept on file for at least three years.

PART III.
PRELIMINARY BREATH TESTS UNDER §§ 18.2-267, 29.1-738.1 AND 46.2-341.25 OF THE CODE OF VIRGINIA.

~~6 VAC 20-190-170.~~ *6 VAC 40-20-170.* Preliminary breath test device.

All preliminary breath tests shall be performed on a preliminary breath test device approved by the ~~division~~ *department*. Such devices shall offer convenience and efficiency in operation as determined by the ~~division~~ *department* and shall also satisfy the requirements of either subdivision 1 or 2 of this section.

1. For instruments having a numeric readout, the device shall have a systematic error not exceeding ±10%.

2. For instruments having a pass/fail, colored light readout, the device shall satisfy the following specifications:

a. When a sample of breath is properly taken from a person with an actual blood alcohol concentration of 0.05% or less by weight by volume or 0.05 grams of alcohol per 210 liters of breath, the device shall not indicate a positive result.

b. When a sample of breath is properly taken from a person with an actual blood alcohol concentration of 0.08% or more by weight by volume or 0.08 grams of alcohol per 210 liters of breath, the device shall not indicate a negative result.

~~6 VAC 20-190-180.~~ *6 VAC 40-20-180.* List of preliminary devices.

The ~~division~~ *department* shall periodically publish in the Virginia Register of Regulations a list of devices approved for use as preliminary breath test devices. Such list shall be published forthwith after any addition or deletion of any device(s) to or from the ~~division's~~ *department's* approval list.

~~6 VAC 20-190-190.~~ *6 VAC 40-20-190.* Operational procedures.

All preliminary breath tests shall be conducted substantially in accordance with the operational procedures set forth in the instruction manual of the manufacturer of the instrument in use except as may be modified by the ~~division~~ *department*.

~~6 VAC 20-190-200.~~ *6 VAC 40-20-200.* Preventive maintenance.

It shall be the responsibility of each agency using preliminary breath test devices to provide preventive maintenance and repairs according to the manufacturer's instructions or procedures except as may be modified by the ~~division~~ *department*.

VA.R. Doc. No. R06-167; Filed January 4, 2006, 11:42 a.m.

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Title of Regulation: **6 VAC 40-30. Regulations for the Approval of Field Tests for Detection of Drugs (formerly 6 VAC 20-220-20 through 6 VAC 20-220-80) (adding 6 VAC 40-30-10 through 6 VAC 40-30-80).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: February 22, 2006.

Agency Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail katya.herndon@dfs.virginia.gov.

Summary:

These regulations outline the process the department follows for the approval of field tests for detection of drugs. The amendments reflect the agency's new status as a department in two ways. First the amendments change the citation for these regulations from 6 VAC 20-220 to 6 VAC 40-30 to reflect the new agency number assigned to the Department of Forensic Science. Second, the amendments change any reference in the regulations to the agency from the "Division of Forensic Science" to the "Department of Forensic Science."

CHAPTER ~~220~~ *30.*
REGULATIONS FOR THE APPROVAL OF FIELD TESTS FOR DETECTION OF DRUGS.

PART I.
DEFINITIONS.

~~6 VAC 20-220-10.~~ *6 VAC 40-30-10.* Definitions.

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

"Agency" means any federal, state or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the ~~Division~~ *Department* of Forensic Science or designee.

~~"Division~~ *Department"* means the ~~Division~~ *Department* of Forensic Science~~, Department of Criminal Justice Services~~.

"Drug" means any controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

"Field test" means any presumptive chemical test unit used outside of a chemical laboratory environment to detect the presence of a drug.

"Field test kit" means a combination of individual field tests units.

"List of approved field tests" means a list of field tests or field test kits approved by the ~~division~~ *department* for use by law-enforcement agencies in the Commonwealth and periodically published by the ~~division~~ *department* in the Virginia Register of Regulations in accordance with § 19.2-188.1 of the Code of Virginia.

"Manufacturer" means any entity which makes or assembles field test units or field test kits to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting a drug.

"Manufacturers' instructions and claims" means those testing procedures, requirements, instructions, precautions and proposed conclusions which are published by the manufacturer and supplied with the field tests or field test kits.

"Street drug preparations" means any drug or combination of drugs and any other substance which has been encountered or is likely to be encountered by a law-enforcement officer as a purported drug in the Commonwealth.

PART II.
PROCESS FOR APPROVAL OF FIELD TESTS.

~~6 VAC 20-220-20.~~ *6 VAC 40-30-20.* Authority for approval.

Section 19.2-188.1 of the Code of Virginia provides that the ~~Division~~ *Department* of Forensic Science shall approve field tests for use by law-enforcement officers to enable them to testify to the results obtained in any preliminary hearing regarding whether any substance, the identify of which is at issue in such hearing, is a controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

~~6 VAC 20-220-30.~~ *6 VAC 40-30-30.* Request for approval.

A. Any manufacturer who wishes to have field tests or field test kits approved shall submit a written request for approval to the ~~division~~ *department* director at the following address:

Director
~~Division~~ *Department* of Forensic Science
700 North Fifth Street
Richmond, VA 23219.

B. Materials sufficient for at least 10 field tests shall be supplied for each drug for which the manufacturer requests approval. The materials shall include all instructions, precautions, color charts, flow charts and the like which are provided with the field test or field test kit and which describe the use and interpretation of the tests.

C. The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose.

D. This approval will require at least 120 days from the receipt of the written request and all needed materials from the manufacturer.

E. The ~~division~~ *department* will use commonly encountered "street drug preparations" to examine those field tests for approval. In order to be approved, the field test must correctly react in a clearly observable fashion to the naked eye, and perform in accordance with manufacturers' instructions and claims.

~~6 VAC 20-220-40.~~ *6 VAC 40-30-40.* Notice of approval.

The ~~division~~ *department* will notify each manufacturer in writing of the approval or disapproval of each test for which approval was requested. Should any test not be approved, the manufacturer may resubmit their request for approval of that field test according to the previously outlined procedures at any time.

~~6 VAC 20-220-50.~~ *6 VAC 40-30-50.* Maintenance of approved status.

The ~~division~~ *department* may require that this approval be done as often as annually for routine purposes. If any modifications are made to an approved field test by the manufacturer, the ~~division~~ *department* shall be notified in writing of the changes. If unreported modifications are discovered by the ~~division~~ *department*, the ~~division~~ *department* may require that all testing and approval be repeated for the particular manufacturers' approved field tests at any time. The ~~division~~ *department* shall notify the manufacturer in writing of this requirement. Any modified field test must be approved before it can be used in accordance with § 19.2-188.1 of the Code of Virginia. These changes shall include, but are not limited to any chemical, procedural or instructional modifications made to the field test.

~~6 VAC 20-220-60.~~ *6 VAC 40-30-60.* Publication.

Upon completion of such testing and in concurrence with the approval authority, the ~~division~~ *department* will periodically publish a list of approved field tests in the General Notices section of the Virginia Register of Regulations. The ~~division~~ *department* will also periodically publish the list on its website. The ~~division~~ *department* may, in addition, provide copies of its approval list to any agency subject to this chapter. The ~~division~~ *department* may share any information or data developed from this testing with these agencies.

~~6 VAC 20-220-70.~~ *6 VAC 40-30-70.* Liability.

A. The ~~division~~ *department* assumes no liability as to the safety of these field tests or field test kits, any chemicals contained therein or the procedures and instructions by which they are used.

B. The ~~division~~ *department* further assumes no responsibility for any incorrect results or interpretations obtained from these inherently tentative presumptive chemical tests.

PART III.
FEES.

~~6 VAC 20-220-80.~~ *6 VAC 40-30-80.* Fees.

Manufacturers will be charged a fee of $50 for each drug or type of drug for which individual approval is requested. The ~~division~~ *department* will evaluate the manufacturers' request and notify them in writing of the amount due before testing begins. Manufacturers who wish to withdraw a request for approval shall immediately notify the ~~division~~ *department* in writing. The ~~division's~~ *department's* assessment of the amount of payment required will be based upon a detailed evaluation of the manufacturer's request and that amount will be final. Approval will not be granted before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R06-165; Filed January 4, 2006, 11:39 a.m.

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Title of Regulation: **6 VAC 40-40. Regulations for the Implementation of the Law Permitting DNA Analysis Upon Arrest for All Violent Felonies and Certain Burglaries (formerly 6 VAC 20-210-10 through 6 VAC 20-210-110) (adding 6 VAC 40-40-10 through 6 VAC 40-40-110).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: February 22, 2006.

Agency Contact: Katya N. Herndon, Regulatory Coordinator, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857 or e-mail katya.herndon@dfs.virginia.gov.

Summary:

The regulation describes when sample DNA is required, who is responsible for collecting the sample, how the sample is to be collected and labeled, and how to transport the sample to the laboratory for analysis. The amendments reflect the agency's new status as a department in two ways. First the amendments change the citation for these regulations from 6 VAC 20-210 to 6 VAC 40-40 to reflect the new agency number assigned to the Department of Forensic Science. Second, the amendments change any reference in the regulations to the agency from the "Division of Forensic Science" to the "Department of Forensic Science."

CHAPTER ~~210~~ *40.*
REGULATIONS FOR THE IMPLEMENTATION OF THE LAW PERMITTING DNA ANALYSIS UPON ARREST FOR ALL VIOLENT FELONIES AND CERTAIN BURGLARIES.

PART I.

DEFINITIONS AND GENERAL PROVISIONS.

~~6 VAC 20-210-10.~~ *6 VAC 40-40-10.* Definitions.

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

"Arrestee" means a person arrested for a qualifying offense under § 19.2-310.2:1 of the Code of Virginia.

"Buccal sample" means a sample taken by swabbing the cheek inside an arrestee's mouth.

"Buccal sample kit" means a kit specified by the ~~division~~ *department* for the collection of buccal cell samples.

"CCRE" means the Central Criminal Records Exchange operated by the Virginia State Police.

"Clerk" means the clerk of court of any general district, juvenile and domestic relations or circuit court in the Commonwealth, and includes deputy clerks.

"Data bank" means the database of DNA profiles from biological samples maintained by the ~~division~~ *department* for convicted felons and arrestees.

"~~Division~~ *Department"* means the ~~Division~~ *Department* of Forensic Science ~~Department of Criminal Justices Services~~.

"DNA" means deoxyribonucleic acid.

"DNA analysis" means analysis conducted on saliva or tissue samples to obtain a genetic profile of identification characteristics.

"DNA sample" means a biological sample taken for DNA analysis.

"DNA sample tracking application" means an application that can be queried to determine whether an arrestee has a sample in the data bank.

"Document control number" means the number that is pre-printed on the fingerprint card (CCRE arrest forms SP179 and SP180) or assigned by Live-Scan.

"LIDS" means the Local Inmate Data System administered by the State Compensation Board.

"Qualifying offense" means an offense requiring a saliva or tissue sample to be taken upon arrest as described in § 19.2-310.2:1 of the Code of Virginia.

~~6 VAC 20-210-20.~~ *6 VAC 40-40-20.* Substantial compliance.

These regulations and the procedures set forth herein relating to the taking, handling and identification of saliva or tissue samples, and the completion or filing of any form or record prescribed by these regulations, are procedural in nature and not substantive. Substantial compliance therewith shall be deemed sufficient.

PART II.
QUALIFYING OFFENSE WARRANTS.

~~6 VAC 20-210-30.~~ *6 VAC 40-40-30.* Qualifying offense warrants.

All warrants for qualifying offenses shall contain the following language: "Take buccal sample if LIDS shows no DNA sample in Data Bank."

PART III.
DNA SAMPLE TRACKING APPLICATION.

~~6 VAC 20-210-40.~~ *6 VAC 40-40-40.* Use of LIDS.

An Internet accessible DNA sample tracking application developed by the State Compensation Board through LIDS shall be accessible through the State Compensation Board's website at www.scb.state.va.us. Access to the DNA sample tracking application shall be located under the website's "Restricted Access" section. User identifications and passwords shall be assigned to all law-enforcement agencies responsible for taking saliva or tissue samples from arrestees.

~~6 VAC 20-210-50.~~ *6 VAC 40-40-50.* Screening for duplicates.

Prior to taking the saliva or tissue sample, the LIDS DNA sample tracking application, or any such other DNA sample tracking application approved by the ~~division~~ *department* and permitted by the Code of Virginia, shall be queried to determine if there is a DNA sample already in the data bank for the arrestee. If the DNA sample tracking application indicates that a sample previously has been taken from the arrestee, no additional sample shall be taken. If the DNA sample tracking application indicates no sample has been taken from the arrestee, a saliva or tissue sample shall be taken in accordance with the procedures outlined in this chapter.

PART IV.
PROCEDURES FOR TAKING SALIVA OR TISSUE SAMPLE.

~~6 VAC 20-210-60.~~ *6 VAC 40-40-60.* Collection of samples.

The samples shall be collected during booking by the sheriff's office, police department or regional jail responsible for booking upon arrest.

~~6 VAC 20-210-70.~~ *6 VAC 40-40-70.* Buccal sample kits.

Saliva and tissue samples shall be collected using buccal sample kits specified and distributed by the ~~division~~ *department*. Each buccal sample kit shall contain a submission form, at least one buccal sample collection device and instructions on the procedure for using the device. These instructions shall be followed when collecting the buccal samples.

~~6 VAC 20-210-80.~~ *6 VAC 40-40-80.* When buccal sample kits are unavailable.

In circumstances where a buccal sample kit is unavailable, the ~~division~~ *department* may accept samples collected without using the buccal sample collection devices contained in the buccal sample kits. These samples shall be collected through

the use of sterile swabs and satisfy the sealing and labeling requirements of ~~6 VAC 20-210-90~~ *6 VAC 40-40-90*.

~~6 VAC 20-210-90.~~ *6 VAC 40-40-90.* Sealing and labeling samples.

All saliva and tissue samples collected shall be placed in sealed, tamper-resistant containers. Samples shall be submitted with the following identifying information: the arrestee's name, social security number, date of birth, race and gender; the name of the person collecting the samples; the date and place of collection; information identifying the arresting or accompanying officer; the qualifying offense; and the document control number (DCN).

~~6 VAC 20-210-100.~~ *6 VAC 40-40-100.* Transportation of samples to the ~~division~~ *department*.

Samples shall be transported to the ~~division~~ *department* in sealed containers not more than 15 days following collection. A copy of the arrest warrant or capias shall be included with the sample when it is transported to the ~~division~~ *department*. Samples may be hand delivered or mailed to the ~~division~~ *department*.

PART V.
NOTIFICATION OF FINAL DISPOSITION.

~~6 VAC 20-210-110.~~ *6 VAC 40-40-110.* Notification of final disposition.

Timely submission of the final disposition of a qualifying offense to CCRE by the clerk shall satisfy the requirement that the clerk notify the ~~division~~ *department* of final disposition of the criminal proceedings under § 19.2-310.2:1 of the Code of Virginia.

VA.R. Doc. No. R06-166; Filed January 4, 2006, 11:41 a.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Titles of Regulations: **9 VAC 5-50. New and Modified Stationary Sources (amending 9 VAC 5-50-250, 9 VAC 5-50-270, 9 VAC 5-50-280).**

9 VAC 5-80. Permits for Stationary Sources (amending 9 VAC 5-80-1100, 9 VAC 5-80-1110, 9 VAC 5-80-2000 through 9 VAC 5-80-2020, 9 VAC 5-80-2040 through 9 VAC 5-80-2070, 9 VAC 5-80-2090, 9 VAC 5-80-2110 [~~, 9 VAC 5-80-2120,~~ *through*] 9 VAC 5-80-2140, 9 VAC 5-80-2180, [~~9 VAC 5-80-2210~~ *9 VAC 5-80-2200*] through 9 VAC 5-80-2240; adding 9 VAC 5-80-1605 through 9 VAC 5-80-1865, 9 VAC 5-80-1925 through 9 VAC 5-80-1995, 9 VAC 5-80-2091, 9 VAC 5-80-2141 through 9 VAC 5-80-2144; repealing 9 VAC 5-80-1310, 9 VAC 5-80-1700 through 9 VAC 5-80-1970).

Statutory Authority: § 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 112, 165, 173, 182 and Title V); 40 CFR Parts 51, 61, 63, 70 and 72.

Effective Date: February 22, 2006.

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

Summary:

Article 8 (9 VAC 5-80-1605 et seq.) of Part II of 9 VAC 5-80 establishes a new source review (NSR) permit program whereby owners of sources locating in prevention of significant deterioration (PSD) areas are required to obtain a permit prior to construction of a new facility or modification (physical change or change in the method of operation) of an existing one. Article 9 (9 VAC 5-80-2000 et seq.) of Part II of 9 VAC 5-80 establishes an NSR permit program whereby owners of sources locating in nonattainment areas are required to obtain a permit prior to construction of a new facility or modification of an existing one.

Articles 8 and 9 apply to the construction or reconstruction of new major stationary sources or major modifications to existing ones. The owner must obtain a permit from the board prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the board to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the board's final action (approval or disapproval) on the permit depending on the results of the preconstruction review.

Article 8 requires a facility to use the best available control technology (BACT) to control emissions from the proposed facility, and requires a facility to control emissions from the proposed facility such that the air quality standards or increments are not violated. Article 9 requires a facility to use the lowest achievable emission rate (LAER) as the limit to control emissions from the proposed facility, and requires the facility to obtain emission reductions from existing sources to offset the proposed project's emissions increases.

EPA's new major NSR reform rule originally incorporated five main elements: (i) changes to the method for determining baseline actual emissions; (ii) changes to the method for determining emissions increases due to operational change; (iii) provisions to exclude pollution control projects (PCPs) from NSR; (iv) provisions for determining applicability of NSR requirements for units designated as Clean Units; and (v) provisions to allow for compliance with plantwide applicability limits (PALs). The current state NSR regulations have been amended in order to meet these new requirements.

The minor NSR regulation in Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5-80 was amended to remove provisions for PCPs.

In addition, Article 8 has been amended in order to be consistent with other NSR regulations. This consists of (i) removing federal enforceability of certain provisions that

should be enforceable by the state (toxics and odor) in order to prevent state-only terms and conditions from being designated as federally enforceable in a permit; (ii) deleting provisions covered elsewhere regarding circumvention, and reactivation and permanent shutdown; and (iii) adding provisions regarding changes to permits, administrative permit amendments, minor permit amendments, significant amendment procedures, and reopening for cause.

Finally, Article 4 (9 VAC 5-50-240 et seq.) of Part II of 9 VAC 5-50, which contains general requirements for new and modified stationary sources, has been revised to be consistent with the control technology provisions of Articles 8 and 9.

Substantive changes in Articles 8 and 9 since the amendments were proposed include: (i) the removal of provisions for Clean Unit and PCP, which have been vacated by a federal court and can no longer be legally implemented; (ii) revisions of the provisions concerning the effective date of the amendments; and (iii) amendments to the definitions of baseline actual emissions, projected actual emissions and effective date.

Article 4.
Standards of Performance for Stationary Sources (Rule 5-4).

9 VAC 5-50-250. Definitions.

A. For the purpose of the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-~~10 et seq.~~), unless otherwise required by context.

C. Terms defined.

"Best available control technology" means a standard of performance (including a visible emission standard) based on the maximum degree of emission reduction for any pollutant which would be emitted from any proposed stationary source which the board, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard in Article 5 (9 VAC 5-50-400 et seq.) of this part or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60. If the board determines that technological or economic limitations on the application of measurement methodology to particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead of requiring the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. In determining best available control technology for stationary sources subject to Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5 Chapter 80, consideration shall be given to the nature and amount of the new emissions, emission control efficiencies achieved in the industry for the source type, and the cost effectiveness of the incremental emission reduction achieved.

"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

~~"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80.~~

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of 9 VAC 5 Chapter 80.

9 VAC 5-50-270. Standard for major stationary sources (nonattainment areas).

A. For major stationary sources located in nonattainment areas, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from the lowest achievable emission rate, as reflected in any condition that may be placed upon the permit approval for the facility.

B. A major stationary source shall apply lowest achievable emission rate for each ~~qualifying~~ *regulated NSR* pollutant *(as defined in 9 VAC 5-80-2010)* that it would emit.

C. A major modification shall apply the lowest achievable emission rate to each new or modified emission unit which would increase the emissions of a ~~qualifying~~ *regulated NSR* pollutant.

D. In the case of a reconstruction, the determination of lowest achievable emission rate shall take into account any economic or technical limitations on compliance with applicable standards of performance (as specified in Article 5 (9 VAC 5-50-400 et seq.) of this chapter) which are inherent in the proposed replacements.

E. For phased construction projects, the determination of lowest achievable emission rate shall be reviewed, and modified as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate for the source.

9 VAC 5-50-280. Standard for major stationary sources (prevention of significant deterioration areas).

A. For major stationary sources located in prevention of significant deterioration areas, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility.

B. A major stationary source shall apply best available control technology for each ~~pollutant subject to regulation under the federal Clean Air Act~~ *regulated NSR pollutant (as defined in 9 VAC 5-80-1615)* that it would have the potential to emit in significant amounts.

C. A major modification shall apply best available control technology for each *regulated NSR* pollutant ~~subject to regulation under the federal Clean Air Act~~ for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of physical change or change in the method of operation in the unit.

D. For phased construction projects, the determination of best available control technology shall be reviewed, and modified as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Article 6.
Permits for New and Modified Stationary Sources.

9 VAC 5-80-1100. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the construction, reconstruction, relocation or modification of any stationary source.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9 VAC 5-80-1320. Exemption from the requirement to obtain a permit under this article shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in 9 VAC 5-80-1320 but which exceeds the applicability thresholds for any applicable emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40~~-10 et seq.~~) if it were an existing source or any applicable standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50~~-10 et seq.~~) shall be subject to the more restrictive of the provisions of either the emission standard in 9 VAC 5 Chapter 40 (9 VAC 5-40~~-10 et seq.~~) or the standard of performance in 9 VAC 5 Chapter 50 (9 VAC 5-50~~-10 et seq.~~).

D. The fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article. The provisions of this article do not apply to a stationary source or modification that would be subject to this article only if fugitive emissions, to the extent quantifiable, are considered in calculating the actual emissions of the source or net emissions increase.

E. An affected facility subject to Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 shall not be exempt from the provisions of this article, except where:

1. The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50; or

2. The affected facility is constructed, reconstructed or modified at a stationary source which has a current permit for similar affected facilities that requires compliance with emission standards and other requirements that are not less stringent than the provisions of Article 5 (9 VAC 5-50-400 et seq.) of 9 VAC 5 Chapter 50.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

G. ~~Except as provided in 9 VAC 5-80-1310,~~ No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources," "new or modified sources, or both" or "stationary sources" are applicable to the construction, reconstruction or modification of all stationary sources (including major stationary sources and

major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction or reconstruction of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-1120 F.

9 VAC 5-80-1110. 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 meanings given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions (expressed in tons per year) of a pollutant from a stationary source or portion thereof, as determined in accordance with the provisions of this definition.

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period that precedes the particular date and that is representative of normal source operation. The board ~~shall~~ *will* allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

2. The board may presume that source-specific allowable emissions for the emissions unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

1. Applicable emission standards;

2. The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and

3. Any other applicable emission limitation, including those with a future compliance date.

"Applicable federal requirement" means all of [*, but not limited to,*] the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

3. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

12. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements and (ii) requirements

regarding increments or visibility as provided in Article 8 (~~9 VAC 5-80-1700~~ *9 VAC 5-80-1605* et seq.) of this part.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Commence," as applied to the construction, reconstruction or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction, reconstruction or modification of the unit, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, reconstruction or modification of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection or installation of an emissions unit.

"Emergency" means, in the context of 9 VAC 5-80-1320 B 2, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emissions cap" means any limitation on the rate of emissions of any ~~regulated~~ air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent;

2. Contain a legal obligation for the owner to adhere to the terms and conditions;

3. Do not allow a relaxation of a requirement of the implementation plan;

4. Are technically accurate and quantifiable;

5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9 VAC 5-80-1180 and other regulations of the board; and

6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of new sources or expansions to existing ones in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9 VAC 5-60-90 et seq.) of 9 VAC 5 Chapter 60.

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT approval prior to the construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9 VAC 5-60-120 et seq.) of ~~(~~9 VAC 5 Chapter 60.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR Part 51.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the EPA into an implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that the EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9 VAC 5-80-1250.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Major modification" means any modification defined as such in ~~9 VAC 5-80-1710 C~~ *9 VAC 5-80-1615 C* or 9 VAC 5-80-2010 C, as may apply.

~~"Major new source review (major NSR program)" means a program for the preconstruction review of changes which are subject to review as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

~~"Minor new source review (minor NSR program)" means a program for the preconstruction review of changes which are subject to review as new or modified sources and which do not qualify as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that do not qualify for review under the major new source review program; (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.) of this part.

"Modification" means any physical change in, change in the method of operation of, or addition to, a stationary source that would result in a net emissions increase of any regulated air pollutant emitted into the atmosphere by the source or which results in the emission of any regulated air pollutant into the atmosphere not previously emitted, except that the following shall not, by themselves (unless previously limited by permit conditions), be considered modifications under this definition:

1. Maintenance, repair and replacement which the board determines to be routine for a source type and which does not fall within the definition of ~~reconstruction~~ *"reconstruction"*;

2. An increase in the production rate of a unit, if that increase does not exceed the operating design capacity of that unit;

3. An increase in the hours of operation;

4. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the source was designed to accommodate that alternative use. A source shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;

5. Use of an alternative fuel or raw material if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the source was not designed to accommodate that alternative use and the owner demonstrates to the board that as a result of trial burns at the source or other sources or of other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased;

6. The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws and regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions; or

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or

device is not necessary for the source to comply with any applicable air pollution control laws or regulations.

"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the implementation plan.

"Net emissions increase" means the amount by which the sum of the following exceeds zero: (i) any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source and (ii) any other increases and decreases in actual emissions at the source that are concurrent with the particular change and are otherwise creditable. An increase or decrease in actual emissions is concurrent with the increase from the particular change only if it is directly resultant from the particular change. An increase or decrease in actual emissions is not creditable if the board has relied on it in issuing a permit for the source under the new source review program and that permit is in effect when the increase in actual emissions from the particular change occurs. Creditable increases and decreases shall be federally enforceable or enforceable as a practical matter.

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

~~"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.~~

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);

2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if:

1. The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act; or

2. The engine otherwise included in subdivision 3 above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

~~"Pollution control project" means physical or operational changes whose primary function is the reduction of emissions of targeted regulated air pollutants but which results in an increase in emissions of nontargeted regulated air pollutants that qualify as a major modification as defined in 9 VAC 5-80-1710 or 9 VAC 5-80-2010. The fabrication, manufacture or production of pollution control/prevention equipment and inherently less polluting fuels or raw materials is not a pollution control project. A pollution control project shall be so designated by the board.~~

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;

2. The replacement significantly extends the life of the emissions unit; and

3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and

4. Any economic or technical limitations on compliance with applicable standards of performance which are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound;

2. Any pollutant for which an ambient air quality standard has been promulgated;

3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;

4. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under 40 CFR Part 63; or

5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, reconstruction, modification or operation of a stationary source, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must [~~impact upon~~ *affect*] the same general areas as the stationary source which causes the secondary emissions. Secondary emissions include emissions from any off site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State enforceable" means all limitations and conditions which are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

~~"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit, and practicable enforceability.~~

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9 VAC 5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Synthetic minor" means a stationary source whose potential to emit is constrained by state enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

~~"Targeted regulated air pollutants" means regulated air pollutants that are reduced as a result of physical or operational changes whose primary function is the reduction of emissions of regulated air pollutants to meet an applicable federal requirement, exclusive of the new source review program.~~

9 VAC 5-80-1310. ~~Pollution control projects.~~ *(Repealed.)*

~~A. This section shall apply only to pollution control projects at major stationary sources and shall be the administrative mechanism, along with the other applicable provisions of this~~

~~article, for issuing pollution control project permits. This section shall not apply to air pollution controls and emissions associated with a proposed new stationary source or emissions unit.~~

~~B. The approval of a permit for a proposed project under this section constitutes a determination by the board that the project is a pollution control project and qualifies for an exclusion from review under Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

~~C. Notwithstanding the definitions for major modification and net emissions increase as defined in 9 VAC 5-80-1710 and 9 VAC 5-80-2010, any physical or operational change consistent with the terms and conditions of a pollution control project permit issued under this section (i) shall not constitute a major modification for the pollutants covered by the pollution control project and (ii) qualifies for the exclusion in subsection B of this section.~~

~~D. No owner or other person shall begin construction of a proposed project that may qualify as a pollution control project without a permit issued pursuant to this section.~~

~~E. The provisions of this article shall apply to any pollution control project, except that 9 VAC 5-50-260 shall not apply. This subsection shall not be construed as preventing the board from prescribing any control measure it finds necessary to make a determination under subdivision H 4 of this section.~~

~~F. Approval of a pollution control project permit shall not provide the owner the license to engage in any activity that (i) will cause emissions from the stationary source that result in violations of or exacerbate violations of, or interfere with the attainment and maintenance of, any ambient air quality standard or (ii) is not in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan.~~

~~G. The owner of a stationary source may request the board to approve a pollution control project permit for any one or more pollutants by submitting an application that meets the following criteria:~~

~~1. The application shall meet the requirements of 9 VAC 5-80-1140.~~

~~2. The application shall contain the information required by 9 VAC 5-80-1150.~~

~~3. Where a significant increase in emissions has not been previously analyzed for its air quality impact and raises the possibility of (i) a violation of an ambient air quality standard or prevention of significant deterioration increment in 9 VAC 5-80-1730 or (ii) adversely affecting visibility or other air quality related values, the application shall include an air quality analysis sufficient to demonstrate the impact of the project.~~

~~4. In the case of nonattainment areas, the application shall include legally enforceable mechanisms to ensure offsetting emissions reductions will be available for any significant increase in a nonattainment pollutant from the pollution control project.~~

~~H. The board may approve a pollution control project for a stationary source in accordance with this subsection.~~

~~1. In considering this request, the board will afford the public an opportunity to review and comment on the source's application for this exclusion in accordance with 9 VAC 5-80-1170. The board will provide a copy of the public notice required by 9 VAC 5-80-1170 F, the permit, and any preliminary review and analysis documents to the regional administrator, U.S. Environmental Protection Agency, prior to promulgation of the public notice required by 9 VAC 5-80-1170 F.~~

~~2. The board will determine that the proposed pollution control project, after consideration of the reduction in the targeted regulated air pollutant and any collateral effects, will be environmentally beneficial. A project that would result in an unacceptable increased risk due to the release of air toxics shall not be considered environmentally beneficial. Unless there is reason to believe otherwise, the board will presume that the projects by their nature will result in reduced risk from air toxics. If a significant collateral increase of a nonattainment pollutant resulting from a pollution control project is not offset on at least a one to one ratio, the pollution control project shall not qualify as environmentally beneficial. Pollution prevention projects that increase utilization rate may not qualify as environmentally beneficial. Therefore, the emissions rate after the change would be the product of the new emissions rate times the existing utilization rate. However, if the increased utilization results from debottlenecking, these projects may qualify, but all the debottlenecked emissions increases should be viewed as collateral and evaluated to determine whether the project is still environmentally beneficial and meets all applicable safeguards.~~

~~3. The board will determine that the proposed pollution control project will not (i) cause or contribute to a violation of an ambient air quality standard or prevention of significant deterioration increment in 9 VAC 5-80-1730 or (ii) adversely affect visibility or other air quality related values. The analysis for this determination will include a case by case assessment of the pollution control project's net emissions and overall impact on the environment and the specific impact.~~

~~4. With regard to the increase in nontargeted regulated air pollutants, the board will determine that the collateral increase will be minimized and will not result in environmental harm.~~

~~5. The board will include in the permit terms and conditions to ensure that adverse collateral environmental impacts from the project are identified, minimized, and, where appropriate, mitigated.~~

~~6. The board will not approve as a pollution control project any project that constitutes the replacement of an existing emissions unit with a newer or different one (albeit more efficient and less polluting) or the reconstruction of an existing emissions unit.~~

Article 8.
Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas.

9 VAC 5-80-1605. Applicability.

A. The provisions of this article apply to the construction of any new major stationary source or any project at an existing major stationary source.

B. The provisions of this article apply in prevention of significant deterioration areas designated in 9 VAC 5-20-205.

C. *At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not yet commenced on the source or modification.*

D. Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new or modified sources" or "stationary sources" apply to the construction [~~*or modification*~~] of *all major stationary sources and major modifications.*

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-1625 G.

[~~*E. For purposes of applying subsection F of this section and other provisions of this article, the effective date of the amendments adopted by the board on [insert adoption date] shall be the date 30 days after the date on which a notice is published in the Virginia Register acknowledging that the administrator has approved the amendments adopted by the board on [insert adoption date].*~~

~~*F.*~~ *E.*] *Unless otherwise approved by the board or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9 VAC 5-80-1775 A prior to* [~~*the effective date of the amended article*~~ *February 22, 2006*]. *Any permit applications that have not been determined to be complete as of* [~~*the effective date of the amendments*~~ *February 22, 2006,*] *shall be subject to the new provisions.*

[~~*G.*~~ *F.*] *Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.*

[~~*H.*~~ *G.*] *The requirements of this article will be applied in accordance with the following principles:*

1. Except as otherwise provided in [~~*subsections I and J*~~ *subsection H*] *of this subsection, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.*

2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 [~~*through 6*~~ *and 4*] *of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.*

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, is significant for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project is significant for that pollutant.

[~~*5. The emission test for projects that involve Clean Units shall be conducted as provided in this subdivision. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.*~~

~~*6. The hybrid test for projects that involve multiple types of emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 through 5 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit is significant for that*~~

~~*pollutant. For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 5 of this subsection for the Clean Unit.*~~

~~*I.*~~ *H.*] *For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9 VAC 5-80-1865.*

[~~*J. An owner undertaking a PCP shall comply with the requirements under 9 VAC 5-80-1855.*~~

~~*K.*~~ *I.*] *The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 and Article 1 (9 VAC 5-60-60 et seq.) and Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.*

[~~*L.*~~ *J.*] *The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9 VAC 5-20-21.*

9 VAC 5-80-1615. Definitions.

A. As used in this article, all words or 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.

B. For the purpose of this article, 9 VAC 5-80-280 and 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:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9 VAC 5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;

b. The applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of [*, but not limited to,*] *the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):*

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to

§ 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required under this article, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. [*The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.*]

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the board has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9 VAC 5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the

satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 μg/m^3 (annual average) of the pollutant for which the minor source baseline date is established.

b. Area redesignations under § 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(1) Establishes a minor source baseline date; or

(2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) In the case of nitrogen dioxide, February 8, 1988.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

(1) In the case of particulate matter and sulfur dioxide, August 7, 1977; and

(2) In the case of nitrogen dioxide, February 8, 1988.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit

that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

[~~*"Clean unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, is complying with such BACT/LAER requirements, and qualifies as a Clean Unit pursuant to 9 VAC 5-80-1835; any emissions unit that has been designated by the board as a Clean Unit, based on the criteria in 9 VAC 5-80-1845 C 1 through 4; or any emissions unit that has been designated by the administrator as a Clean Unit in accordance with 40 CFR 52.21(y)(3)(i) through (iv).*~~]

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

[~~*"Effective date of this revision" means the effective date determined in accordance with 9 VAC 5-80-1605 E.*~~]

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a

steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under §110 of the federal Clean Air Act;

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3

(9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9 VAC 5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant [*for nonattainment areas*] *in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a* [~~1~~ *(1)*] *of the definition of "major stationary source* [~~,~~]*"* [*in 9 VAC 5-80-2010 C.*]

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.

(3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter; and

(c) The owner demonstrates to the board that as a result of trial burns at the source or other sources or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) [~~*The addition, replacement or use of a PCP at an existing emissions unit meeting the requirements of 9 VAC 5-80-1855. A replacement control technology must provide more effective emission control than that of the replaced control technology to qualify for this exclusion. (9)*~~] *The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:*

(a) The applicable implementation plan, and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

[~~*(10)*~~ *(9)*] *The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.*

[~~*(11)*~~ *(10)*] *The reactivation of a very clean coal-fired electric utility steam generating unit.*

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9 VAC 5-80-1865 for a PAL for that pollutant.

Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of a regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants.

(x) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants.

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plants.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants.

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) which do not qualify for review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9 VAC 5-80-1605 [~~*H*~~ *G*]*; and*

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; [*and*] *(ii) the board has not relied on it in issuing a permit for the source under this chapter (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs* [~~*; and (iii) the increase or decrease in emissions did not occur at a Clean Unit except as provided in 9 VAC 5-80-1835 H and 9 VAC 5-80-1845 J*~~].

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change [~~*; and*~~ *.*]

[~~*(4) The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under 40 CFR 52.21(y), 9 VAC 5-80-1845 or 9 VAC 5-80-2142. That is, once an emissions unit has been designated as a Clean Unit, the owner cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (i.e., must not use that reduction in a "netting analysis" for another emissions unit). However, any new emission reductions that were not relied upon in a PCP excluded pursuant to 9 VAC 5-80-1855 or for a Clean Unit designation are creditable to the extent they meet the requirements in 9 VAC 5-80-1855 F 4 for the PCP and 9 VAC 5-80-1835 H or 9 VAC 5-80-1845 J for a Clean Unit.*~~]

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9 VAC 5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the major NSR permit, the minor NSR permit, the state operating permit, or the federal operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

[~~*"Pollution control project" or "PCP" means any activity, set of work practices or project (including pollution prevention) undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. The following projects are presumed to be environmentally beneficial pursuant to 9 VAC 5-80-1855 B 1. Projects not listed in this definition may qualify for a case-specific PCP exclusion pursuant to the requirements of 9 VAC 5-80-1855 B and E.*~~

~~*a. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.*~~

~~*b. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.*~~

~~*c. Flue gas recirculation, low-NO_x burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x.*~~

~~*d. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this article, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.*~~

~~*e. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:*~~

~~*(1) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05% sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05% sulfur #2 diesel);*~~

~~*(2) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;*~~

~~*(3) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;*~~

~~*(4) Switching from coal to #2 fuel oil (0.5% maximum sulfur content); and*~~

~~*(5) Switching from high sulfur coal to low sulfur coal (maximum 1.2% sulfur content).*~~

~~*f. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:*~~

~~*(1) The productive capacity of the equipment is not increased as a result of the activity or project.*~~

~~*(2) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS. To make this determination, the following procedures shall be conducted:*~~

~~*(a) Determine the ODP of the substances by consulting 40 CFR Part 82, Subpart A, Appendices A and B.*~~

~~*(b) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of*~~

~~usage within the past 10 years) by the ODP of the replaced ODS.~~

~~(c) Calculate the projected ODP-weighted amount by multiplying the projected annual usage of the new substance by its ODP.~~

~~(d) If the value calculated in subdivision (b) is more than the value calculated in subdivision (c), then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~

~~"Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.~~]

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally [~~and state~~] *enforceable* [*or enforceable*] *as a practical matter* [*by the state*]*.*

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; [~~and~~ *or*]

[~~c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or~~

~~d.~~ *c.*] *In lieu of using the method set out in subdivisions a* [~~through c~~ *and b*] *of this definition, may elect to use the emissions unit's potential to emit, in tons per year.*

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

c. Is equipped with low-NO_X burners prior to the time of commencement of operations following reactivation; and

d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

a. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds are precursors for ozone);

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or

d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The board may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	*Emissions Rate*
Carbon Monoxide	*100 tons per year (tpy)*
Nitrogen Oxides	*40 tpy*
Sulfur Dioxide	*40 tpy*
Particulate Matter (TSP)	*25 tpy*
PM_{10}	*15 tpy*
[$PM_{2.5}$	*10 tpy]*
Ozone	*40 tpy of volatile organic compounds*
Lead	*0.6 tpy*
Fluorides	*3 tpy*
Sulfuric Acid Mist	*7 tpy*
Hydrogen Sulfide (H_2S)	*10 tpy*
Total Reduced Sulfur (including H_2S)	*10 tpy*
Reduced Sulfur Compounds (including H_2S)	*10 tpy*
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	*3.5×10^{-6} tpy*
Municipal waste combustor metals (measured as particulate matter)	*15 tpy*
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	*40 tpy*
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	*50 tpy*

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and

opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9 VAC 5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

9 VAC 5-80-1625. General.

A. No owner or other person shall begin actual construction of any new major stationary source or major modification without first obtaining from the board a permit to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. The requirements of this article apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this article otherwise provides.

C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the board to relocate the unit.

D. Prior to the decision of the board, all permit applications will be subject to a public comment period, a public hearing will be held as provided in 9 VAC 5-80-1775.

E. [*If the board and the owner make a mutual determination that it facilitates the efficient processing and issuing of permits for projects that are to be constructed concurrently,*] *the board may combine the requirements of and the permits for emissions units within a stationary source subject to the* [*major*] new *source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the* [*major*] *new source review program be combined into one application.*

F. The board may [*not*] *incorporate the terms and conditions of a state operating permit* [*, a minor new source review permit, or a PAL permit*] *into a permit issued pursuant to this article.* [~~*The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed.*~~]

G. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) of 9 VAC 5 Chapter 40, Article 2 (9 VAC 5-50-130 et seq.) of 9 VAC 5 Chapter 50, Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60, or Article 5 (9 VAC 5-60-300) of 9 VAC 5 Chapter 60.

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

H. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9 VAC 5-80-1635. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Class I	
Particulate matter:	
PM_{10}, annual arithmetic mean	*4*
PM_{10}, 24 hour maximum	*8*
Sulfur dioxide:	
Annual arithmetic mean	*2*
24-hour maximum	*5*
Three-hour maximum	*25*
Nitrogen dioxide:	
Annual arithmetic mean	*2.5*
Class II	
Particulate matter:	
PM_{10}, annual arithmetic mean	*17*
PM_{10}, 24 hour maximum	*30*
Sulfur dioxide:	
Annual arithmetic mean	*20*
24-hour maximum	*91*
Three-hour maximum	*512*
Nitrogen dioxide:	
Annual arithmetic mean	*25*
Class III	
Particulate matter:	
PM_{10}, annual geometric mean	*34*
PM_{10}, 24 hour maximum	*60*
Sulfur dioxide:	
Annual arithmetic mean	*40*
24-hour maximum	*182*
Three-hour maximum	*700*
Nitrogen dioxide:	
Annual arithmetic mean	*50*

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

9 VAC 5-80-1645. Ambient air ceilings.

No concentration of a pollutant shall exceed:

1. The concentration permitted under the secondary ambient air quality standard, or

2. The concentration permitted under the primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

9 VAC 5-80-1655. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures acceptable to the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

B. For projects with phased development, a single application may be submitted covering the entire project.

C. Any application form, report, or certification submitted to the board shall comply with the provisions of 9 VAC 5-20-230.

9 VAC 5-80-1665. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9 VAC 5-80-1675. Compliance determination and verification by performance testing.

A. Compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

B. Testing required by this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

C. The requirements of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

D. The provisions for the granting of waivers under subsection C of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the board to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.

9 VAC 5-80-1685. Stack heights.

A. The provisions of 9 VAC 5-50-20 H apply.

B. Prior to issuing a permit with a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition in 9 VAC 5-10-20, the board will notify the public of the availability of the demonstration study specified in subdivision 3 of the GEP definition and will provide opportunity for public hearing on it using the procedures set forth in 9 VAC 5-80-1775.

9 VAC 5-80-1695. Exemptions.

A. The requirements of this article shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

a. Coal cleaning plants (with thermal dryers).

b. Kraft pulp mills.

c. Portland cement plants.

d. Primary zinc smelters.

e. Iron and steel mills.

f. Primary aluminum ore reduction plants.

g. Primary copper smelters.

h. Municipal incinerators capable of charging more than 250 tons of refuse per day.

i. Hydrofluoric acid plants.

j. Sulfuric acid plants.

k. Nitric acid plants.

l. Petroleum refineries.

m. Lime plants.

n. Phosphate rock processing plants.

o. Coke oven batteries.

p. Sulfur recovery plants.

q. Carbon black plants (furnace process).

r. Primary lead smelters.

s. Fuel conversion plants.

t. Sintering plants.

u. Secondary metal production plants.

v. Chemical process plants.

w. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

y. Taconite ore processing plants.

z. Glass fiber processing plants.

aa. Charcoal production plants.

bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would [~~*impact*~~ *affect*] *no class I area and no area where an applicable increment is known to be violated; and*

d. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9 VAC 5-20-204.

C. The requirements of 9 VAC 5-80-1715, 9 VAC 5-80-1735, and 9 VAC 5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would [~~*impact*~~ *affect*] *no class I area and no area where an applicable increment is known to be violated, and*

2. Would be temporary.

D. The requirements of 9 VAC 5-80-1715, 9 VAC 5-80-1735, and 9 VAC 5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The board may exempt a proposed major stationary source or major modification from the requirements of 9 VAC 5-80-1735 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide - 575 µg/m^3, 8-hour average

Nitrogen dioxide - 14 µg/m^3, annual average

Particulate matter - 10 µg/m^3 of PM_{10}, 24-hour average

Sulfur dioxide - 13 µg/m^3, 24-hour average

Ozone[1]

Lead - 0.1 µg/m^3, 3-month average

Fluorides - 0.25 µg/m^3, 24-hour average

Total reduced sulfur - 10 µg/m^3, 1-hour average

Hydrogen sulfide - 0.2 µg/m^3, 1-hour average

Reduced sulfur compounds - 10 µg/m^3, 1-hour average; or

1. No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

9 VAC 5-80-1700. ***(Repealed.)***

9 VAC 5-80-1705. Control technology review.

A. A major stationary source or major modification shall meet each applicable emissions limitation under the implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61 and 63.

B. A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

C. A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

D. For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time that occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

9 VAC 5-80-1710. ***(Repealed.)***

9 VAC 5-80-1715. Source impact analysis.

A. The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any ambient air quality standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

B. The following applies to any new major stationary source or major modification if it would cause or contribute to a violation of any ambient air quality standard.

1. A new major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable air quality standard:

Pollutant	*Annual*	*Averaging time (hours)*			
		24	*8*	*3*	*1*
SO_2	*1.0 $\mu g/m^3$*	*5.0 $\mu g/m^3$*		*25.0 $\mu g/m^3$*	
PM_{10}	*1.0 $\mu g/m^3$*	*5.0 $\mu g/m^3$*			
NO_2	*1.0 $\mu g/m^3$*				
CO			*500 $\mu g/m^3$*		*2000 $\mu g/m^3$*

2. A proposed new major stationary source or major modification may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the new major stationary source or major modification would otherwise cause or contribute to a violation of any ambient air quality standard. In the absence of such emission reductions, the board will deny the proposed construction.

3. The requirements of this subsection do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9 VAC 5-20-204.

9 VAC 5-80-1720. ***(Repealed.)***

9 VAC 5-80-1725. Air quality models.

A. All applications of air quality modeling involved in this article shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W to 40 CFR Part 51.

B. Where an air quality impact model specified in Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator shall be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to notice and opportunity for public comment under procedures developed in accordance with 9 VAC 5-80-1775.

9 VAC 5-80-1730. ***(Repealed.)***

9 VAC 5-80-1735. Air quality analysis.

A. Preapplication analysis [*- shall be conducted as follows:*]

1. Any application for a permit under this article shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

a. For the source, each pollutant that it would have the potential to emit in a significant amount;

b. For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the board determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the board determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

5. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of § IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

B. [~~*Post-construction monitoring.*~~] *The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the board determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.*

C. [~~*Operation of monitoring stations.*~~] *The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this section.*

9 VAC 5-80-1740. ***(Repealed.)***

9 VAC 5-80-1745. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this article.

A. With respect to a source or modification to which 9 VAC 5-80-1705, 9 VAC 5-80-1715, 9 VAC 5-80-1735, and 9 VAC 5-80-1755 apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2. A detailed schedule for construction of the source or modification;

3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

B. Upon request of the board, the owner shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area the source or modification would affect.

9 VAC 5-80-1750. ***(Repealed.)***

9 VAC 5-80-1755. Additional impact analyses.

A. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

B. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

C. The board may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the board deems necessary and appropriate.

9 VAC 5-80-1760. ***(Repealed.)***

9 VAC 5-80-1765. Sources affecting federal class I areas - additional requirements.

A. [~~*Notice to administrator.*~~] *The board shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:*

1. Notification of the permit application status as provided in [~~*subsection A of*~~] *9 VAC 5-80-1775* [*A*]*.*

2. Notification of the public comment period on the application as provided in [~~*subsection F 5 of*~~] *9 VAC 5-80-1775* [*F 5*]*.*

3. Notification of the final determination on the application and issuance of the permit as provided in [~~*subsection F 9 of*~~] *9 VAC 5-80-1775* [*F 9*]*.*

4. Notification of any other action deemed appropriate by the board.

B. [~~*Notice to federal land managers.*~~] *The board shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under* [~~*subsection F of*~~] *9 VAC 5-80-1775* [*F*]*, and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.*

C. [~~*Federal land manager.*~~] *The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.*

D. [~~*Visibility analysis.*~~] *The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subsection B of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board shall, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.*

E. [~~*Denial - impact on air quality related values.*~~] *The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.*

F. [~~*Class I variances.*~~] *The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and so certifies, the board may, provided that the applicable requirements of this article are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:*

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Particulate matter:	
PM_{10}, annual geometric mean	*17*
PM_{10}, 24 hour maximum	*30*
Sulfur dioxide:	
Annual arithmetic mean	*20*
24-hour maximum	*91*
Three-hour maximum	*325*
Nitrogen dioxide:	
Annual arithmetic mean	*25*

G. [~~*Sulfur dioxide variance by governor with federal land manager's concurrence.*~~] *The owner of a proposed source or modification that cannot be approved under subsection F of this section may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the board shall issue a permit to such source or modification pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.*

H. [~~*Variance by the governor with the president's concurrence.*~~] *In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.*

I. [~~*Emission limitations for presidential or gubernatorial variance.*~~] *In the case of a permit issued pursuant to subsection G or H of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:*

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Period of exposure	*Low terrain areas*	*High terrain areas*
24-hour maximum	*36*	*62*
3-hour maximum	*130*	*221*

9 VAC 5-80-1770. ***(Repealed.)***

9 VAC 5-80-1775. Public participation.

A. Within 30 days after receipt of an application, the board will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the board in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application shall be, for the purpose of this article, the date on which the board received all required

information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. No later than 30 days after receiving the initial determination notification required under subsection A of this section, the applicant shall notify the public about the proposed source as required in subsection C of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection D of this section.

C. The public notice required under subsection B of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

D. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board will attend and provide information and answer questions on the permit application review process.

E. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection C of this section and for providing the informational briefing as required in subsection D of this section.

F. Within one year after receipt of a complete application, the board will make a final determination on the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

2. Make available in at least one location in each air quality control region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted (exclusive of confidential information under 9 VAC 5-170-60), a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. If appropriate, hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board will notify the public of the time and place of the briefing, by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification will be published at least 30 days prior to the day of the briefing.

4. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification will contain a statement of the estimated local impact of the proposed source or modification, which at a minimum will provide information regarding specific pollutants and the total quantity of each which may be emitted, and will list the type and quantity of any fuels to be used. The notification will be published at least 30 days prior to the day of the hearing. Written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

5. Send a copy of the notice of public comment to the applicant, the administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: local air pollution control agencies, the chief elected official and chief administrative officer of the city and county where the source or modification would be located and any other locality particularly affected, the planning district commission, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

6. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

7. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The board will consider the applicant's response in making a final decision. The board will make all comments available for public inspection in the same locations where the board made available preconstruction information relating to the proposed source or modification.

8. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this article.

9. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the board made available preconstruction information and public comments relating to the source or modification.

G. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board will process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

9 VAC 5-80-1780. *(Repealed.)*

9 VAC 5-80-1785. Source obligation.

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9 VAC 5-80-1985.

B. The provisions of this subsection apply to projects at an existing emissions unit at a major stationary source (other than projects at a [~~*Clean Unit or at a*~~] *source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a* [~~*through c*~~ *and b*] *of the definition of "projected actual emissions" for calculating projected actual emissions.*

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

a. A description of the project;

b. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, [~~*the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded,*~~] *and any netting calculations, if applicable.*

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the board. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the board before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision 1 b of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the board within 60 days after the end of each calendar year during which records must be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the board if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the board within 60 days after the end of such calendar year. The report shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and

c. Any other information that the owner wishes to include in the report (for example, an explanation as to why the emissions differ from the preconstruction projection).

C. The owner of the source shall make the information required to be documented and maintained pursuant to subsection B of this section available for review upon a request for inspection by the board or the general public pursuant to the requirements contained in 9 VAC 5-170-60.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the board no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the board to indicate that a given project subject to subsection B is a part of a major modification that resulted in a significant emissions increase, the board will proceed as if the owner is in violation of 9 VAC 5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. [*Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the board before beginning actual construction.*]

9 VAC 5-80-1790. *(Repealed.)*

9 VAC 5-80-1795. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 USC 4321), review conducted pursuant to this article shall be coordinated by the administrator with the broad environmental reviews under that Act and under § 309 of the federal Clean Air Act to the maximum extent feasible and reasonable.

9 VAC 5-80-1800. *(Repealed.)*

9 VAC 5-80-1805. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state that the governor of an affected state or Indian governing body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected state or Indian reservation, the governor or Indian governing body may request the administrator to enter into negotiations with the persons involved to resolve such dispute. If requested by any state or Indian governing body involved, the administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the persons involved do not reach agreement, the administrator shall resolve the dispute. The administrator's determination, or the results of agreements reached through other means, shall become part of the applicable implementation plan and shall be enforceable as part of such plan.

9 VAC 5-80-1810. *(Repealed.)*

9 VAC 5-80-1815. Interstate pollution abatement.

A. The owner of each source or modification, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any air quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels that may be affected by such source at least 60 days prior to the date of commencement of construction.

B. Any state or political subdivision may petition the administrator for a finding that any source or modification emits or would emit any air pollutant in amounts that will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

9 VAC 5-80-1820. *(Repealed.)*

9 VAC 5-80-1825. Innovative control technology.

A. Prior to the close of the public comment period under 9 VAC 5-80-1775, an owner of a proposed major stationary source or major modification may request, in writing, that the board approve a system of innovative control technology.

B. The board, with the consent of the governor(s) of affected state(s), will determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

2. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under 9 VAC 5-80-1705 B by a date specified by the board. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

3. The source or modification would meet the requirements of 9 VAC 5-80-1705 and 9 VAC 5-80-1715 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the board;

4. The source or modification would not, before the date specified by the board:

[~~(a)~~ a.] Cause or contribute to a violation of an applicable ambient air quality standard; or

[~~(b) Impact~~ b. Affect] any area where an applicable increment is known to be violated;

5. All other applicable requirements including those for public participation have been met; and

6. The provisions of 9 VAC 5-80-1765 (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

C. The board will withdraw any approval to employ a system of innovative control technology made under this article, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3. The board decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

D. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection C of this section, the board may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

9 VAC 5-80-1830. ***(Repealed.)***

9 VAC 5-80-1835. **[~~*Clean Unit Test for emissions units that are subject to BACT or LAER.*~~** ***(Reserved.)*** **]**

[~~*A. An owner of a major stationary source may use the Clean Unit Test according to the provisions of this section to determine whether emissions increases at a Clean Unit are part of a project that is a major modification. The provisions of this section apply to any emissions unit for which the board has issued a major NSR permit within the last five years.*~~

~~*B. The general provisions set forth in this subsection shall apply to Clean Units.*~~

~~*1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection D of this section) and before the expiration date (as determined in accordance with subsection E of this section) will be considered to have occurred while the emissions unit was a Clean Unit.*~~

~~*2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT and the project would not alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision F 4 of this section, the emissions unit remains a Clean Unit.*~~

~~*3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT or the project would alter any physical or operational characteristics that formed the basis for the BACT determination as specified in subdivision F 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 3 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.*~~

~~*4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-1605 H 1 through 4 and 9 VAC 5-80-1605 H 6 as if the emissions unit is not a Clean Unit.*~~

~~*C. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 and 2 of this subsection. After the original Clean Unit designation expires in accordance with subsection E of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 3 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-1845. To requalify as a Clean Unit under subdivision 3 of this subsection, the emissions unit shall obtain a new major NSR permit issued in accordance with this article and meet all the criteria in subdivision 3 of this subsection. The Clean Unit designation applies individually for each pollutant emitted by the emissions unit.*~~

~~*1. The emissions unit shall have received a major NSR permit within the last five years. The owner shall maintain and be able to provide information that would demonstrate that this permitting requirement is met.*~~

~~*2. Air pollutant emissions from the emissions unit shall be reduced through the use of qualifying air pollution control technology (which includes pollution prevention or work practices) that meets both of the following requirements:*~~

~~*a. The control technology achieves the BACT or LAER level of emissions reductions as determined through issuance of a major NSR permit within the past five years. However, the emissions unit is not eligible for the Clean Unit designation if the BACT determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.*~~

~~*b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.*~~

~~*3. In order to requalify for the Clean Unit designation, the emissions unit shall obtain a new major NSR permit that requires compliance with the current day BACT (or LAER), and the emissions unit shall meet the requirements in subdivisions 1 and 2 of this subsection.*~~

~~*D. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project at the emissions unit is a major modification) is determined according to one of the following:*~~

~~*1. For original Clean Unit designation and for emissions units that requalify as Clean Units by implementing new control technology to meet current day BACT, the effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the effective date of this revision.*~~

~~*2. For emissions units that requalify for the Clean Unit designation using an existing control technology, the effective date is the date the new major NSR permit is issued.*~~

~~*E. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to one of the following:*~~

~~*1. For any emissions unit that automatically qualifies as a Clean Unit under subdivisions C 1 and 2 of this section or requalifies by implementing new control technology to meet current day BACT under subdivision C 3 of this section, the Clean Unit designation expires five years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner fails*~~

to comply with the provisions for maintaining the Clean Unit designation in subsection G of this section.

2. For any emissions unit that requalifies as a Clean Unit under subdivision C 3 of this section using an existing control technology, the Clean Unit designation expires five years after the effective date; or, it expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection G of this section.

F. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable federal operating permit program, but no later than when the federal operating permit is renewed, the federal operating permit for the major stationary source shall include the following terms and conditions:

1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies.

2. If the effective date is not known when the Clean Unit designation is initially recorded in the federal operating permit (e.g., because the air pollution control technology is not yet in service), the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.

3. If the expiration date is not known when the Clean Unit designation is initially recorded into the federal operating permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.

4. All emission limitations and work practice requirements adopted in conjunction with BACT, and any physical or operational characteristics that formed the basis for the BACT determination (e.g., possibly the emissions unit's capacity or throughput).

5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation (see subsection G of this section).

6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection G of this section.

G. To maintain the Clean Unit designation, the owner shall conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted in conjunction with the BACT that are recorded in the major NSR permit, and subsequently reflected in the federal operating permit. The owner may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the BACT determination (for example, the emissions unit's capacity or throughput).

2. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.

3. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

H. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally and state enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

I. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it may requalify under the requirements that are currently applicable in the area.]

9 VAC 5-80-1840. ***(Repealed.)***

9 VAC 5-80-1845. **[*~~Clean Unit provisions for emissions units that achieve an emission limitation comparable to BACT.~~* *(Reserved.)*]**

[*A. An owner of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions of this section. The provisions of this section apply to emissions units that do not qualify as Clean Units under 9 VAC 5-80-1835, but that are*

~~achieving a level of emissions control comparable to BACT, as determined by the board in accordance with this section.~~

~~B. The general provisions set forth in this subsection shall apply to Clean Units.~~

~~1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection E of this section) and before the expiration date (as determined in accordance with subsection F of this section) will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to BACT, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision H 4 of this section, the emissions unit remains a Clean Unit.~~

~~3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to BACT, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT as specified in subdivision H 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit re-qualifies as a Clean Unit pursuant to subdivision C 4 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-1605 G 1 through 4 and 9 VAC 5-80-1605 G 6 as if the emissions unit is not a Clean Unit.~~

~~C. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 through 3 of this subsection. After the original Clean Unit designation expires in accordance with subsection F of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 4 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-1835. To requalify as a Clean Unit under subdivision 4 of this subsection, the emissions unit shall obtain a new permit issued pursuant to the requirements in subsections G and H of this section and meet all the criteria in subdivision 4 of this subsection. The board will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.~~

~~1. Air pollutant emissions from the emissions unit shall be reduced through the use of qualifying air pollution control technology (which includes pollution prevention or work practices) that meets both of the following requirements:~~

~~a. The owner has demonstrated that the emissions unit's control technology is comparable to BACT according to the requirements of subsection D of this section. However, the emissions unit is not eligible for a Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the BACT determinations to which it is compared have resulted in a determination that no control measures are required).~~

~~b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. The board must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class I area by a Federal Land Manager and for which information is available to the general public.~~

~~3. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before the effective date of this revision. However, for such emissions units, the owner shall apply for the Clean Unit designation within two years after the effective date of this revision. For technologies installed on and after the effective date of this revision, the owner shall apply for the Clean Unit designation at the time the control technology is installed.~~

~~4. In order to requalify as a Clean Unit, the emissions unit shall obtain a new permit (pursuant to requirements in subsections G and H of this section) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current day BACT, and the emissions unit shall meet the requirements in subdivisions 1 a and 2 of this subsection.~~

~~D. The owner may demonstrate that the emissions unit's control technology is comparable to BACT for purposes of subdivision C 1 of this section according to either subdivisions 1 or 2 of this subsection. Subdivision 3 of this subsection specifies the time for making this comparison.~~

~~1. The emissions unit's control technology is presumed to be comparable to BACT if it achieves an emission limitation that is equal to or better than the average of the emission limitations achieved by all the sources for which a BACT or LAER determination has been made within the preceding five years and entered into the RACT/BACT/LAER Clearinghouse (RBLC), and for which it is technically feasible to apply the BACT or LAER control technology to the emissions unit. The board will also compare this presumption to any additional BACT or LAER determinations of which the board is aware, and shall~~

~~consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to BACT is correct.~~

~~2. The owner may demonstrate that the emissions unit's control technology is substantially as effective as BACT (the "substantially as effective test"). In addition, any other person may present evidence related to whether the control technology is substantially as effective as BACT during the public participation process required under subsection G of this section. The board will consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as BACT.~~

~~3. The provisions governing the time for making the comparison under this subsection shall be as follows:~~

~~a. The owner of an emissions unit with control technologies that are installed before the effective date of this revision may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements. The expiration date of the Clean Unit designation will depend on which option the owner uses, as specified in subsection F of this section.~~

~~b. The owner of an emissions unit with control technologies that are installed after the effective date of this revision shall demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day BACT requirements.~~

~~E. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection G of this section is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.~~

~~F. If the owner demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the BACT requirements that applied at the time the control technology was installed, then the Clean Unit designation expires five years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires five years from the effective date of the Clean Unit designation, as determined according to subsection E of this section. In addition, for all emissions units, the Clean Unit designation expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection I of this section.~~

~~G. The board will designate an emissions unit a Clean Unit only by issuing a permit through a NSR program that includes requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit shall also meet the requirements in subsection H of this section.~~

~~H. The permit required by subsection G of this section shall include the terms and conditions set forth in subdivisions 1 through 6 of this subsection. Such terms and conditions shall be incorporated into the major stationary source's federal operating permit in accordance with the provisions of the federal operating permit program, but no later than when the federal operating permit is renewed.~~

~~1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies.~~

~~2. If the effective date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~3. If the expiration date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~4. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to BACT, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to BACT (e.g., possibly the emissions unit's capacity or throughput).~~

~~5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation (see subsection I of this section).~~

~~6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection I of this section.~~

~~I. To maintain the Clean Unit designation, the owner shall conform to all the restrictions listed in subdivisions 1 through 5 of this subsection. This subsection applies independently to each pollutant for which the board has designated the emissions unit a Clean Unit. That is, failing to conform to the~~

~~restrictions for one pollutant affects the Clean Unit designation only for that pollutant.~~

~~1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to BACT.~~

~~2. The owner may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to BACT (e.g., the emissions unit's capacity or throughput).~~

~~3. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.~~

~~4. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~J. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase ("netting analysis") unless such use occurs before the effective date of this revision or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally and state enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~K. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. That is, if a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to 9 VAC 5-80-1835 B 3 and subdivision B 3 of this section, it shall requalify under the requirements that are currently applicable.~~]

9 VAC 5-80-1850. ***(Repealed.)***

9 VAC 5-80-1855. **[~~Pollution control project (PCP) exclusion procedural requirements.~~ *(Reserved.)***

~~A. Before an owner begins actual construction of a PCP, the owner shall either submit a notice to the board if the project is listed in subdivisions a through f of the definition of "pollution control project," or if the project is not listed in subdivisions a through f of the definition of "pollution control project," then the owner shall submit a permit application and obtain approval to use the PCP exclusion from the board consistent with the requirements of subsection E of this section. Regardless of whether the owner submits a notice or a permit application, the project shall meet the requirements in subsection B of this section, and the notice or permit application shall contain the information required in subsection C of this section.~~

~~B. Any project that relies on the PCP exclusion shall meet the following requirements:~~

~~1. The environmental benefit from the emissions reductions of pollutants regulated under the federal Clean Air Act shall outweigh the environmental detriment of emissions increases in pollutants regulated under the federal Clean Air Act. A statement that a technology from subdivisions a through f of the definition for "pollution control project" is being used shall be presumed to satisfy this requirement.~~

~~2. The emissions increases from the project will not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.~~

~~C. In the notice or permit application sent to the board, the owner shall include, at a minimum, the following information:~~

~~1. A description of the project.~~

~~2. The potential emissions increases and decreases of any pollutant regulated under the federal Clean Air Act and the projected emissions increases and decreases using the methodology in 9 VAC 5-80-1605 H, that will result from the project, and a copy of the environmentally beneficial analysis required by subdivision B 1 of this section.~~

~~3. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in the federal operating permit program.~~

~~4. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~5. Demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by subdivision B 2 of this section. An air quality impact analysis is not required for any pollutant that will not experience a significant emissions increase as a result of the project.~~

~~*D. For projects listed in subdivisions a through f of the definition of "pollution control project," the owner may begin actual construction of the project immediately after notice is sent to the board (unless otherwise prohibited under requirements of the applicable implementation plan). The owner shall respond to any requests by the board for additional information that the board determines is necessary to evaluate the suitability of the project for the PCP exclusion.*~~

~~*E. Before an owner may begin actual construction of a PCP project that is not listed in subdivisions a through f of the definition for "pollution control project" (an "unlisted project"), the project must be approved by the board and recorded in an NSR permit, state operating permit, or federal operating permit. The permit procedures must include the requirement that the board provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The board will address all material comments received by the end of the comment period before taking final action on the permit.*~~

~~*F. Upon installation of the PCP, the owner shall comply with the following operational requirements:*~~

~~*1. The owner shall operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application required by subsection C of this section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.*~~

~~*2. The owner shall maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the general duty requirements in subdivision 1 of this subsection.*~~

~~*3. The owner shall comply with any provisions in the applicable permit related to use and approval of the PCP exclusion.*~~

~~*4. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emissions limit if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally and state enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.*~~]

9 VAC 5-80-1860. *(Repealed.)*

9 VAC 5-80-1865. Actuals plantwide applicability limits (PAL).

A. The board may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. Any physical change in or change in the method of operation of a major stationary source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through this article; and

c. Is not subject to the provisions in 9 VAC 5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

2. Except as provided under subdivision 1 c of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the board for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the major stationary source owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.

1. The board may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12

consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

c. The PAL permit shall contain all the requirements of subsection F of this section.

d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

e. Each PAL shall regulate emissions of only one pollutant.

f. Each PAL shall have a PAL effective period of five years.

g. The owner of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M through O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 9 VAC 5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures [~~*of 9 VAC 5-80-1775*~~ *prescribed in the applicable permit programs identified in the definition of PAL permit*]. [~~*This includes the requirement that the board provide*~~ *In no case may the board issue a PAL permit unless the board provides*] *the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The board will address all material comments before taking final action on the permit.*

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant (as reflected in the definition of "significant") level for the PAL pollutant. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. The same consecutive 24-month period shall be used for each different PAL pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances. Emissions associated with units that were permanently shutdown after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The board will specify a reduced PAL level or levels (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the board is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the board, or until the board determines that the revised PAL permit will not be issued.

4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.

5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection I of this section.

6. The calculation procedures that the major stationary source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision N 1 of this section.

7. A requirement that the major stationary source owner monitor all emissions units in accordance with the provisions under subsection M of this section.

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection O of this section by the required deadlines.

10. Any other requirements that the board deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be five years.

H. The requirements for the reopening of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. During the PAL effective period, the board will reopen the PAL permit to:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner of the major stationary source creates creditable emissions reductions for use as offsets under 9 VAC 5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

2. The board may reopen the PAL permit for any of the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the board may impose on the major stationary source.

c. Reduce the PAL if the board determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air standard or ambient air increment in 9 VA 5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the board) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The board will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the board determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The board may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the board issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR program requirements if such change meets the definition of "major modification."

5. The major stationary source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9 VAC 5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 1 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The board will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the board.

2. A major stationary source owner shall submit a timely application to the board to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the board determines that the revised permit with the renewed PAL will not be issued [*, and a permit is issued pursuant to subsection I of this section*].

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subsection B of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

d. Any other information the owner wishes the board to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the board will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subdivision.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the board may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The board may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the board in a written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

a. If the potential to emit of the major stationary source is less than the PAL, the board will adjust the PAL to a level no greater than the potential to emit of the source; and

b. The board will not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the board has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The board may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

a. The owner of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

b. As part of this application, the major stationary source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding five years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR program process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The board will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subdivision and must be approved by the board.

c. Notwithstanding subdivision 1 b of this subdivision, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the board.

d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the board determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and

b. CEMS shall sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the board, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the board determines that testing is not required.

7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the board will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the board. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require an owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the board in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the board within 30 days of the end of each reporting period. This report shall contain the following information:

a. The identification of owner and operator and the permit number.

b. Total annual emissions (tons per year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.

c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the major stationary source during the preceding six-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The major stationary source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9 VAC 5-80-110 F 2 B shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9 VAC 5-80-110 F 2 B. The reports shall contain the following information:

a. The identification of owner and operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the applicable federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the board the results of any revalidation test or method within three months after completion of such test or method.

P. The board will not issue a PAL that does not comply with the requirements of this section after [~~*the effective date of this revision*~~ *February 22, 2006*]*. The board may supersede any PAL that was established prior to* [~~*the effective date of this revision*~~ *February 22, 2006,*] *with a PAL that complies with the requirements of this section.*

9 VAC 5-80-1870. ***(Repealed.)***

9 VAC 5-80-1880. ***(Repealed.)***

9 VAC 5-80-1890. ***(Repealed.)***

9 VAC 5-80-1900. ***(Repealed.)***

9 VAC 5-80-1910. ***(Repealed.)***

9 VAC 5-80-1920. ***(Repealed.)***

9 VAC 5-80-1925. Changes to permits.

A. The general requirements for making changes to permits [*issued under this article*] are *as follows:*

1. [*Except as provided in subdivision 3 of this subsection*] *changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-1935 through 9 VAC 5-80-1965.*

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.

4. [~~*This section shall not be applicable to general permits*~~ *Under no circumstances may a permit issued under this article be changed in order to (i) incorporate the terms and conditions necessary to implement any provision of the new source review program for a project that qualifies as a modification under the new source review program or (ii) incorporate the terms and conditions necessary to implement any provision of the new source review program for a PAL permit*]*.*

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit [~~*revisions*~~ *changes*] *can be found in 9 VAC 5-80-1935 through 9 VAC 5-80-1955.*

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-1965.

9 VAC 5-80-1930. *(Repealed.)*

9 VAC 5-80-1935. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-2170 have been fulfilled.

[~~*4. The combining of permits under the new source review program as provided in 9 VAC 5-80-1625 E.*~~]

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board will incorporate the changes without providing notice to the public under 9 VAC 5-80-1775. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9 VAC 5-80-1940. *(Repealed.)*

9 VAC 5-80-1945. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that [*meet all of the following criteria*]*:*

1. Do not violate any applicable federal requirement [~~*;*~~ *.*]

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements [~~*;*~~ *.*]

3. Do not require or change a case-by-case determination of an emission limitation or other standard [~~*;*~~ *.*]

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include [~~*; a.*~~ *, but are not limited to,*] *an emissions cap assumed to avoid classification as a modification under the new source review program* [~~*or § 112 of the federal Clean Air Act; and.*~~]

[~~*b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;*~~

~~*5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and*~~

~~*6.*~~ *5.*] *Are not required to be processed as a significant amendment under 9 VAC 5-80-1955; or as an administrative permit amendment under 9 VAC 5-80-1935.*

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that [*meet any of the following criteria*]*:*

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require more frequent monitoring or reporting by the permittee [~~*or to reduce the level of an emissions cap*~~]*.*

3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-1625 G 1 as state-only enforceable as provided in 9 VAC 5-80-1625 G 2 for any permit issued under this article or any regulation from which this article is derived.

C. [~~*Notwithstanding subsection A of this section,*~~] *Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the* [*underlying*] *statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.* [*In order for the underlying statutory or regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.*]

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-1775 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9 VAC 5-80-1950. ***(Repealed.)***

9 VAC 5-80-1955. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-1945 or as administrative amendments under 9 VAC 5-80-1935.

2. Significant amendment procedures shall be used for those permit amendments that [*meet any of the following* criteria]*:*

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include [~~:~~ ~~(1)~~ *, but are not limited to,*] *an emissions cap assumed to avoid classification as a modification under the new source review program* [~~*or § 112 of the federal Clean Air Act; and.*~~]

[~~*(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.*~~]

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-1775 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-1775.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-1960. ***(Repealed.)***

9 VAC 5-80-1965. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

[~~*4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.*~~]

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9 VAC 5-80-1970. ***(Repealed.)***

9 VAC 5-80-1975. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the

previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this article by 9 VAC 5-80-1695 A 2.

9 VAC 5-80-1985. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction [, ~~reconstruction~~] or modification is not commenced within [~~the latest of the following time frames: 1. Eighteen~~ 18] months from the date the permit is granted.

[~~2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any government entity.~~

~~3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).~~]

B. A permit granted pursuant to this article shall become invalid if a program of construction [, ~~reconstruction~~] or modification is discontinued for a period of 18 months or more or if a program of construction [, ~~reconstruction~~] or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted using the procedures for minor amendments in 9 VAC 5-80-1945.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5 Chapter 20 (9 VAC 5-20) and the Virginia Air Pollution Control Law.

J. The board will notify the applicant in writing of its decision, with its reasons to change, suspend or revoke a permit, or to render a permit invalid.

9 VAC 5-80-1995. Existence of permit no defense.

The existence of a permit under this article shall not constitute a defense to a violation of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

Article 9.
Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region.

9 VAC 5-80-2000. Applicability.

A. The provisions of this article apply to ~~any person seeking to construct or reconstruct~~ *the construction of* any new major stationary source or ~~to make~~ a major modification ~~to a major stationary source, if the source or modification is or would be~~ *that is* major for the pollutant for which the area is designated as nonattainment.

B. The provisions of this article apply in (i) nonattainment areas designated in 9 VAC 5-20-204 or (ii) the Ozone Transport Region as defined in 9 VAC 5-80-2010 C. This article applies to all localities in the Ozone Transport Region regardless of a locality's nonattainment status.

C. *If the Ozone Transport Region is designated attainment for ozone,* sources located or planning to locate in the ~~Ozone Transport~~ region shall be subject to the offset requirements for areas classified as moderate in 9 VAC 5-80-2120 B 2. *If the*

Ozone Transport Region is designated nonattainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements of 9 VAC 5-80-2120 B depending on the classification except if the classification is marginal or there is no classification, the classification shall be moderate for purpose of applying 9 VAC 5-80-2120 B.

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not commenced on the source or modification.

~~E. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this article and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.~~

~~F.~~ *E.* Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" apply to the construction~~, reconstruction~~ [~~or modification~~] of all major stationary sources and major modifications.

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), or Article 8 (~~9 VAC 5-80-1700~~ *9 VAC 5-80-1605* et seq.) of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-2020 [E ~~F~~].

[~~*F. For purposes of applying subsection G of this section and other provisions of this article, the effective date of the amendments adopted by the board on [insert adoption date] shall be the date 30 days after the date on which a notice is published in the Virginia Register acknowledging that the administrator has approved the amendments adopted by the board on [insert adoption date].*~~

~~*G.*~~ *F.*] *Unless otherwise approved by the board or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of* [~~*subsection A of*~~] *9 VAC 5-80-2060* [*A*] *prior to* [~~*the effective date of the amended article*~~ *February 22, 2006*]*. Any permit applications that have not been determined to be complete as of* [~~*the effective date of the amended article*~~ *February 22, 2006,*] *shall be subject to the new provisions.*

[G. ~~*H.*~~] Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

[~~*I.*~~ *H.*] *The requirements of this article will be applied in accordance with the following principles:*

1. Except as otherwise provided in [~~*subsections J and K*~~ *subsection I*] *of this section, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: (i) a significant emissions increase and (ii) a significant net emissions increase. A project is not a major modification if it does not cause a significant emissions increase. If a project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.*

2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 [~~*through 6*~~ *and 4*] *of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.*

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

[~~*5. The emission test for projects that involve Clean Units shall be as provided in this subdivision. For a project that will be constructed and operated at a Clean Unit without causing the emissions unit to lose its Clean Unit designation, no emissions increase is deemed to occur.*~~

~~*6. The hybrid test for projects that involve multiple types of emissions units shall be as provided in this subdivision. A*~~

~~*significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 through 5 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a Clean Unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 5 of this subsection for the Clean Unit.*~~

~~J.~~ I.] *For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9 VAC 5-80-2144.*

[~~*K. An owner undertaking a PCP shall comply with the requirements under 9 VAC 5-80-2143.*~~

~~L.~~ J.] *The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 and Article 1 (9 VAC 5-60-60 et seq.) and Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.*

[~~*M.*~~ *K.*] *The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9 VAC 5-20-21.*

9 VAC 5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10), unless otherwise required by context.

B. For the purpose of this article, 9 VAC 5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a *regulated NSR* pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition*, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9 VAC 5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes*.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a ~~two-year~~ *consecutive 24-month* period which precedes the particular date and which is representative of normal source operation. The board ~~shall~~ *will* allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit ~~which~~ *that* has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 40 CFR Parts 60 ~~and 61~~*, 61 and 63*;

b. Any applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of [*, but not limited to,*] the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other

requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (~~9 VAC 5-80-1700~~ *9 VAC 5-80-1605* et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. [*The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.*]

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9 VAC 5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is

inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

[~~*"Clean Unit" means any emissions unit that has been issued a major NSR permit that requires compliance with BACT or LAER, that is complying with such BACT or LAER requirements, and qualifies as a Clean Unit pursuant to 9 VAC 5-80-2141; or any emissions unit that has been designated by a board as a Clean Unit, based on the criteria in 9 VAC 5-80-2142 C 1 through C 4; or any emissions unit that has been designated as a Clean Unit by the Administrator in accordance with 40 CFR 52.21(y)(3)(i) through (iv).*~~]

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) ~~which~~ *that* would result in a change in actual emissions.

"Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter values on a continuous basis.

[~~*"Effective date of this revision" means the effective date determined in accordance with 9 VAC 5-80-2000 F.*~~]

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any ~~regulated~~ air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit ~~any pollutant subject to regulation under the federal Clean Air Act~~ *any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit*.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with ~~9 VAC 5-80-2050~~ *this article* and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

c. All terms and conditions *(unless expressly designated as not federally enforceable)* in a federal operating permit, including any provisions that limit a source's potential to emit~~, unless expressly designated as not federally enforceable~~.

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110 ~~or § 111(d)~~ *, § 111(d), or § 129* of the federal Clean Air Act.

e. Limitations and conditions *(unless expressly designated as not federally enforceable)* that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA ~~in accordance with 40 CFR Part 51~~ *into the implementation plan*.

f. Limitations and conditions *(unless expressly designated as not federally enforceable)* that are part of ~~an~~ *a state* operating permit ~~issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability~~ *where the permit and the permit program pursuant to which it was issued meet all of the following criteria:*

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as

any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a ~~Virginia~~ regulation *of the board* or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9 VAC 5-80-50 et seq.), Article 2 (9 VAC 5-80-310 et seq.), Article 3 (9 VAC 5-80-360 et seq.), and Article 4 (9 VAC 5-80-710 et seq.) of this part.

~~"Fixed capital cost" means the capital needed to provide all the depreciable components.~~

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Lowest achievable emissions rate *(LAER)*" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant [*for nonattainment areas*] *in subdivision a* [~~1~~ *(1)*] *of the definition of "major stationary source."*

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in *(i)* a significant ~~net~~ emissions increase of ~~any qualifying nonattainment pollutant~~ *a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source*.

b. Any ~~net~~ *significant* emissions increase *from any emissions units or net emissions increase at a source* that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include *the following*:

(1) Routine maintenance, repair and replacement~~;~~.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source which:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter; *and*

(c) The owner demonstrates to the board that as a result of trial burns at the source or other sources or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.

~~(3)~~ *(6)* An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) [~~*The addition, replacement or use of a PCP at an existing emissions unit meeting the requirements of*~~

~~*9 VAC 5-80-2143. A replacement control technology shall provide more effective emissions control than that of the replaced control technology to qualify for this exclusion. (9)*~~] *The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:*

(a) The applicable implementation plan, and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9 VAC 5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.

~~"Major new source review (major NSR)" means a program for the preconstruction review of changes that are subject to review as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of ~~any nonattainment~~ *a regulated NSR* pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9 VAC 5-20-204, (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9 VAC 5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants.

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under ~~§ 111 or § 112 of the federal Clean Air Act~~ *40 CFR Part 60, 61 or 63*.

~~"Minor new source review (minor NSR)" means a program for the preconstruction review of changes that are subject to review as new or modified sources and that do not qualify as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.~~

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that do not qualify for review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits ~~or approvals~~ required under ~~federal air quality control laws and regulations, and those air quality control laws and regulations which~~ *the NSR program that* are part of the applicable implementation plan.

"Net emissions increase"

a. Means*, with respect to any regulated NSR pollutant emitted by a major stationary source,* the amount by which the sum of the following exceeds zero:

(1) ~~Any~~ *The* increase in ~~actual~~ emissions from a particular physical change or change in the method of operation at a stationary source *as calculated pursuant to 9 VAC 5-80-2000* [~~I~~ *H*]; and

(2) Any other increases and decreases in actual emissions at the *major stationary* source that are contemporaneous with the particular change and are otherwise creditable. *Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.*

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the *particular* change ~~specified in subdivision a (1) of this definition~~ commences and the date that the increase ~~specified in subdivision a (1) of this definition~~ *from the particular change* occurs; [and]

(2) The board has not relied on it in issuing a permit for the source pursuant to this chapter which permit is in effect when the increase in actual emissions from the particular change occurs [~~; and.~~]

[~~*(3) The increase or decrease in emissions did not occur at a Clean Unit, except as provided in 9 VAC 5-80-2141 H and 9 VAC 5-80-2142 J.*~~]

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is ~~federally and state~~ enforceable *as a practical matter* at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; [and]

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change [~~.~~ ;]

[~~*(5) The decrease in actual emissions did not result from the installation of add-on control technology or application of pollution prevention practices that were relied on in designating an emissions unit as a Clean Unit under 40 CFR 52.21(y) or under regulations approved pursuant to 9 VAC 5-80-1855 or 9 VAC 5-80-2142. That is, once an emissions unit has been designated as a Clean Unit, the owner cannot later use the emissions reduction from the air pollution control measures that the Clean Unit designation is based on in calculating the net emissions increase for another emissions unit (i.e., shall not use that reduction in a "netting analysis" for another emissions unit). However, any new emissions reductions that were not relied upon in a PCP excluded pursuant to 9 VAC 5-80-2143 or for a Clean Unit designation are creditable to the extent they meet the requirements in 9 VAC 5-80-2143 F 4 for the PCP and 9 VAC 5-80-2141 H or 9 VAC 5-80-2142 J for a Clean Unit.*~~]

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source review (NSR) permit" means a permit issued under the new source review program.

~~"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.~~

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1605 et seq.) and Article 9 (9 VAC 5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9 VAC 5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9 VAC 5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the major NSR permit, the minor NSR permit, the state operating permit, or the federal operating permit issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

[~~*"Pollution control project (PCP)" means any activity, set of work practices, or project (including pollution prevention) undertaken at an existing emissions unit that reduces emissions of air pollutants from such unit. Such qualifying activities or projects can include the replacement or upgrade of an existing emissions control technology with a more effective unit. Other changes that may occur at the source are not considered part of the PCP if they are not necessary to reduce emissions through the PCP. Projects listed in subdivisions a through f of this definition are presumed to be environmentally beneficial pursuant to 9 VAC 5-80-2143 B 1. Projects not listed in these subdivisions may qualify for a case-specific PCP exclusion pursuant to the requirements of 9 VAC 5-80-2143 B and E.*~~

~~*a. Conventional or advanced flue gas desulfurization or sorbent injection for control of SO_2.*~~

~~*b. Electrostatic precipitators, baghouses, high efficiency multiclones, or scrubbers for control of particulate matter or other pollutants.*~~

~~*c. Flue gas recirculation, low NO_x burners or combustors, selective noncatalytic reduction, selective catalytic reduction, low emission combustion (for IC engines), and oxidation/absorption catalyst for control of NO_x.*~~

~~*d. Regenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For the purpose of this article, "hydrocarbon combustion flare" means either a flare used to comply with an applicable NSPS or MACT standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.*~~

~~*e. Activities or projects undertaken to accommodate switching (or partially switching) to an inherently less polluting fuel, to be limited to the following fuel switches:*~~

~~*(1) Switching from a heavier grade of fuel oil to a lighter fuel oil, or any grade of oil to 0.05% sulfur diesel (i.e., from a higher sulfur content #2 fuel or from #6 fuel, to CA 0.05% sulfur #2 diesel);*~~

~~(2) Switching from coal, oil, or any solid fuel to natural gas, propane, or gasified coal;~~

~~(3) Switching from coal to wood, excluding construction or demolition waste, chemical or pesticide treated wood, and other forms of "unclean" wood;~~

~~(4) Switching from coal to #2 fuel oil (0.5% maximum sulfur content); and~~

~~(5) Switching from high sulfur coal to low sulfur coal (maximum 1.2% sulfur content).~~

~~f. Activities or projects undertaken to accommodate switching from the use of one ozone depleting substance (ODS) to the use of a substance with a lower or zero ozone depletion potential (ODP), including changes to equipment needed to accommodate the activity or project, that meet the following requirements:~~

~~(1) The productive capacity of the equipment is not increased as a result of the activity or project; and~~

~~(2) The projected usage of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS, determined as follows:~~

~~(a) Determine the ODP of the substances by consulting 40 CFR Part 82, subpart A, appendices A and B.~~

~~(b) Calculate the replaced ODP-weighted amount by multiplying the baseline actual usage (using the annualized average of any 24 consecutive months of usage within the past 10 years) by the ODP of the replaced ODS.~~

~~(c) Calculate the projected ODP-weighted amount by multiplying the projected future annual usage of the new substance by its ODP.~~

~~(d) If the value calculated in subdivision (b) of this subdivision is more than the value calculated in subdivision (c) of this subdivision, then the projected use of the new substance is lower, on an ODP-weighted basis, than the baseline usage of the replaced ODS.~~

~~"Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.~~]

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. *For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally* [~~and state~~] *enforceable* [*or enforceable*] *as a practical matter* [*by the state*].

"Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9 VAC 5-80-1605 et seq.) of this part.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;

b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; [~~and~~ *or*]

[~~c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or~~

~~d.~~ *c.*] *In lieu of using the method set out in subdivisions a* [~~through c~~ *and b*] *of this definition, may elect to use the*

emissions unit's potential to emit, in tons per year, as defined under the definition of potential to emit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

~~"Qualifying pollutant" means, with regard to a major stationary source, any pollutant emitted in such quantities or at such rate as to qualify the source as a major stationary source.~~

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

~~"Reconstruction" means when the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of subdivisions a through c of this definition. A reconstructed stationary source will be treated as a new stationary source for purposes of this article.~~

~~a. The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility.~~

~~b. The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility.~~

~~c. The extent to which the components being replaced cause or contribute to the emissions from the facility.~~

"Regulated ~~air~~ *NSR* pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound;

b. Any pollutant for which an ambient air quality standard has been promulgated; *or*

c. Any pollutant ~~subject to any standard promulgated under § 111 of the federal Clean Air Act~~ *that is a constituent or precursor of a general pollutant listed under subdivisions a and b of this definition, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant*.

~~d. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under 40 CFR Part 63; or~~

~~e. Any pollutant subject to a regulation adopted by the board.~~

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions ~~must~~ *shall* be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

a. Ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
[PM_{10}	*15 tpy*
$PM_{2.5}$	*10 tpy*]
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means ~~a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9 VAC 5-80-800 et seq.) of this part,~~

~~promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability~~ *an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9 VAC 5-80-800 et seq.) of this part*.

"Stationary source" means any building, structure, facility, or installation which emits or may emit ~~any air pollutant subject to regulation under the federal Clean Air Act~~ *a regulated NSR pollutant*.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9 VAC 5-80-2020. General.

A. No owner or other person shall begin actual construction~~,~~ ~~reconstruction~~ or modification of any *new* major stationary source or major modification without first obtaining from the board a permit to construct and operate such source. *The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.*

B. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining from the board a permit to relocate the unit.

[~~*C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the board to relocate the unit.*~~

C. ~~*D.*~~ *If the board and the owner make a mutual determination that it facilitates the efficient processing and issuing of permits for projects that are to be constructed concurrently,*] the board may combine the requirements of and the permits for emissions units within a stationary source subject to the [*major*] new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the [*major*] new source review program be combined into one application.

[D. ~~*E.*~~] The board may [*not*] incorporate the terms and conditions of a state operating permit [*, a minor new source review permit, or a PAL permit*] into a permit issued pursuant to this article. [~~The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed.~~

E. ~~*F.*~~] All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) ~~or Article 3 (9 VAC 5-40-160 et seq.)~~ of 9 VAC 5 Chapter 40 ~~or~~, Article 2 (9 VAC 5-50-130 et seq.) ~~or Article 3 (9 VAC 5-50-160 et seq.)~~ of 9 VAC 5 Chapter 50*, Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60, or Article 5 (9 VAC 5-60-300) of 9 VAC 5 Chapter 60*.

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

[F. ~~*G.*~~] Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9 VAC 5-80-2040. Application information required.

A. The board ~~shall~~ *will* furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.

B. Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emissions standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated ~~air~~ *NSR* pollutants.

a. A permit application shall describe all emissions of regulated ~~air~~ *NSR* pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Actual emission rates in tons per year and other information as may be necessary to determine the net emissions increase of actual emissions.

6. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

7. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated ~~air~~ *NSR* pollutants at the source.

9. Calculations on which the information in subdivisions 3 through 8 of this subsection are based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

10. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit, including the submission of measured air quality data at the proposed site prior to construction~~, reconstruction~~ or modification. Such measurements shall be accomplished using procedures acceptable to the board.

11. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth.

12. For major stationary sources, the analyses required by 9 VAC 5-80-2090 2 shall be provided by the applicant. Upon request, the board will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

9 VAC 5-80-2050. Standards and conditions for granting permits.

A. No permit will be granted pursuant to this article unless it is shown to the satisfaction of the board that the following standards and conditions have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50).

2. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

3. The board determines that the following occurs:

a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with 9 VAC 5-80-2120 such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this article, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the implementation plan) reasonable further progress; or

b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the implementation plan; and

c. Any emission reductions required as a precondition of the issuance of a permit under subdivision ~~3 a or 3 b of this subsection~~ *a or b of this subdivision* shall be state and federally enforceable before such permit may be issued.

4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under these regulations.

5. The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this article.

6. The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

B. [~~Permits may be granted to stationary sources or emissions units that contain emission caps provided the limits or caps are made enforceable as a practical matter using the elements set forth in subsection D of this section. C.~~] Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9 VAC 5-50-270. The following criteria shall be met in establishing emission standards to the extent necessary to

assure that emissions levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions that would exceed the emissions rate based on the potential to emit of the emissions unit.

3. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

[~~D.~~ *C.*] Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limit on fuel sulfur content.

b. Limit on production rates with time frames as appropriate to support the emission standards.

c. Limit on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. ~~Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.~~

4. Specifications for air pollution control equipment installed or to be installed. ~~Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.~~

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9 VAC 5-80-2060. Action on permit application.

A. Within 30 days after receipt of an application, the board ~~shall~~ *will* notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board ~~shall~~ *will* notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. Processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required. Processing steps may include, but not be limited to, the following:

1. Completion of the preliminary review and analysis in accordance with 9 VAC 5-80-2090 and the preliminary decision of the board.

2. Completion of the public participation requirements in accordance with 9 VAC 5-80-2070.

3. Completion of the final review and analysis and the final decision of the board.

C. The board will normally take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from it) when required, unless more information is needed. The board ~~shall~~ *will* notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-2080.

D. The applicant may appeal the decision pursuant to Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.

E. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any

comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-2070 F 1.

9 VAC 5-80-2070. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9 VAC 5-80-2060 A, applicants shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board ~~shall~~ *will* attend and provide information and answer questions on the permit application review process.

D. Upon determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subsection F of this section.

F. For the public comment period and public hearing, the board ~~shall~~ *will* notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board ~~shall~~ *will* process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

H. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.

9 VAC 5-80-2090. Application review and analysis.

No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-2050 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50).

2. Applications shall be subject to an air quality analysis to determine the impact of ~~qualifying~~ nonattainment pollutant emissions.

9 VAC 5-80-2091. Source obligation.

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9 VAC 5-80-2180.

B. The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a [~~*Clean Unit or at a*~~] *source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a* [~~*through c*~~ *and b*] *of the*

definition of "projected actual emissions" for calculating projected actual emissions:

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

a. A description of the project;

b. Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project; and

c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, [~~*the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded,*~~] *and any netting calculations, if applicable.*

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the board. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the board before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision 1 b of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the board within 60 days after the end of each year during which records shall be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the board if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection) by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the board within 60 days after the end of such year. The report shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and

c. Any other information that the owner wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

C. The owner shall make the information required to be documented and maintained pursuant to subsection A of this section available for review upon a request for inspection by the board or the general public pursuant to the requirements contained in 9 VAC 5-80-270 or 9 VAC 5-80-670.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the board no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the board to indicate that a given project subject to subsection B of this section is a part of a major modification that resulted in a significant emissions increase, the board will proceed as if the owner is in violation of 9 VAC 5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. [*Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the board before beginning actual construction.*]

9 VAC 5-80-2110. Interstate pollution abatement.

A. The owner of each new or modified source, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction~~, reconstruction~~ or modification.

B. Any state or political subdivision may petition the administrator for a finding that any new or modified source emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction~~, reconstruction~~ or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

9 VAC 5-80-2120. Offsets.

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source

or other sources in the same nonattainment area, except that for ozone precursor pollutants the board may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in ozone nonattainment areas designated in 9 VAC 5-20-204 shall be at least the following:

1. Nonattainment areas classified as marginal	1.1 to one.
2. Nonattainment areas classified as moderate	1.15 to one.
3. Nonattainment areas classified as serious	1.2 to one.
4. Nonattainment areas classified as severe	1.3 to one.
5. Nonattainment areas with any other classification or no classification	1 to one.

The ratio of total emissions reductions of the nonattainment pollutant to total increased emissions of the nonattainment pollutant in nonattainment areas (other than ozone nonattainment areas) designated in 9 VAC 5-20-204 shall be at least 1 to one.

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of subsection A of this section.

D. The board ~~shall~~ *will* allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

2. The source demonstrates to the satisfaction of the board that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

4. The owner will comply with an alternative measure, imposed by the board, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the board may impose an emissions fee to be paid to the board which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The board ~~shall~~ *will* utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or

2. The applicable implementation plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The board will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one volatile organic compound with another of lesser reactivity.

J. Where this article does not adequately address a particular issue, the provisions of Appendix S to 40 CFR Part 51 shall be

followed to the extent that they do not conflict with this [~~article~~ *section*].

K. Credit for an emissions reduction can be claimed to the extent that the board has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

[~~*L. Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a Clean Unit or a project as a PCP cannot be used as offsets.*~~

~~*M. Decreases in actual emissions occurring at a Clean Unit cannot be used as offsets, except as provided in 9 VAC 5-80-2141 H and 9 VAC 5-80-2142 J. Decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in 9 VAC 5-80-2143 F 4.*~~

~~*N.*~~ *L.*] *The total tonnage of increased emissions, in tons per year, resulting from a major modification that shall be offset in accordance with § 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.*

[9 VAC 5-80-2130. De minimis increases and stationary source modification alternatives for ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

A. ~~De minimis increases.~~ Increased emissions of volatile organic compounds or nitrogen oxides resulting from any physical change in, or change in the method of operation of, a major stationary source located in an ozone nonattainment area classified as serious or severe in 9 VAC 5-20-204 shall be considered de minimis for purposes of determining the applicability of the permit requirements under this article if the increase in net emissions of the same pollutant from such source is 25 tons or less when aggregated with all other net increases in emissions from the source over a period of five consecutive calendar years which includes the calendar year in which such increase occurred.

B. *The following shall apply to* modifications of major stationary sources emitting less than 100 tons per year of volatile organic compounds or nitrogen oxides.

1. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit of less than 100 tons per year of volatile organic compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subsection A of this section shall be considered a major modification under this article. However, in applying emission standards under 9 VAC 5 Chapter 50 (9 VAC 5-50~~-10 et seq.~~) to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emissions rate.

2. If the owner elects to offset the increase of volatile organic compounds or of nitrogen oxides by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, such increase shall not be considered a major modification under this article.

C. *The following shall apply to* modifications of major stationary sources emitting 100 tons per year or more of volatile organic compounds or nitrogen oxides.

1. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subsection A of this section shall be considered a major modification under this article.

2. In applying emission standards under 9 VAC 5 Chapter 50 (9 VAC 5-50~~-10 et seq.~~) to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emissions rate, if the owner elects to offset the increase by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to one.]

9 VAC 5-80-2140. Exception.

The provisions of this article do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric acid plants;

10. Sulfuric acid plants;

11. Nitric acid plants;

12. Petroleum refineries;

13. Lime plants;

14. Phosphate rock processing plants;

15. Coke oven batteries;

16. Sulfur recovery plants;

17. Carbon black plants (furnace process);

18. Primary lead smelters;

19. Fuel conversion plants;

20. Sintering plants;

21. Secondary metal production plants;

22. Chemical process plants;

23. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input;

24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

25. Taconite ore processing plants;

26. Glass fiber processing plants;

27. Charcoal production plants;

28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

29. Any other stationary source category which, as of August 7, 1980, is being regulated under ~~§ 111 or § 112 of the federal Clean Air Act (42 USC § 7401~~ *40 CFR Parts 60, 61 or 63*.

9 VAC 5-80-2141. **[*~~Clean Unit test for emissions units that are subject to LAER.~~* (*Reserved.)*]**

[*~~A. An owner of a major stationary source may use the Clean Unit test according to the provisions of this section to determine whether emissions increases at a Clean Unit are part of a project that is a major modification. The provisions of this section apply to any emissions unit for which the board has issued a major NSR permit within the past five years.~~*

~~B. The general provisions set forth in this subsection shall apply to Clean Units.~~

~~1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection D of this section) and before the expiration date (as determined in accordance with subsection E of this section) will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision F 4 of this section, the emissions unit remains a Clean Unit.~~

~~3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision F 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 3 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-2000 I 1 through 4 and 6 as if the emissions unit is not a Clean Unit.~~

~~5. For certain emissions units with PSD permits that meet the requirements of subdivisions a and b of this subdivision, the BACT level of emissions reductions or work practice requirements or both shall satisfy the requirement for LAER in meeting the requirements for Clean Units under subsections C through H of this section. For these emissions units, all requirements for the LAER determination under subdivisions 2 and 3 of this subsection shall also apply to the BACT permit terms and conditions. In addition, the requirements of subdivision G 1 b of this section do not apply to emissions units that qualify for Clean Unit status under this subdivision.~~

~~a. The emissions unit shall have received a PSD permit within the last five years and such permit shall require the emissions unit to comply with BACT.~~

~~b. The emissions unit shall be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the effective date of the Clean Unit test provisions in the area.~~

~~C. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 and 2 of this subsection. After the original Clean Unit designation expires in accordance with subsection E of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 3 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-2142. To requalify as a Clean Unit under subdivision 3 of this subsection, the emissions unit shall obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all the criteria in subdivision 3 of this subsection. Clean Unit designation applies individually for each pollutant emitted by the emissions unit.~~

~~1. The emissions unit shall have received a major NSR permit within the past five years. The owner shall maintain and be able to provide information that would demonstrate that this permitting requirement is met.~~

~~2. Air pollutant emissions from the emissions unit shall be reduced through the use of an air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements:~~

~~a. The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past five years. However, the emissions unit is not eligible for Clean Unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.~~

~~b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.~~

~~3. In order to requalify for the Clean Unit designation, the emissions unit shall obtain a new major NSR permit that requires compliance with the current-day LAER, and the emissions unit shall meet the requirements in subdivisions 1 and 2 of this subsection.~~

~~D. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project at the emissions unit is a major modification) is determined according to the following:~~

~~1. For an original Clean Unit designation and for emissions units that requalify as Clean Units by implementing a new control technology to meet current-day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the effective date of this revision.~~

~~2. For emissions units that requalify for the Clean Unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.~~

~~E. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner may no longer use the Clean Unit test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the following:~~

~~1. For any emissions unit that automatically qualifies as a Clean Unit under subdivision C 1 and C 2 of this section, the Clean Unit designation expires five years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner fails to comply with the provisions for maintaining Clean Unit designation in subsection G of this section.~~

~~2. For any emissions unit that requalifies as a Clean Unit under subdivision C 3 of this section, the Clean Unit designation expires five years after the effective date; or, it expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection G of this section.~~

~~F. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable federal operating permit program, but no later than when the federal operating permit is renewed, the federal operating permit for the source shall include the following terms and conditions:~~

~~1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which the Clean Unit designation applies.~~

~~2. If the effective date is not known when the Clean Unit designation is initially recorded in the federal operating permit (e.g., because the air pollution control technology is not yet in service), the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~3. If the expiration date is not known when the Clean Unit designation is initially recorded into the federal operating permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~4. All emission limitations and work practice requirements adopted in conjunction with the LAER, and any physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput).~~

~~5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation (see subsection G of this section).~~

~~6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection G of this section.~~

~~G. To maintain the Clean Unit designation, the owner shall conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to conform to the restrictions for one pollutant affects Clean Unit designation only for that pollutant.~~

~~1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit, and subsequently reflected in the federal operating permit.~~

~~a. The owner shall not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput).~~

~~b. The Clean Unit shall not emit above a level that has been offset.~~

~~2. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.~~

~~3. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~H. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then, the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~I. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it shall requalify under the requirements that are currently applicable in the area.~~]

9 VAC 5-80-2142. [~~Clean unit provisions for emissions units that achieve an emissions limitation comparable to LAER.~~ (Reserved.)]

[~~A. An owner of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is a major modification according to the provisions of this section. The provisions of this section apply to emissions units that do not qualify as Clean Units under 9 VAC 5-80-2141, but that are achieving a level of emissions control comparable to LAER, as determined by the board in accordance with this section.~~

~~B. The general provisions set forth in this subsection shall apply to a Clean Unit designated under this section.~~

~~1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection E of this section) and before the expiration date (as determined in accordance with subsection F of this section) will be considered to have occurred while the emissions unit was a Clean Unit.~~

~~2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision H 4 of this section, the emissions unit remains a Clean Unit.~~

~~3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision H 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 4 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.~~

~~4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-2000 I 1 through 4 and 6 as if the emissions unit were never a Clean Unit.~~

~~C. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 through 3 of this subsection. After the original Clean Unit designation expires in accordance with subsection F of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 4 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-2141. To requalify as a Clean Unit under subdivision 4 of this subsection, the emissions unit shall obtain a new permit issued pursuant to the requirements in subsections G and H of this section and meet all the criteria in subdivision 4 of this subsection. The board will make a separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.~~

~~1. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements:~~

~~a. The owner has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subsection D of this section. However, the emissions unit is not eligible for the Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the LAER determinations to which it is compared have resulted in a determination that no control measures are required).~~

~~b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.~~

~~2. The board will determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.~~

~~3. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before [the effective date of this revision]. However, for such emissions units, the owner shall apply for the Clean Unit designation within two years after [the effective date of this revision]. For technologies installed after the plan requirements become effective, the owner shall apply for the Clean Unit designation at the time the control technology is installed.~~

~~4. In order to requalify as a Clean Unit, the emissions unit shall (i) obtain a new permit (pursuant to subsections G and H of this section) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current-day LAER, and (ii) meet the requirements in subdivisions 1 a and 2 of this subsection.~~

~~D. The owner may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of subdivision C 1 of this section according to either subdivisions 1 or 2 of this subsection. Subdivision 3 of this subsection specifies the time for making this comparison.~~

~~1. The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as any one of the five best-performing similar sources for which a LAER determination has been made within the preceding five years, and for which information has been entered into the RACT/BACT/LAER Clearinghouse (RBLC). The board will also compare this presumption to any additional LAER determinations of which it is aware, and will consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to LAER is correct.~~

~~2. The owner may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection G of this section. The board will consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.~~

~~3. The provisions governing the time for making the comparison under this subsection shall be as follows:~~

~~a. The owner of an emissions unit whose control technology is installed before the effective date of this revision may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements. The expiration date of the Clean Unit designation will depend on which option the owner uses, as specified in subsection F of this section.~~

~~b. The owner of an emissions unit whose control technology is installed after [the effective date of this revision] may demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.~~

~~E. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection G of this section is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.~~

~~F. If the owner demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, then the Clean Unit designation expires five years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires five years from the effective date of the Clean Unit designation, as determined according to subsection E of this section. In addition, for all emissions units, the Clean Unit designation expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection I of this section.~~

~~G. The board will designate an emissions unit a Clean Unit only by issuing a permit through an NSR program that includes requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit shall also meet the requirements of subsection H of this section.~~

~~H. The permit required by subsection G of this section shall include the terms and conditions set forth in subdivisions 1 through 6 of this subsection. Such terms and conditions shall be incorporated into the source's federal operating permit in accordance with the provisions of the federal operating permit program, but no later than when the federal operating permit is renewed.~~

~~1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies.~~

~~2. If the effective date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal~~

~~operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~3. If the expiration date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.~~

~~4. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER (e.g., possibly the emissions unit's capacity or throughput).~~

~~5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation (see subsection I of this section).~~

~~6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection I of this section.~~

~~I. To maintain Clean Unit designation, the owner shall conform to all the restrictions listed in subdivisions 1 through 5 of this subsection. This subsection applies independently to each pollutant for which the board has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.~~

~~1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.~~

~~2. The owner may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER (e.g., possibly the emissions unit's capacity or throughput).~~

~~3. The Clean Unit may not emit above a level that has been offset.~~

~~4. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.~~

~~5. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.~~

~~J. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of plan requirements adopted to implement this subsection or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~

~~K. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to 9 VAC 5-80-2141 B 3 and subdivision B 3 of this section, it shall requalify under the requirements that are currently applicable.~~]

9 VAC 5-80-2143. **[~~*Pollution control project (PCP) exclusion.*~~ *(Reserved.)*]**

[~~*A. Before an owner begins actual construction of a PCP, the owner shall either submit a notice to the board if the project is listed in subdivisions a through f of the definition of "pollution control project," or if the project is not listed in subdivisions a through f of the definition of "pollution control project," then the owner shall submit a permit application and obtain approval to use the PCP exclusion from the board consistent with the requirements in subsection E of this section. Regardless of whether the owner submits a notice or a permit application, the project shall meet the requirements in subsection B of this section, and the notice or permit application shall contain the information required in subsection C of this section.~~

~~B. Any project that relies on the PCP exclusion shall provide the following:~~

~~1. The environmental benefit from the emission reductions of pollutants regulated under the federal Clean Air Act shall outweigh the environmental detriment of emissions increases. A statement that a technology from subdivisions a through f of the definition of "pollution control project" is being used shall be presumed to satisfy this requirement.~~

~~2. The emissions increases from the project shall not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) that has been identified for a federal class~~

~~I area by a federal land manager and for which information is available to the general public.~~

~~C. In the notice or permit application sent to the board, the owner shall include, at a minimum, the following information:~~

~~1. A description of the project.~~

~~2. The potential emissions increases and decreases of any pollutant regulated under the federal Clean Air Act and the projected emissions increases and decreases using the methodology in 9 VAC 5-80-2000 I, that will result from the project, and a copy of the environmentally beneficial analysis required by subdivision B 1 of this section.~~

~~3. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in the federal operating permit program.~~

~~4. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~5. Demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by subdivision B 2 of this section. An air quality impact analysis is not required for any pollutant which will not experience a significant emissions increase as a result of the project.~~

~~D. For projects listed in subdivisions a through f of the definition of "pollution control project," the owner may begin actual construction of the project immediately after notice is sent to the board (unless otherwise prohibited under requirements of the applicable implementation plan). The owner shall respond to any requests by the board for additional information that the board determines is necessary to evaluate the suitability of the project for the PCP exclusion.~~

~~E. Before an owner begins actual construction of a PCP project that is not listed in subdivisions a through f of the definition of "pollution control project," the project shall be approved by the board and recorded in an NSR permit, state operating permit, or federal operating permit. The permit procedures must include the requirement that the board provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The board will address all material comments received by the end of the comment period before taking final action on the permit.~~

~~F. Upon installation of the PCP, the owner shall comply with the following operational requirements:~~

~~1. The owner shall operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application required by subsection C of this section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.~~

~~2. The owner shall maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the requirements of subdivision 1 of this subsection.~~

~~3. The owner shall comply with any provisions in the applicable permit related to use and approval of the PCP exclusion.~~

~~4. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.~~]

9 VAC 5-80-2144. Actuals plantwide applicability limits (PALs)

A. The board may approve the use of an actuals PAL for any existing major stationary source (except as provided in subdivision 1 of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. No PAL shall be allowed for VOC or NO_X for any source located in an extreme ozone nonattainment area.

2. Any physical change in or change in the method of operation of a source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through this article; and

c. Is not subject to the provisions in 9 VAC 5-80-2000 D (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

3. Except as provided under subdivision 2 c of this subsection, a source shall continue to comply with all applicable federal or state requirements, emission

limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the board for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

2. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

3. The calculation procedures that the owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.

1. The board may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month rolling average). For each month during the first 11 months from the PAL effective date, the owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

c. The PAL permit shall contain all the requirements of subsection F of this section.

d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant.

e. Each PAL shall regulate emissions of only one pollutant.

f. Each PAL shall have a PAL effective period of five years.

g. The owner shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M through O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 9 VAC 5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs [*for existing major stationary sources*] shall *be established, renewed, or increased through the public participation procedures* [~~*of 9 VAC 5-90-2070*~~ *prescribed in the applicable permit programs identified in the definition of PAL permit*]. [~~*This includes the requirement that the board provide*~~ *In no case may the board issue a PAL permit unless the board provides*] *the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The board will address all material comments before taking final action on the permit.*

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant or under the federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. The same consecutive 24-month period shall be used for each different PAL pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances. Emissions associated with units that were permanently shutdown after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The board will specify a reduced PAL level (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the board is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if an owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the board, or until the board determines that the revised PAL permit will not be issued.

4. A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

5. A requirement that, once the PAL expires, the source is subject to the requirements of subsection I of this section.

6. The calculation procedures that the owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

7. A requirement that the owner monitor all emissions units in accordance with the provisions under subsection M of this section.

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection O of this section by the required deadlines.

10. Any other requirements that the board deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be five years.

H. The requirements for reopening of a PAL permit set forth in this section shall apply to actuals PALs.

1. During the PAL effective period, the board will reopen the PAL permit to:

a. Correct typographical and calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner creates creditable emissions reductions for use as offsets under 9 VAC 5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

2. The board may reopen the PAL permit for any of the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the board may impose on the major stationary source.

c. Reduce the PAL if the board determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical and calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL which is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the timeframe specified for PAL renewals in subdivision J 2 of this section, the source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the board) by distributing the PAL allowable emissions for the source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subsection J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The board will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the board determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The board may approve the use of monitoring systems (such as source testing or emission factors) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the board issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the source will be subject to the nonattainment major NSR requirements if such change meets the definition of "major modification."

5. The owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9 VAC 5-80-2000 D, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The board will follow the procedures specified in subsection D of this section in approving any request to

renew a PAL, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the board.

2. The owner shall submit a timely application to the board to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the board determines that the revised permit with the renewed PAL will not be issued [*, and a permit is issued pursuant to subsection I of this* section].

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subsection B of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

d. Any other information the owner wishes the board to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the board will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subsection.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the board may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The board may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the board in its written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

a. If the potential to emit of the source is less than the PAL, the board will adjust the PAL to a level no greater than the potential to emit of the source; and

b. The board will not approve a renewed PAL level higher than the current PAL, unless the source has complied with the provisions for increasing a PAL under subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the board has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The board may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

a. The owner shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the source's emissions to equal or exceed its PAL.

b. As part of this application, the owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding five years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process (e.g., LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The board will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subsection and must be approved by the board.

c. Notwithstanding subdivision 1 b of this subsection, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the board.

d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the board determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable performance specifications found in 40 CFR Part 60, appendix B; and

b. CEMS shall sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the board, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the board determines that testing is not required.

7. The owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the board will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the board. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require the owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the board in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the board within 30 days of the end of each reporting period. This report shall contain the following information:

a. Identification of the owner and the permit number.

b. Total annual emissions in tons per year based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.

c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the source during the preceding six-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9 VAC 5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9 VAC 5-80-110 F 2 b. The reports shall contain the following information:

a. Identification of the owner and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the board the results of any revalidation test or method within three months after completion of such test or method.

P. The board will not issue a PAL that does not comply with the requirements of this section after [~~*the effective date of this revision*~~ *February 22, 2006*]*. The board may supersede any PAL that was established prior to* [~~*the effective date of this revision*~~ *February 22, 2006,*] *with a PAL that complies with the requirements of this section.*

9 VAC 5-80-2180. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction~~, reconstruction~~ or modification is not commenced within [~~the latest of the following time frames: 1. Eighteen~~ *18*] months from the date the permit is granted.

[~~2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any government entity.~~

~~3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).~~]

B. A permit granted pursuant to this article shall become invalid if a program of construction~~, reconstruction~~ or modification is discontinued for a period of 18 months or more or if a program of construction~~, reconstruction~~ or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase ~~must~~ *shall* commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted using the procedures for minor amendments in 9 VAC 5-80-2220.

D. Any owner who constructs or operates a source or modification not in accordance *(i) with the application submitted pursuant to this article, or (ii)* with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who

commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all *applicable* requirements of the regulations of the board.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9 VAC 5-170-120 et seq.) of 9 VAC 5 Chapter 170 and the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia).

J. The board ~~shall~~ *will* notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit or to render a permit invalid.

[9 VAC 5-80-2200. Changes to permits.

A. The general requirements for making changes to permits *issued under this article* are as follows:

1. *Except as provided in subdivision 3 of this subsection,* changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-2210 through 9 VAC 5-80-2240.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.

4. ~~This section shall not be applicable to general permits~~ *Under no circumstances may a permit issued under this article be changed in order to (i) incorporate the terms and conditions necessary to implement any provision of the new source review program for a project that qualifies as a modification under the new source review program or (ii) incorporate the terms and conditions necessary to implement any provision of the new source review program for a PAL permit*.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit ~~revisions~~ *changes* can be found in 9 VAC 5-80-2210 through 9 VAC 5-80-2230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-2240.]

9 VAC 5-80-2210. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity that does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-2170 have been fulfilled.

[~~4. The combining of permits under the new source review program as provided in 9 VAC 5-80-2020 C.~~]

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board ~~shall~~ *will* incorporate the changes without providing notice to the public under 9 VAC 5-80-2070. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9 VAC 5-80-2220. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that *meet all of the following criteria*:

1. Do not violate any applicable federal requirement~~;~~.

2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements~~;~~.

3. Do not require or change a case-by-case determination of an emission limitation or other standard~~;~~.

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include [~~: a.~~ *, but are not limited to,*] an emissions cap assumed to avoid classification as a modification under the new source review program [~~or § 112 of the federal Clean Air Act; and~~.]

[~~b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;.~~

~~5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and .~~

~~6.~~ *5.*] Are not required to be processed as a significant amendment under 9 VAC 5-80-2230 or as an administrative permit amendment under 9 VAC 5-80-2210.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that *meet any of the following criteria*:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require more frequent monitoring or reporting by the permittee [~~or to reduce the level of an emissions cap~~].

3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-2020 E 1 as state-only enforceable as provided in 9 VAC 5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

C. [~~Notwithstanding subsection A of this section,~~] Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the [*underlying*] statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. [*In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.*]

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-2070 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9 VAC 5-80-2230. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-2220 or as administrative amendments under 9 VAC 5-80-2210.

2. Significant amendment procedures shall be used for those permit amendments that *meet any of the following criteria:*

a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a

change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include [~~: (1)~~ *, but are not limited to,*] an emissions cap assumed to avoid classification as a modification under the new source review program [~~or § 112 of the federal Clean Air Act; and.~~]

[~~(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.~~]

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-2070 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-2070.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9 VAC 5-80-2240. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit [must ~~*shall*~~] be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

[~~4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.~~]

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

VA.R. Doc. No. R03-181 and R04-189; Filed December 18, 2005, 1:22 p.m.

STATE WATER CONTROL BOARD

Notice of Effective Date

Title of Regulation: **9 VAC 25-260. Water Quality Standards (amending 9 VAC 25-260-30).**

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

Effective Date: December 29, 2005.

On September 27, 2005, the State Water Control Board adopted revisions to the Water Quality Standards in 9 VAC 25-260-30. These revisions relate to water quality standards to designate seven streams within the Shenandoah National Park as Exceptional State Waters (Big Run, Doyles River, East Hawksbill Creek, Jeremys Run, East Branch Naked Creek, Piney River, and North Fork Thornton River). The amendments were published in the Virginia Register of Regulations as final in 22:3 VA.R. 381-382 October 17, 2005, with an effective date upon filing a notice of EPA approval with the Registrar of Regulations.

The State Water Control Board hereby notices EPA approval of these revisions to the water quality standards via a letter dated December 20, 2005, from Jon M. Capacasa, Director of the Water Protection Division, EPA Region 3, to Robert G. Burnley, Director of the Virginia Department of Environmental Quality. The effective date of these amendments is December 29, 2005. Copies are available online at http://www.deq.virginia.gov/wqs; by calling toll free at 1-800-592-5482 ext. 4113 or (804) 698-4121; by written request to David C. Whitehurst at P.O. Box 10009, Richmond, VA 23240; or by e-mail request to dcwhitehurst@deq.virginia.gov.

VA.R. Doc. Nos. R04-110; Filed December 29, 2005, 3:23 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12 VAC 30-120. Waivered Services Elderly or Disabled Consumer Direction Waiver (adding 12 VAC 30-120-900 through 12 VAC 30-120-980; repealing 12 VAC 30-120-10 through 12 VAC 30-120-60 and 12 VAC 30-120-490 through 12 VAC 30-120-550).**

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

Effective Date: February 22, 2006.

Agency Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680, or e-mail teja.stokes@dmas.virginia.gov.

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.

Summary:

This regulatory action combines the Elderly and Disabled Waiver with the Consumer-Directed Waiver. The new combined waiver will offer agency-directed personal assistance, agency-directed respite, consumer-directed personal assistance, consumer-directed respite, adult day health care, and personal emergency response systems.

Amendments are made to the proposed regulations to enhance the clarity of the regulatory text and to correct grammar or citations. In addition to these technical changes (i) the definition section is amended, (ii) the local Department of Social Services is added to the list of persons or entities to be notified upon certain events, (iii) language is amended regarding the submission of required information, (iv) the requirement that a request include documentation of the need for increased care is added, (v) a requirement that aides be at least 18 years old is added, (vi) the requirement that primary caregivers live in the home in order to receive respite care services is removed, and (vii) the requirements that all personal care providers have CPR training and an annual flu shot are removed.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 22:2 VA.R. 168-215 October 3, 2005, with the changes identified below. Pursuant to § 2.2-4031 A of the Code of Virginia, the adopted regulation is not published at length; however, the sections that have changed since publication of the proposed are set out.

12 VAC 30-120-10 through 12 VAC 30-120-550. [No change from proposed.]

PART ~~XI.~~ *VIII.*
INDIVIDUAL AND FAMILY DEVELOPMENTAL DISABILITIES SUPPORT WAIVER.

PART IX.
ELDERLY OR DISABLED WITH CONSUMER DIRECTION WAIVER.

12 VAC 30-120-900. Definitions.

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

"Activities of daily living" or "ADLs" means tasks such as bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Adult day health care center" or "ADHC" means a DMAS-enrolled provider that offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and disabled individuals at risk of placement in a nursing facility. The ADHC must be licensed by DSS as an ADHC.

"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and coordination of rehabilitation services in a congregate daytime setting.

"Agency-directed services" means services provided by a personal care agency.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12 VAC 30-110 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

"Barrier crime" means those crimes as defined at § [~~*37.2-416*~~ *32.1-162.9:1*] *of the Code of Virginia.*

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Cognitive impairment" means a severe deficit in mental capability that affects an individual's areas of functioning such as thought processes, problem solving, judgment, memory, or comprehension that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

"Consumer-directed services" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the personal care aide.

"Consumer-directed (CD) services facilitator" or "facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Plan of Care, providing employee management

training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services.

"Designated preauthorization contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services.

"Direct marketing" means either (i) conducting either directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) using direct mailing; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) providing continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Elderly or Disabled with Consumer Direction Waiver" or "EDCD waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who are elderly or disabled who would otherwise require a nursing facility level of care.

"Fiscal agent" means an agency or division within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal care services and respite services.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization contractor shall only give preauthorization for medically necessary Medicaid reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping and laundry. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Medication monitoring" means an electronic device, which is only available in conjunction with Personal Emergency Response Systems, that enables certain individuals at high risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Personal care agency" means a participating provider that provides personal care services.

"Personal care aide" means a person who provides personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a nursing facility. Personal care services are provided to individuals in the areas of activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. Services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

"Personal emergency response system (PERS)" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"PERS provider" means a certified home health or a personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and services calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while remaining in the community.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission Screening Committee/Team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.'

[*"Primary caregiver" means the primary person who consistently assumes the rule of providing direct care and support of the individual to live successfully in the community without compensation for providing such care.*]

"Respite care agency" or "respite care facility" means a participating provider that renders respite services.

"Respite services" means those short-term personal care services provided to individuals who are unable to care for themselves because of the absence of or need for the relief of those unpaid caregivers who normally provide the care.

"State Plan for Medical Assistance" or "State Plan" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the Preadmission Screening Team that assesses an individual's physical health, mental health, and social and functional abilities to determine if the individual meets the nursing facility level of care.

12 VAC 30-120-910. General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services.

A. EDCD Waiver services populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following Medicaid-eligible individuals who have been determined to be eligible for waiver services and to require the level of care provided in a nursing facility:

1. Individuals who are elderly as defined by § 1614 of the Social Security Act; or

2. Individuals who are disabled as defined by § 1614 of the Social Security Act.

B. Covered services.

1. Covered services shall include: adult day health care, personal care (both consumer- and agency-directed), respite services (both consumer-directed, agency-directed, and facility-based), and PERS.

2. These services shall be medically appropriate and medically necessary to maintain the individual in the community and prevent institutionalization.

3. A recipient of EDCD Waiver services may receive personal care (agency- and consumer-directed), respite care (agency- and consumer-directed), adult day health care, and PERS services in conjunction with hospice services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. Services under this waiver will not be available to hospice recipients unless the hospice can document the provision of at least 21 hours per week of homemaker/home health aide services and that the recipient needs personal care-type services that exceed this amount.

4. Under this § 1915(c) waiver, DMAS waives §§ 1902(a)(10)(B) and (C) of the Social Security Act related to comparability of services.

12 VAC 30-120-920. Individual eligibility requirements.

A. The Commonwealth has elected to cover low-income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver group under 42 CFR 435.217; and the medically needy groups specified in 42 CFR 435.320, 435.322, 435.324, and 435.330.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the following deductions:

a. For individuals to whom § 1924(d) applies (Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B)), deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. However, in no case, shall the total amount of income (both earned

and unearned) that is disregarded for maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act;

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act; and

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under the state law but not covered under the State Plan.

b. For individuals to whom § 1924(d) of the Social Security Act does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family that shall be equal to the medically needy income standard for a family of the same size; and

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Plan.

B. Assessment and authorization of home and community-based services.

1. To ensure that Virginia's home and community-based waiver programs serve only Medicaid eligible individuals who would otherwise be placed in a nursing facility, home and community-based waiver services shall be considered only for individuals who are eligible for admission to a nursing facility. Home and community-based waiver services shall be the critical service to enable the individual to remain at home and in the community rather than being placed in a nursing facility.

2. The individual's eligibility for home and community-based services shall be determined by the Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support. If an individual meets nursing facility criteria, the Preadmission Screening Team shall provide the individual and family/caregiver with the choice of Elderly or Disabled with Consumer Direction Waiver services or nursing facility placement.

3. The Preadmission Screening Team shall explore alternative settings or services to provide the care needed by the individual. When Medicaid-funded home and community-based care services are determined to be the critical services necessary to delay or avoid nursing facility placement, the Preadmission Screening Team shall initiate referrals for services.

4. Medicaid will not pay for any home and community-based care services delivered prior to the individual establishing Medicaid eligibility and prior to the date of the preadmission screening by the Preadmission Screening Team and the physician signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96).

5. Before Medicaid will assume payment responsibility of home and community-based services, preauthorization must be obtained from the designated preauthorization contractor on all services requiring preauthorization. Providers must submit all required information to the designated preauthorization contractor within 10 business days of initiating care [*or within 10 business days of receiving verification of Medicaid eligibility from the local DSS*]. *If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to the designated preauthorization contractor within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the Preadmission Screening Team physician's signature on the DMAS-96 form.*

6. Once services for the individual have been authorized by the designated preauthorization contractor, the provider/services facilitator will submit a Patient Information Form (DMAS-122), along with a written confirmation of level of care eligibility from the designated preauthorization contractor, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities. After the provider/services facilitator has received written notification of Medicaid eligibility by DSS and written enrollment from the designated preauthorization contractor, the provider/services facilitator shall inform the individual or family/caregiver so that services may be initiated.

7. The provider/services facilitator with the most billable hours must request an updated DMAS-122 form from the local DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.

8. Home and community-based care services shall not be offered or provided to any individual who resides in a nursing facility, an intermediate care facility for the mentally retarded, a hospital, an assisted living facility licensed by DSS or an Adult Foster Care provider certified by DSS, or a group home licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.

C. Appeals. Recipient appeals shall be considered pursuant to 12 VAC 30-110-10 through 12 VAC 30-110-380. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

12 VAC 30-120-930. General requirements for home and community-based participating providers.

A. Requests for participation will be screened by DMAS or the designated DMAS contractor to determine whether the provider applicant meets these basic requirements for participation and demonstrates the abilities to perform, at a minimum, the following activities:

1. Immediately notify DMAS in writing of any change in the information that the provider previously submitted to DMAS;

2. Assure freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services are performed;

3. Assure the individual's freedom to refuse medical care, treatment, and services;

4. Accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;

5. Provide services and supplies to individuals in full compliance with Title VI (42 USC § 2000d et seq.) of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973 (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

6. Provide services and supplies to individuals of the same quality and in the same mode of delivery as is provided to the general public;

7. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS payment methodology beginning with the individual's authorization date for the waiver services;

8. Use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms;

9. Use DMAS-designated billing forms for submission of charges;

10. Not perform any type of direct marketing activities to Medicaid individuals;

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable federal and state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least six years after such minor has reached 18 years of age.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth;

12. Furnish information on request and in the form requested to DMAS, the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

14. Pursuant to 42 CFR 431.300 et seq., 12 VAC 30-20-90, and any other applicable federal or state law, hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS in conjunction with the cited laws;

15. When ownership of the provider changes, notify DMAS in writing at least 15 calendar days before the date of change;

16. Pursuant to §§ 63.2-1509 and 63.2-1606 of the Code of Virginia, if a participating provider knows or suspects that a home and community-based waiver services individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation must report this immediately from first knowledge to the local DSS adult or child protective services worker as applicable;

17. In addition to compliance with the general conditions and requirements, adhere to the conditions of participation outlined in the individual provider's participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider's participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both; and

18. Meet minimum qualifications of staff. All employees must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime as defined herein. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.

B. For DMAS to approve provider agreements with home and community-based waiver providers, providers must meet staffing, financial solvency, disclosure of ownership, and assurance of comparability of services requirements as specified in the applicable provider manual.

C. The individual shall have the option of selecting the provider of his choice from among those providers who are approved and who can appropriately meet his needs.

D. A participating provider may voluntarily terminate his participation in Medicaid by providing 30 days' written notification.

E. DMAS may terminate at-will a provider's participation agreement on 30 days' written notice as specified in the DMAS participation agreement. DMAS may immediately terminate a provider's participation agreement if the provider is no longer eligible to participate in the Medicaid program. Such action precludes further payment by DMAS for services provided to individuals on or after the date specified in the termination notice.

F. A provider shall have the right to appeal adverse actions taken by DMAS. Provider appeals shall be considered pursuant to 12 VAC 30-10-1000 and 12 VAC 30-20-500 through 12 VAC 30-20-560.

G. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia or, the U.S. territories, must, within 30 days, notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement.

H. The provider/services facilitator is responsible for the Patient Information Form (DMAS-122). The service provider/services facilitator's provider shall notify the designated preauthorization contractor [*, the local DSS,*] *and DMAS, in writing, when any of the following circumstances occur. Furthermore, it shall be the responsibility of the designated preauthorization contractor to update DMAS, as requested, when any of the following events occur:*

1. Home and community-based waiver services are implemented;

2. An individual dies;

3. An individual is discharged from EDCD waiver services;

4. Any other circumstances (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 days; or

5. The initial selection by the individual or family/caregiver of a provider/services facilitator to provide services, or a change by the individual or family/caregiver of a provider/services facilitator, if it affects the individual's patient pay amount.

I. Changes or termination of services.

1. The provider may decrease the amount of authorized care if the revised plan of care is appropriate and based on the needs of the individual. If the individual disagrees with the proposed decrease, the individual has the right to appeal to DMAS. The participating provider is responsible for developing the new plan of care and calculating the new hours of service delivery. The individual or person responsible for supervising the individual's care shall discuss the decrease in care with the individual or family/caregiver, document the conversation in the individual's record, and notify the designated preauthorization contractor [~~*and*~~*. The preauthorization contractor will* notify] *the individual or family of the change by letter. This letter shall clearly state the individual's right to appeal.*

2. If a change in the individual's condition necessitates an increase in care, the participating provider must assess the need for increase and, if appropriate, develop a plan of care for services to meet the changed needs. The provider may implement the increase in personal/respite care hours without approval from DMAS, or the designated

preauthorization contractor, if the amount of services does not exceed the amount established by DMAS, or the designated preauthorization contractor, as the maximum for the level of care designated for that individual on the plan of care. Any increase to an individual's plan of care that exceeds the number of hours allowed for that individual's level of care or any change in the individual's level of care must be preauthorized by DMAS or the designated preauthorization contractor [*and be accompanied by adequate documentation justifying the increase*].

3. In an emergency situation when the health and safety of the individual or provider personnel is endangered, DMAS, or the designated preauthorization contractor, must be notified prior to discontinuing services. The written notification period shall not be required. If appropriate, the local DSS adult or child protective services department must be notified immediately.

4. In a nonemergency situation, i.e., when the health and safety of the individual or provider personnel is not endangered, the participating provider, other than a PERS provider, shall give the individual or family/caregiver, or both, at least 10 days' written notification plus three days for mailing of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider is discontinuing services. The effective date shall be at least 10 days plus three days for mailing from the date of the notification letter. A PERS provider shall give the individual or family/caregiver at least 14 days' prior written notification of the intent to discontinue services. The letter shall provide the reasons for and the effective date of the action. The effective date shall be at least 14 days from the date of the notification letter.

5. In the case of termination of home and community-based waiver services by DMAS or the designated preauthorization contractor, individuals shall be notified of their appeal rights pursuant to 12 VAC 30-110. DMAS, or the designated preauthorization contractor, has the responsibility and the authority to terminate the receipt of home and community-based care services by the individual for any of the following reasons:

a. The home and community-based care services are no longer the critical alternative to prevent or delay institutional placement;

b. The individual is no longer eligible for Medicaid;

c. The individual no longer meets the nursing facility criteria; or

d. The individual's environment does not provide for his health, safety, and welfare.

J. DMAS will conduct annual level-of-care reviews for all waiver recipients.

12 VAC 30-120-940. Adult day health care services.

A. This section contains specific requirements governing the provision of adult day health care (ADHC).

B. Adult day health care services may be offered to individuals in an ADHC setting. Adult day health care may be offered either as the sole home and community-based care service or in conjunction with personal care (agency- or consumer-directed), respite care (agency- or consumer-directed), or PERS.

C. Special provider participation conditions. In order to be a participating provider, the adult day health care center shall:

1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review;

2. Adhere to DSS adult day health care center standards;

3. Adhere to and meet the following DMAS special participation standards that are imposed in addition to DSS standards:

a. Provide a separate room or an area equipped with one bed, cot, or recliner for every 12 Medicaid adult day health care participants;

b. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant;

c. Maintain a minimum staff-to-participant ratio of at least one staff member to every six participants. This includes Medicaid and other participants;

d. Provide at least two staff members awake and on duty at the ADHC at all times when there are Medicaid participants in attendance;

e. In the absence of the director, designate the activities director, registered nurse, or therapist to supervise the program;

f. May include volunteers in the staff-to-participant ratio if these volunteers meet the qualifications and training requirements for compensated employees, and, for each volunteer so counted, include at least one compensated employee in the staff-to-participant ratio;

g. For any center that is co-located with another facility, count only its own separate identifiable staff in the center's staff-to-participant ratio; and

h. Employ the following:

(1) A director who shall be responsible for overall management of the center's programs. The director shall be the provider contact person for DMAS and the designated preauthorization contractor and shall be responsible for responding to communication from DMAS and the designated preauthorization contractor.

(a) The director shall be responsible for assuring the development of the plan of care for adult day health care individuals. The director has ultimate responsibility for directing the center program and supervision of its employees. The director can also serve as the activities director if they meet the qualifications for that position.

(b) The director shall assign himself, the activities director, registered nurse or therapist to act as adult

day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.

(c) The director shall meet the qualifications specified in the DSS standards for adult day health care for directors.

(2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants. The activities director shall:

(a) Have a minimum of 48 semester hours or 72 quarter hours of postsecondary education from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education; and

(b) Have one year of related experience, which may include work in an acute care hospital, rehabilitation hospital, nursing facility, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education.

(3) Program aides who shall be responsible for overall care and maintenance of the participant (assistance with activities of daily living, social/recreational activities, and other health and therapeutic-related activities). Each program aide hired by the provider shall be screened to ensure compliance with qualifications required by DMAS. The aide shall, at a minimum, have the following qualifications:

[*(a) Be at least 10 years of age or older;*]

[~~*(a)*~~ *(b)*] *Be able to read and write in English to the degree necessary to perform the tasks expected;*

[~~*(b)*~~ *(c)*] *Be physically able to do the work;*

[~~*(c)*~~ *(d)*] *Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculums are offered by educational institutions, nursing facilities, and hospitals. Training consistent with DMAS training guidelines may also be given by the center's professional staff. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by DMAS staff who are authorized by DMAS to review these files. Prior to assigning a program aide to a participant, the ADHC shall ensure that the aide has satisfactorily completed a DMAS-approved training program.*

(4) A registered nurse (RN) employed or contracted with the center who shall be responsible for administering to and monitoring the health needs of the participants. The nurse shall be responsible for the planning and implementation of the plan of care involving multiple services where specialized health care knowledge is needed. The nurse shall be present a minimum of eight hours each month at the center. DMAS may require the nurse's presence at the adult day health care center for more than this minimum standard depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although DMAS does not require that the registered nurse be a full-time staff position, there shall be a registered nurse available, either in person or by telephone, to the center's participants and staff during all times that the center is in operation. The registered nurse shall:

(a) Be registered and licensed as a registered nurse to practice nursing in the Commonwealth; and

(b) Have two years of related clinical experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as an LPN.

D. Service responsibilities of the adult day health care center and staff shall be:

1. Aide responsibilities. The aide shall be responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's plan of care.

2. RN responsibilities. The RN shall be responsible for:

a. Providing periodic evaluation of the nursing needs of each participant;

b. Providing the indicated nursing care and treatment; and

c. Monitoring, recording, and administering of prescribed medications or supervising the participant in self-administered medication.

3. Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and speech-language therapy. Rendering of the specific rehabilitative therapy is not included in the center's fee for services but must be rendered as a separate service by a rehabilitative provider.

4. Nutrition responsibilities. The center shall provide one meal per day that supplies one-third of the daily nutritional requirements established by the U.S. Department of Agriculture. Special diets and counseling shall be provided to Medicaid participants as necessary.

5. Adult day health care coordination. The designated adult day health care coordinator shall coordinate the delivery of the activities as prescribed in the participants' plans of care and keep them updated, record 30-day progress notes, and review the participants' daily records each week. If the individual's condition changes more frequently, more

frequent reviews and recording of progress notes shall be required to reflect the participant's changing condition.

6. Recreation and social activities responsibilities. The center shall provide planned recreational and social activities suited to the individuals' needs and designed to encourage physical exercise, prevent deterioration of the individual's condition, and stimulate social interaction.

E. Documentation required. The ADHC shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff who are authorized by DMAS to review these files. At a minimum, these records shall contain:

1. The Long-Term Care Uniform Assessment Instrument, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care for Medicaid-Funded Long-Term Care form (DMAS-97), the DMAS-101A and the DMAS-101B forms (if applicable), and the most recent patient information from the DMAS-122 form;

2. Interdisciplinary plans of care developed by the ADHC's director, registered nurse, or therapist and relevant support persons, in conjunction with the participant;

3. Documentation of interdisciplinary staff meetings that shall be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care plan of care and make any necessary revisions;

4. At a minimum, 30-day goal oriented progress notes recorded by the designated adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes shall be written more frequently than every 30 days;

5. The rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care obtained every 30 days (physical therapy, speech therapy, occupational therapy, home health, and others);

6. Daily records of services provided. The daily record shall contain the specific services delivered by ADHC staff. The record shall also contain the arrival and departure times of the participant and be signed weekly by the director, activities director, registered nurse, or therapist employed by the center. The daily record shall be completed on a daily basis, neither before nor after the date of services delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly record, that staff member shall sign the weekly comments. A copy of this record must be given to the participant or family/caregiver weekly; and

7. All correspondence to the individual, DMAS, and the designated preauthorization contractor.

12 VAC 30-120-950. Agency-directed personal care services.

A. This section contains requirements governing the provision of agency-directed personal care services.

B. Service description. Personal care services are comprised of hands-on care of either a supportive or health-based nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460. It may be provided in a home and community setting to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care may be offered either as the sole home and community-based care service or in conjunction with adult day health care, respite care (agency-or consumer-directed), or PERS.

C. Criteria. In order to qualify for these services, the individual must demonstrate a need for care with activities of daily living.

1. DMAS will also pay, consistent with the approved plan of care, for personal care that the personal care aide provides to the enrolled individual to assist him at work or postsecondary school. DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973.

2. DMAS or the designated preauthorization contractor will review the individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.

3. DMAS will not pay for the personal care aide to assist the enrolled individual with any functions related to the individual completing his job or postsecondary school functions or for supervision time during work or school or both.

4. There shall be a limit of eight hours per 24-hour day for supervision services.

5. The provider must develop an individualized plan of care that addresses the individual's needs at home and work and in the community.

D. Special provider participation conditions. The personal care provider shall:

1. Operate from a business office.

2. Employ persons who have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by DMAS to review these files.

3. [~~*Employ*~~ *Hire employees*] *(or contract with) and directly supervise a registered nurse who will provide ongoing supervision of all personal care aides.*

a. The registered nurse shall be currently licensed to practice in the Commonwealth as an RN and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as a licensed practical nurse (LPN).

b. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for all individuals admitted to personal care, when an individual is readmitted after being discharged from services, or if he is transferred from another provider, ADHC, or from a consumer-directed services program.

c. The registered nurse supervisor shall make supervisory visits as often as needed, but no fewer visits than provided as follows, to ensure both quality and appropriateness of services:

(1) A minimum frequency of these visits is every 30 days for individuals with a cognitive impairment and every 90 days for individuals who do not have a cognitive impairment, as defined herein. The provider agency shall have the responsibility of determining if 30-day registered nurse supervisory visits are appropriate for the individual.

(2) The initial home assessment visit by the registered nurse shall be conducted to create the plan of care and assess the individual's needs. The registered nurse shall return for a follow-up visit within 30 days after the initial visit to assess the individual's needs and make a final determination that there is no cognitive impairment. This determination must be documented in the individual's record by the registered nurse. Individuals who are determined to have a cognitive impairment will continue to have supervisory visits every 30 days.

(3) If there is no cognitive impairment, the registered nurse may give the individual or family/caregiver the option of having the supervisory visit every 90 days or any increment in between, not to exceed 90 days, or the provider may choose to continue the 30-day supervisory visits based on the needs of the individual. The registered nurse supervisor must document in the individual's record this conversation and the option that was chosen. The individual or the family/caregiver must sign and date this document.

(4) If an individual's personal care aide is supervised by the provider's registered nurse supervisor less frequently than every 30 days and DMAS, or the designated preauthorization contractor, determines that the individual's health, safety, or welfare is in jeopardy, DMAS, or the designated preauthorization contractor, may require the provider's registered nurse supervisor to supervise the personal care aide every 30 days or more frequently than has been determined by the registered nurse supervisor. This will be documented by the provider and entered in the individual's record.

d. During visits to the individual's home, a registered nurse supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the individual's current functioning status, and medical and social needs. The personal care aide's record shall be reviewed and the individual's or family's/caregiver's satisfaction with the type and amount of services discussed. The registered nurse supervisor's summary shall note:

(1) Whether personal care services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the individual's needs or if changes are indicated in the plan;

(3) Any special tasks performed by the personal care aide and the personal care aide's qualifications to perform these tasks;

(4) The individual's satisfaction with the services;

(5) Whether the individual has been hospitalized or there has been a change in the medical condition or functional status of the individual;

(6) Other services received by the individual and the amount; and

(7) The presence or absence of the personal care aide in the home during the registered nurse supervisor's visit.

e. A registered nurse supervisor shall be available to the personal care aide for conferences pertaining to individuals being served by the aide and shall be available to the aide by telephone at all times that the aide is providing services to individuals.

f. The registered nurse supervisor shall evaluate the personal care aide's performance and the individual's needs to identify any insufficiencies in the personal care aide's abilities to function competently and shall provide training as indicated. This shall be documented in the individual's record.

g. If there is a delay in the registered nurses' supervisory visits because the individual was unavailable, the reason for the delay must be documented in the individual's record.

4. Employ and directly supervise personal care aides who provide direct care to individuals. Each aide hired for personal care shall be evaluated by the provider agency to ensure compliance with qualifications required by DMAS. Each personal care aide shall:

[*a. Be at least 18 years of age or older;*]

[~~*a.*~~ *b.*] *Be able to read and write in English to the degree necessary to perform the expected tasks;*

[~~*b.*~~ *c.*] *Complete a minimum of 40 hours of training consistent with DMAS standards. Prior to assigning an*

aide to an individual, the provider agency shall ensure that the personal care aide has satisfactorily completed a DMAS-approved training program consistent with DMAS standards;

[~~c.~~ d.] Be physically able to do the work; and

[~~d.~~ e.] Not be (i) the parents of minor children who are receiving waiver services or (ii) spouses of individuals who are receiving waiver services.

Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers or aides available to provide the care. These family members must meet the same requirements as personal care aides who are not family members.

E. Required documentation for individuals' records. The provider shall maintain all records for each individual receiving personal care services. These records shall be separate from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by DMAS. At a minimum, the record shall contain:

1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care for Medicaid-Funded Long-Term Care (DMAS-97), all Provider Agency Plans of Care (DMAS-97A), all Patient Information Forms (DMAS-122), and all DMAS-101A and 101B forms (if applicable);

2. The initial assessment by a registered nurse or a RN supervisor completed prior to or on the date that services are initiated;

3. Registered nurse supervisor's notes recorded and dated during significant contacts with the personal care aide and during supervisory visits to the individual's home;

4. All correspondence to the individual, DMAS, and the designated preauthorization contractor;

5. Reassessments made during the provision of services;

6. Significant contacts made with family/caregivers, physicians, DMAS, the designated preauthorization contractor, formal, informal services providers and all professionals related to the individual's Medicaid services or medical care;

7. All personal care aides' records (DMAS-90). The personal care aide record shall contain:

a. The specific services delivered to the individual by the aide and his responses to this service;

b. The personal care aide's daily arrival and departure times;

c. The aide's weekly comments or observations about the individual, including observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

d. The personal care aide's and individual's or responsible caregiver's weekly signatures, including the date, to verify that personal care services have been rendered during that week as documented in the record. An employee of the provider cannot sign for the individual unless he is a family/caregiver of the individual. This family member cannot be the same family member who is providing the service. Signatures, times and dates shall not be placed on the personal care aide record prior to the last date that the services are actually delivered; and

8. All of the individual's progress reports.

12 VAC 30-120-960. Agency-directed respite care services.

A. This section contains requirements governing the provision of agency-directed respite care services.

B. Agency-directed respite care services are comprised of hands-on care of either a supportive or health-related nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self-administration of medications or other medical needs, monitoring health status and physical condition, and personal care services provided in a work environment. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460.

C. General. Respite care may only be offered to individuals who have a primary caregiver [~~living in the home~~] who requires temporary relief to avoid institutionalization of the individual. Respite care services may be provided in the individual's home or place of residence, or a facility licensed as a nursing facility and enrolled in Medicaid. The authorization of respite care (agency-directed and consumer-directed) is limited to a total of 720 hours per calendar year per individual. Reimbursement shall be made on an hourly basis.

D. Special provider participation conditions. To be approved as a respite care provider with DMAS, the respite care provider shall:

1. Operate from a business office.

2. Have employees who have satisfactory work records, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime.

3. Employ (or contract with) and directly supervise a registered nurse who will provide ongoing supervision of all respite care aides/LPNs.

a. The registered nurse supervisor shall be currently licensed to practice in the Commonwealth as an RN and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as an LPN.

b. Based on continuing evaluations of the aide's/LPN's performance and the individual's needs, the registered nurse supervisor shall identify any insufficiencies in the aide's/LPN's abilities to function competently and shall provide training as indicated.

c. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for any individual admitted to respite care.

d. A registered nurse supervisor shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days dependent on the cognitive status of the individual. If an individual is also receiving personal care services, the respite care RN supervisory visit may coincide with the personal care RN supervisory visits.

(2) When respite care services are not received on a routine basis, but are episodic in nature, a registered nurse supervisor shall not be required to conduct a supervisory visit every 30 to 90 days. Instead, a registered nurse supervisor shall conduct the initial home assessment visit with the aide/LPN on or before the start of care and make a second home visit during the second respite care visit. If an individual is also receiving personal care services, the respite care RN supervisory visit may coincide with the personal care RN supervisory visit.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the RN supervisory visit conducted for personal care services may serve as the registered nurse supervisory visit for respite care. However, the registered nurse supervisor shall document supervision of respite care separately from the personal care documentation. For this purpose, the same individual record can be used with a separate section for respite care documentation.

e. During visits to the individual's home, the registered nurse supervisor shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the individual's current functioning status and medical and social needs. The aide's/LPN's record shall be reviewed along with the individual's or family's satisfaction with the type and amount of services discussed. The registered nurse supervisor shall document in a summary note:

(1) Whether respite care services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the individual's needs or if changes need to be made to the plan of care;

(3) The individual's satisfaction with the services;

(4) Any hospitalization or change in the medical condition or functioning status of the individual;

(5) Other services received by the individual and the amount of the services received; and

(6) The presence or absence of the aide/LPN in the home during the RN supervisory visit.

f. An RN supervisor shall be available to the aide/LPN for conference pertaining to individuals being served by the aide/LPN and shall be available to the aide/LPN by telephone at all times that the aide/LPN is providing services to respite care individuals.

g. If there is a delay in the registered nurse's supervisory visits because the individual is unavailable, the reason for the delay must be documented in the individual's record.

4. Employ and directly supervise aides/LPNs who provide direct care to respite care individuals. Each aide/LPN hired by the provider shall be evaluated by the provider to ensure compliance with qualifications as required by DMAS. Each aide must:

a. Be at least 18 years of age or older;

b. Be physically able to do the work;

c. Be able to read and write in English to the degree necessary to perform the tasks expected;

d. Have completed a minimum of 40 hours of DMAS-approved training consistent with DMAS standards. Prior to assigning an aide to an individual, the provider shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards; and

e. Be evaluated in his job performance by the registered nurse supervisor.

Respite care aides may not be the parents of [~~*individuals who are minors or the individuals' spouses*~~ *minor children who are receiving waiver services or spouses of individuals who are receiving waiver services*]. *Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers or aides available to provide the care. Family members who are approved to provide paid respite services must meet the qualifications for respite care aides.*

5. Employ a licensed practical nurse (LPN) to perform skilled respite care services. Such services shall be reimbursed by DMAS under the following circumstances:

a. The individual has a need for routine skilled care that cannot be provided by unlicensed personnel. These

individuals would typically require a skilled level of care if in a nursing facility (e.g., individuals on a ventilator, individuals requiring nasogastric or gastrostomy feedings, etc.);

b. No other individual in the individual's support system is willing and able to supply the skilled component of the individual's care during the caregiver's absence; and

c. The individual is unable to receive skilled nursing visits from any other source that could provide the skilled care usually given by the caregiver.

The provider must document in the individual's record the circumstances that require the provision of services by an LPN. When an LPN is required, the LPN must also provide any of the services normally provided by an aide.

E. Required documentation for individuals' records. The provider shall maintain all records of each individual receiving respite services. These records shall be separated from those of nonhome and community-based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by DMAS to review these files. At a minimum these records shall contain:

1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care for Medicaid-Funded Long-Term Care (DMAS-97), all respite care assessments and plans of care, all aide records (DMAS-90), all LPN skilled respite records (DMAS-90A), all Patient Information Forms (DMAS-122), and all DMAS-101A and DMAS-101B forms, as applicable;

2. The physician's order for services, obtained prior to the service begin date and updated every six months;

3. The initial assessment by a registered nurse completed prior to or on the date services are initiated;

4. Registered nurse supervisor's notes recorded and dated during significant contacts with the care aide and during supervisory visits to the individual's home;

5. All correspondence to the recipient, DMAS, and the designated preauthorization contractor;

6. Reassessments made during the provision of services;

7. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal services providers, and all professionals related to the individual's Medicaid services or medical care; and

8. All respite care records. The respite care record shall contain:

a. The specific services delivered to the individual by the aide or LPN and his response to this service;

b. The daily arrival and departure times of the aide or LPN for respite care services;

c. Comments or observations recorded weekly about the individual. Aide or LPN comments shall include but not be limited to observation of the individual's physical and emotional condition, daily activities, and the individual's response to services rendered;

d. The signatures of the aide or LPN, and the individual, once each week to verify that respite care services have been rendered. Signature, times, and dates shall not be placed on the aide's record prior to the last date of the week that the services are delivered. If the individual is unable to sign the aide record, it must be documented in his record how or who will sign in his place. An employee of the provider shall not sign for the individual unless he is a family member or legal guardian of the recipient; and

e. All individual progress reports.

Documentation signed by the LPN must be reviewed and signed by the supervising RN.

12 VAC 30-120-970. Personal emergency response system (PERS).

A. Service description. PERS is a service that monitors individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's home telephone line. PERS may also include medication monitoring devices.

B. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for digital alarm communicator system units and Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the recipient.

C. Criteria. PERS services are limited to those individuals ages 14 and older who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision. PERS may only be provided in conjunction with personal care (agency- or consumer-directed), respite (agency- or consumer-directed), or adult day health care. An individual may not receive PERS if he has a cognitive impairment as defined in 12 VAC 30-120-900.

1. PERS can be authorized when there is no one else, other than the individual, in the home who is competent and continuously available to call for help in an emergency. If the individual's caregiver has a business in the home, such as, but not limited to, a day care center, PERS will only be approved if the individual is evaluated as being dependent in the categories of "Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

2. Medication monitoring units must be physician ordered. In order to receive medication monitoring services, an

individual must also receive PERS services. The physician orders must be maintained in the individual's file.

D. Services units and services limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, adjustments, and monitoring of the PERS. A unit of service [~~*is*~~ *equals*] *the one-month rental* [~~*price as*~~ *of PERS, the price of which is*] *set by DMAS. The one-time installation of the unit includes installation, account activation, and individual and caregiver instruction. The one-time installation fee shall also include the cost of the removal of the PERS equipment.*

2. PERS service must be capable of being activated by a remote wireless device and be connected to the individual's telephone line. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

3. In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days. There must be documentation of this in the individual's record.

E. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based waiver participating providers as specified in 12 VAC 30-120-930, PERS providers must also meet the following qualifications and requirements:

1. A PERS provider must be either a personal care agency, a durable medical equipment provider, a hospital, a licensed home health provider, or a PERS manufacturer. All such providers shall have the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring;

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS equipment 24 hours a day, 365 or 366 days per year as appropriate; (ii) determining whether an emergency exists; and (iii) notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help;

3. A PERS provider must comply with all applicable Virginia statutes, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed;

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication monitoring unit and shall provide temporary equipment while the original equipment is being repaired;

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the telephone be off the hook or in use when the unit is activated;

7. A PERS provider must maintain a data record for each PERS individual at no additional cost to DMAS or the individual. The record must document all of the following:

a. Delivery date and installation date of the PERS;

b. Individual/caregiver signature verifying receipt of the PERS device;

c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;

d. Updated and current individual responder and contact information, as provided by the individual or the individual's caregiver; and

e. A case log documenting the individual's utilization of the system, all contacts, and all communications with the individual, caregiver, and responders;

8. The PERS provider must have backup monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) Safety Standard Number 1635 for digital alarm communicator system units and Safety Standard Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring a manual reset by the individual;

10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor to familiarize staff with the services, allow for ongoing evaluation and refinement of the program, and instruct the individual, caregiver, and responders in the use of the PERS services;

11. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24 hours and automatically

transmit a low battery alert signal to the response center if the backup battery is low. The emergency response console unit must also be able to self-disconnect and redial the backup monitoring site without the individual resetting the system in the event it cannot get its signal accepted at the response center;

12. PERS providers must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the monitoring agency's equipment meets the following requirements. The PERS provider must be capable of simultaneously responding to multiple signals for help from individuals' PERS equipment. The PERS provider's equipment must include the following:

a. A primary receiver and a backup receiver, which must be independent and interchangeable;

b. A backup information retrieval system;

c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

d. A backup power supply;

e. A separate telephone service;

f. A toll-free number to be used by the PERS equipment in order to contact the primary or backup response center; and

g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds;

13. The PERS provider must maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

14. The PERS provider shall document and furnish within 30 days of the action taken a written report for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error. This written report shall be furnished to the personal care provider, the respite care provider, the CD services facilitation provider, or in cases where the individual only receives ADHC services, to the ADHC provider;

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid individuals; and

16. The PERS provider must obtain and keep on file a copy of the most recently completed Patient Information form (DMAS-122). Until the PERS provider obtains a copy of the DMAS-122 form, the PERS provider must clearly document efforts to obtain the completed DMAS-122 form from the personal care provider, respite care provider, the CD services facilitation provider, or the ADHC provider.

12 VAC 30-120-980. Consumer-directed services: personal care and respite services.

A. Service description.

1. Consumer-directed personal care services and respite care services are comprised of hands-on care of either a supportive or health-related nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self-administration of medications or other medical needs, monitoring health status and physical condition, and personal care services provided in a work environment. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18 VAC 90-20-420 through 18 VAC 90-20-460.

2. Consumer-directed respite services are specifically designed to provide temporary, periodic, or routine relief to the unpaid [~~, live-in,~~] primary caregiver of an individual. This service may be provided in the individual's home or other community settings.

3. DMAS shall either provide for fiscal agent services or contract for the services of a fiscal agent for consumer-directed services. The fiscal agent will be reimbursed by DMAS (if the service is contracted) to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

4. Individuals choosing consumer-directed services must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with consumer-directed services. The CD services facilitator is responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the plan of care, providing training to the individual and family/caregiver on his responsibilities as an employer, and providing ongoing support of the consumer-directed services. The CD services facilitator cannot be the individual, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver employing the aide.

B. Criteria.

1. In order to qualify for consumer-directed personal care services, the individual must demonstrate a need for personal care services as defined in 12 VAC 30-120-900.

2. Consumer-directed respite services may only be offered to individuals who have an unpaid primary caregiver [~~living in the home~~] who requires temporary relief to avoid institutionalization of the individual. Respite services are

designed to focus on the need of the unpaid primary caregiver for temporary relief and to help prevent the breakdown of the unpaid primary caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

3. DMAS will also pay, consistent with the approved plan of care, for personal care that the personal care aide provides to the enrolled individual to assist him at work or postsecondary school. DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973.

a. DMAS or the designated preauthorization contractor will review the individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.

b. DMAS will not pay for the personal care aide to assist the enrolled individual with any functions related to the individual completing his job or postsecondary school functions or for supervision time during work or school or both.

4. Individuals who are eligible for consumer-directed services must have, or have a family/caregiver who has, the capability to hire and train their own personal care aides and supervise the aide's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.

5. The individual, or if the individual is unable, a family/caregiver, shall be the employer of consumer-directed services and, therefore, shall be responsible for hiring, training, supervising, and firing personal care aides. Specific employer duties include checking references of personal care aides, determining that personal care aides meet basic qualifications, and maintaining copies of timesheets to have available for review by the CD services facilitator and the fiscal agent on a consistent and timely basis. The individual or family/caregiver must have a backup plan for the provision of services in case the aide does not show up for work as expected or terminates employment without prior notice.

C. Service units and limitations.

1. The unit of services for consumer-directed respite services is one hour. Consumer-directed respite services are limited to a maximum of 720 hours per calendar year. Individuals who receive consumer-directed respite services, agency-directed respite services and/or facility-based respite services may not receive more than 720 hours combined, regardless of service delivery method.

2. The unit of service for consumer-directed personal care services is one hour.

D. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12 VAC 30-120-930, the CD services facilitator must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess, at a minimum, an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have at least two years of satisfactory experience in a human services field working with individuals who are disabled or elderly. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the CD services facilitator's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that may occur in individuals who are elderly or individuals with disabilities, as well as strategies to reduce limitations and health problems;

(2) Physical care that may be required by individuals who are elderly or individuals with disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by individuals who are elderly or individuals with disabilities that reduce the need for human help and improve safety;

(4) Various long-term care program requirements, including nursing facility and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care and respite services;

(5) Elderly or Disabled with Consumer-Direction Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(6) How to conduct assessments (including environmental, psychosocial, health, and functional factors) and their uses in services planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed services, including hiring, training, managing, approving time sheets, and firing an aide;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals, family/caregivers and service providers;

(2) Assessing, supporting, observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to individuals who are elderly or individuals with disabilities; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Develop a rapport and communicate with individuals from diverse cultural backgrounds.

3. If the CD services facilitator is not a registered nurse, the CD services facilitator must inform the individual's primary health care provider that services are being provided and request consultation as needed.

4. Initiation of services and service monitoring.

a. For consumer-directed services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and family/caregiver to identify the needs, assist in the development of the plan of care with the individual or family/caregiver, and provide employee management training within seven days of the initial visit. The initial comprehensive home visit is done only once per provider upon the individual's entry into CD services. If the individual changes CD services facilitator, the new CD services facilitator must complete a reassessment visit in lieu of a comprehensive visit.

b. After the initial visit, the CD services facilitator will continue to monitor the plan of care on an as-needed basis, but in no event less frequently than quarterly for personal care. The CD services facilitator will review the utilization of consumer-directed respite services, either every six months or upon the use of 300 respite services hours, whichever comes first.

c. A CD services facilitator must conduct face-to-face meetings with the individual or family/caregiver at least every six months for respite services and quarterly for personal care to ensure appropriateness of any consumer-directed services received by the individual.

5. During visits with the individual, the CD services facilitator must observe, evaluate, and consult with the individual or family/caregiver, and document the adequacy and appropriateness of consumer-directed services with regard to the individual's current functioning and cognitive status and medical and social needs. The CD services facilitator's written summary of the visit must include, but is not necessarily limited to:

a. A discussion with the individual or family/caregiver concerning whether the service is adequate to meet the individual's needs;

b. Any suspected abuse, neglect, or exploitation and who it was reported to;

c. Any special tasks performed by the aide and the aide's qualifications to perform these tasks;

d. The individual's or family/caregiver's satisfaction with the service;

e. Any hospitalization or change in medical condition, functioning, or cognitive status; and

f. The presence or absence of the aide in the home during the CD services facilitator's visit.

6. The CD services facilitator must be available to the individual or family/caregiver by telephone.

7. The CD services facilitator must request a criminal record check and a sex offender record check pertaining to the aide on behalf of the individual and report findings of these records checks to the individual or the family/caregiver and the program's fiscal agent. If the individual is a minor, the aide must also be screened through the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Registry finding must be requested by the CD services facilitator prior to beginning CD services. Aides will not be reimbursed for services provided to the individual effective on the date that the criminal record check confirms an aide has been found to have been convicted of a crime as described in § [~~*37.2-416*~~ *32.1-162.9:1*] *of the Code of Virginia or if the aide has a confirmed record on the DSS Child Protective Services Central Registry.*

8. The CD services facilitator shall review copies of timesheets during the face-to-face visits to ensure that the number of plan of care-approved hours are being provided and are not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual or family/caregiver to resolve discrepancies and must notify the fiscal agent.

9. The CD services facilitator must maintain records of each individual. At a minimum these records must contain:

a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

b. The personal care plan of care goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, and modified as appropriate. Respite plan of care goals, objectives, and activities must be reviewed by the provider annually and every six months or when 300 service hours have been used. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual;

c. CD services facilitator's dated notes documenting any contacts with the individual or family/caregiver and visits to the individual's home;

d. All correspondence to and from the individual, the designated preauthorization contractor, and DMAS;

e. Records of contacts made with the individual, family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;

f. All training provided to the aides on behalf of the individual or family/caregiver;

g. All employee management training provided to the individual or family/caregiver, including the individual's or family/caregiver's receipt of training on their responsibility for the accuracy of the aide's timesheets;

h. All documents signed by the individual or the individual's family/caregiver that acknowledge the responsibilities as the employer; and

i. All copies of the completed Uniform Assessment Instrument (UAI), the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care form (DMAS-97), all Consumer-Directed Personal Assistance Plans of Care forms (DMAS-97B), all Patient Information Forms (DMAS-122), the DMAS-95 Addendum, the Outline and Checklist for Consumer-Directed Recipient Comprehensive Training, and the Services Agreement Between the Consumer and the Services Facilitator.

10. For consumer-directed personal care and consumer-directed respite services, individuals or family/caregivers will hire their own personal care aides and manage and supervise their performance. The aide must meet the following requirements:

a. Be 18 years of age or older;

b. Have the required skills to perform consumer-directed services as specified in the individual's supporting documentation;

c. Be able to read and write in English to the degree necessary to perform the tasks expected;

d. Possess basic math, reading, and writing skills;

e. Possess a valid Social Security number;

f. Submit to a criminal records check and, if the individual is a minor, consent to a search of the DSS Child Protective Services Central Registry. The aide will not be compensated for services provided to the individual if either of these records checks verifies the aide has been convicted of crimes described in § [~~37.2-416~~ 32.1-162.9:1] of the Code of Virginia or if the aide has a founded complaint confirmed by the DSS Child Protective Services Central Registry;

g. Be willing to attend training at the individual's or family/caregiver's request;

h. Understand and agree to comply with the DMAS Elderly or Disabled with Consumer Direction Waiver requirements; and

i. Receive periodic tuberculosis (TB) screening [~~, cardiopulmonary resuscitation (CPR) training and an annual flu shot (unless medically contraindicated)~~].

11. Aides may not be the parents of [~~individuals who are minors or the individuals' spouses~~ minor children who are receiving waiver services or the spouse of the indiviudals who are receiving waiver services] or the family/caregivers that are directing the individual's care. Payment may not be made for services furnished by other family/caregivers living under the same roof as the individual being served unless there is objective written documentation as to why there are no other providers available to provide the care.

12. Family/caregivers who are reimbursed to provide consumer-directed services must meet the aide qualifications.

13. If the individual is consistently unable to hire and retain the employment of a personal care aide to provide consumer-directed personal care or respite services, the CD services facilitator will make arrangements to have the services transferred to an agency-directed services provider of the individual's choice or to discuss with the individual or family/caregiver other service options.

14. The CD services facilitator is required to submit to DMAS biannually, for every individual, an individual progress report, the most recently updated UAI, and any monthly visit/progress reports. This information is used to assess the individual's ongoing need for Medicaid-funded long-term care and appropriateness and adequacy of services rendered.

D. Individual responsibilities.

1. The individual must be authorized for consumer-directed services and successfully complete management training performed by the CD services facilitator before the individual can hire a personal care aide for Medicaid reimbursement. Individuals who are eligible for consumer-directed services must have the capability to hire and train their own personal care aides and supervise aides' performance. Individuals with cognitive impairments who are unable to manage their own care may have a family/caregiver serve as the employer on behalf of the individual.

2. Individuals will acknowledge that they will not knowingly continue to accept consumer-directed personal care services when the service is no longer appropriate or necessary for their care needs and will inform the services facilitator. If consumer-directed services continue after

services have been terminated by DMAS or the designated preauthorization contractor, the individual will be held liable for employee compensation.

NOTICE: The forms used in administering 12 VAC 30-120, Waivered Services, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS

Virginia Uniform Assessment Instrument (UAI) (1994).

Consent to Exchange Information, DMAS-20 (rev. 4/03).

Provider Aide/LPN Record Personal/Respite Care, DMAS-90 (rev. 12/02).

LPN Skilled Respite Record, DMAS-90A (eff. 7/05).

Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 3/03).

Screening Team Plan of Care for Medicaid-Funded Long Term Care, DMAS-97 (rev. 12/02).

Provider Agency Plan of Care, DMAS-97A (rev. 9/02).

Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).

Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 4/03).

Consumer-Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (rev. 8/03).

MI/MR Level I Supplement for EDCD Waiver Applicants, DMAS-101A (rev. 10/04).

Assessment of Active Treatment Needs for Individuals with MI, MR, or RC Who Request Services under the Elder or Disabled with Consumer-Direction Waivers, DMAS-101B (rev. 10/04).

AIDS Waiver Evaluation Form for Enteral Nutrition, DMAS-116 (6/03).

Patient Information Form, DMAS-122 (rev. 12/98).

Technology Assisted Waiver/EPSDT Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259.

Home Health Certification and Plan of Care, CMS-485 (rev. 2/94).

LPN SKILLED RESPITE RECORD

Recipient's Name: _____ Phone: _____

Address: _____

Reason for Skilled Respite: _____

DAY:	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
DATE (Month/Day/Year):	/ /	/ /	/ /	/ /	/ /	/ /	/ /
NEUROLOGICAL							
LOC A/O x3, Asleep, Awake							
CARDIAC							
Rhythm NSR, No Murmur							
Pulse / Quality Palpable in Extremities							
Edema / Cap Refill							
Invasive Lines None/CVL/PIV							
RESPIRATORY							
Rate							
Breath Sounds							
Secretions							
Chest PT							
Trach Care / Change							
Suction / Times per shift							
MONITORS							
Cardiac/Apnea – Settings							
Type / Oxygen Amt							
Vent – Settings							
C-Pap / Bi-Pap							
Blood Sugar Levels							
GASTROINTESTINAL							
Abdomen Assessment							
Bowel Sounds							
GT/NGT / Tube Patient							
TPN							
Feeds Tolerated							
GENTIOURINARY							
Spon. Voids/Diaper/Cath							
Catheter Care							
Intermittent Cath							
OTHER							
Complete/Partial Bath							
Oral Care							
Skin Care							
Skin Tugor							
Wound Care							
Turn & Position							
Medication							
Need for POC changes							
New MD Orders							

TIME IN							
TIME OUT							
NUMBER OF HOURS							

Comments: _____

Weekly Signatures:

Recipient/Family's Signature Date

LPN's Signature Date

RN's Signature (not mandatory) Date

DMAS-90A
New 7/05

This form contains patient-identifiable information and is intended for review and use of no one except authorized parties. Misuse or disclosure of this information is prohibited by State and Federal Laws. If you have obtained this form by mistake, please send it to: DMAS, 600 East Broad Street, Suite 1300, Richmond, VA 23219

MI/MR LEVEL I SUPPLEMENT FOR EDCD WAIVER APPLICANTS

A. This section is to be completed by the Pre-admission Screening Committee.

Name: _____ Date of Birth: _____ Date PAS Request Received _____

Social Security No. _____ Medicaid No. _____ Responsible CSB _____

1. DOES THE INDIVIDUAL MEET NURSING FACILITY CRITERIA?

☐ Yes ☐ No (Check "Yes" only if both a and b below are answered "Yes".)

a. Does the individual meet the program criteria for the Elderly or Disabled With Consumer-Direction Waiver AND is the individual at imminent risk? ☐ Yes ☐ No

b. Can a safe and appropriate plan of care be developed to meet all medical/nursing/custodial care needs? ☐ Yes ☐ No

(If "Yes", this form must be completed. If "No", do not complete Level I screening and do not refer for assessment of active tx needs. Individuals who do not meet the above criteria cannot be approved for Medicaid funded waiver services.)

2. DOES THE INDIVIDUAL HAVE A CURRENT SERIOUS MENTAL ILLNESS (MI)? ☐ Yes ☐ No

(Check "Yes" only if answers a, b, and c below are "Yes". If "No", do not refer for assessment of active tx needs for MI Diagnosis.)

a. Is this major mental disorder diagnosable under DSM-IV (e.g., schizophrenia, mood, paranoid, panic, or other serious anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or other mental disorder that may lead to a chronic disability)? ☐ Yes ☐ No

b. Has the disorder resulted in functional limitations in major life activities within the past 3-6 months, particularly with regard to interpersonal functioning; concentration, persistence, or pace; and adaptation to change? ☐ Yes ☐ No

c. Does the treatment history indicate that the individual has experienced psychiatric treatment more intensive than outpatient care more than once in the past 2 years or the individual has experienced within the last 2 years an episode of significant disruption to the normal living situation due to the mental disorder? ☐ Yes ☐ No

3. DOES THE INDIVIDUAL HAVE A DIAGNOSIS OF MENTAL RETARDATION (MR) WHICH WAS MANIFESTED BEFORE AGE 18? ☐ Yes ☐ No

4. DOES THE INDIVIDUAL HAVE A RELATED CONDITION? ☐ Yes ☐ No

(Check "Yes" only if each item below is Checked "Yes". If "No", do not refer for Level II PAS for related condition.)

a. Is the condition attributable to any other condition (e.g. cerebral palsy, epilepsy, autism, muscular dystrophy, multiple sclerosis, Frederick's ataxia, spina befida), other than MI, found to be closely related to MR because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of MR persons and requires treatment of services similar to those for these persons? ☐ Yes ☐ No

b. Has the condition manifested before age 22? ☐ Yes ☐ No

c. Is the condition likely to continue indefinitely? ☐ Yes ☐ No

d. Has the condition resulted in substantial limitations in 3 or more of the following areas of major life activity; self-care understanding and use of language, learning, mobility, self-direction, and capacity for independent living? ☐ Yes (If yes, circle applicable areas) ☐ No

5. RECOMMENDATION (Either "a" or "b" must be checked.)

a. ☐ Refer for Level II assessment for **:

☐ MI (# 2 above is checked "Yes")

☐ MR or Related Condition (# 3 or # 4 is checked "Yes")

☐ Dual diagnosis (MI and MR/Related Condition categories are checked)

** NOTE: If 5a is checked, the individual may NOT be authorized for Medicaid-funded waiver until the CSB has completed the DMAS-101B.

b. ☐ No referral for active treatment needs assessment required because individual:

☐ Does not meet the applicable criteria for serious MI or MR or related condition

☐ Has a primary diagnosis of dementia (including Alzheimer's disease) and does not have a diagnosis of MR

☐ Has a primary diagnosis of dementia (including Alzheimer's disease) AND has a secondary diagnosis of a serious MI

☐ Has a severe physical illness (e.g. documented evidence of coma, functioning at brain-stem level, or other conditions which result in a level of impairment so sever that the individual could not be expected to benefit from specialized services.)

☐ Is terminally ill (note: a physician must have documented that individual's life expectancy is six (6) months or less)

Signature & Title: _____ Screening Committee: _____

Date: _____ Telephone #: _____ Street Address: _____

DMAS-101A (rev. 10/04)

INSTRUCTIONS FOR COMPLETION OF THE DMAS 101B
PROCESS FOR AUTHORIZING CBC SERVICES FOR PERSONS WITH MI/MR CONDITION

The pre-admission screening team must have this form completed when the person being screened has a condition of mental illness or mental retardation and the person is requesting community-based care services (Personal Care, Adult Day Health Care, Respite Care). Once the screening team determines that the person meets the criteria for CBC services (meets NF or Pre-NF criteria and is at risk of NF placement unless CBC services are offered) the screening team must complete the top portion of the DMAS 101, attach a copy of the UAI and send the two forms to the CSB for an evaluation of the person's need for MH/MR services. This must be done before the screening team completes the DMAS 96 to authorize services.

Any time the screening team has the CSB complete the MH/MR Service Needs Summary Form, *a copy must be attached* to the packet submitted to DMAS for reimbursement and a copy to the Elderly or Disabled With Consumer-Direction Waiver provider if services through this Waiver are authorized.

Assessment of Active Treatment Needs for Individuals with MI, MR, or RC who Request services under the Elder or Disabled with Consumer-Direction Waivers

Attached is an assessment completed by _____ Preadmission Screening Team to determine the need and appropriateness of community-based services under the Elder or Disabled with Consumer-Direction (EDCD) Waiver (personal care, adult day health care, consumer-directed services, and /or respite care) for _____.
(Person Applying for Service)

As part of our assessment process, we have determined that the individual has:
____ *A condition of mental illness which requires assessment for services needed*
____ *A condition of mental retardation which requires assessment for services needed*

Please complete the information below and return it to _____ within 72 hours of
(Name of Screener Making Referral & Phone #)
the date referred _____ so that the assessment and authorization process can be completed.

TO BE COMPLETED BY THE COMMUNITY SERVICES BOARD (Attach additional information as needed.)

The _____ Community Services Board assessed the needs of the individual referenced above on
(Name of CSB)
_____ (*Date assessment completed).*

1. The individual does have a condition of mental illness or mental retardation and has the following active treatment needs:

_____
_____
_____
_____
_____

a. Active Treatment needs will be met by:

_____
_____
_____

b. If active treatment needs are met by a third party, please attach verification from the third party that all active treatment needs are being met. Also, if active treatment needs are being met by the school system, please explain how active treatment needs will be met during summer vacation:

_____
_____
_____

2. The individual does have a condition of mental illness or mental retardation, but could not benefit from services. Please explain.
(Note if this block is checked, but there is no explanation, services under the EDCD Waiver cannot be authorized.)

_____
_____
_____

3. The individual does not have a condition of mental illness or mental retardation and therefore does not need treatment or services from the CSB.

Name of individual who completed assessment: (Please print name) _____

Signature of individual who completed assessment: _____

Phone Number: _____ Date Signed: _____

DMAS 101B revised 10/04

VA.R. Doc. No. R05-117; Filed December 20, 2005, 3:15 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Title of Regulation: **18 VAC 110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (amending 18 VAC 110-30-10, 18 VAC 110-30-15, 18 VAC 110-30-20, 18 VAC 110-30-30, 18 VAC 110-30-40, 18 VAC 110-30-50, 18 VAC 110-30-80, 18 VAC 110-30-110, 18 VAC 110-30-130, 18 VAC 110-30-150, 18 VAC 110-30-170 through 18 VAC 110-30-220, 18 VAC 110-30-240, 18 VAC 110-30-260, 18 VAC 110-30-270; repealing 18 VAC 110-30-35).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: February 22, 2006.

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

Summary:

The amendments eliminate unnecessary requirements for equipment and security, increase the initial license application fee and the reinstatement fee for a license expired for more than a year, add a facility reinspection fee, allow electronic transmission and storage of records, amend a burdensome reinstatement requirement and clarify rules for repackaging and storage. In addition, amendments are updated for consistency with changes in the Code of Virginia changes requiring registration and training of pharmacy technicians and counseling of patients.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

REGISTRAR'S NOTICE: The proposed regulation was adopted as published in 20:21 VA.R. 2653-2667 June 13, 2005, 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. R05-45; Filed December 21, 2005, 1:58 p.m.

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TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

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

Title of Regulation: **19 VAC 30-20. Motor Carrier Safety Regulations (amending 19 VAC 30-20-40, 19 VAC 30-20-80, 19 VAC 30-20-220 and 19 VAC 30-20-250; adding 19 VAC 30-20-205).**

Statutory Authority: § 52-8.4 of the Code of Virginia.

Effective Date: March 1, 2006.

Agency Contact: Lieutenant Herbert B. Bridges, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3489, FAX (804) 378-3487 or e-mail herbert.bridges@vsp.virginia.gov.

Summary:

Amendment 14 adopts and incorporates by reference changes made by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, to 49 CFR Parts 390 through 397 promulgated and in effect as of March 1, 2006. The amendments to the federal regulations:

1. Amend 49 CFR Parts 390 and 391 specifying the maximum driver safety performance history data history that new or prospective employers are required to seek for applicants under consideration for employment as commercial motor vehicle drivers; establish minimum training requirements for operators of longer combination vehicles and for instructors who train these operators; and establish a national safety permit program for motor carriers that transport certain hazardous materials in interstate or intrastate commerce;

2. Amend 49 CFR Parts 390, 392, and 393, Parts and Accessories Necessary for Safe Operation. These amendments remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between 49 CFR Part 393 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards (49 CFR Part 571); and codify certain Federal Motor Carrier Safety Administration regulatory guidance concerning the requirements of 49 CFR Part 393. Generally, the amendments do not involve the establishment of new or more stringent requirements, but a clarification of existing requirements. This action is intended to make many sections more concise, easier to understand, and more performance oriented;

3. Amend 49 CFR Parts 390 and 395 governing hours of service for commercial motor vehicle drivers. The rule addresses requirements for driving, duty, and off-duty time; a recovery period, sleeper berth, and new requirements for short-haul drivers. The hours-of-service regulations published on April 28, 2003, were vacated by the U.S. Court of Appeals for the District of Columbia Circuit on July 16, 2004. Congress subsequently provided, through the Surface Transportation Extension Act of 2004, that the 2003 regulations remain in effect until the effective date of a new final rule addressing the issues raised by the court on

September 30, 2005, whichever occurs first. This rule meets that requirement;

4. Amend 19 VAC 30-20-40 exempting utility services from the hours of service during emergencies as enacted by the 2004 General Assembly and codified in § 52-8.4 of Code of Virginia;

5. Amend 19 VAC 30-20-80 to revise the date when rules promulgated by the federal Motor Carrier Safety Administration and in effect as of January 2, 2006, are incorporated by reference;

6. Amend by adding 19 VAC 30-20-205, Maximum driving time for property-carrying vehicles - § 395.3. This new section will adopt the intrastate variance allowed by the Federal Motor Carrier Safety Administration for drivers of property-carrying vehicles and permitted by 49 CFR Part 350 and only applicable to the intrastate transportation of construction materials and equipment as defined in § 395.2;

7. Amend 19 VAC 30-20-220 and 19 VAC 30-20-250 to remove redundant wording and simplify these sections.

19 VAC 30-20-40. Application of regulations.

A. These regulations and those contained in 49 CFR Parts 390 through 397, unless excepted, shall be applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate and intrastate commerce.

B. These regulations shall not apply to hours worked by any carrier when transporting passengers or property to or from any portion of the Commonwealth for the purpose of *(i)* providing relief or assistance in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, major loss of utility services or other calamity or disaster *or (ii) engaging in the provision or restoration of utility services when the loss of such service is unexpected, unplanned or unscheduled*. The suspension of the regulation provided for in § 52-8.4 A of the Code of Virginia shall expire if the Secretary of the United States Department of Transportation determines that it is in conflict with the intent of Federal Motor Carrier Safety Regulations.

19 VAC 30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of January 2, ~~2004~~ *2006*, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 390 through 397, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

19 VAC 30-20-205. Maximum driving time for property-carrying vehicles - § 395.3.

Any driver of a property-carrying commercial motor vehicle, operated wholly in the intrastate transportation of construction materials and equipment as defined in § 395.2, shall not exceed 12 hours of driving time following 10 consecutive hours off duty or drive after having been on duty 16 hours following 10 consecutive hours off duty. No driver shall drive if he has been on duty 70 hours in a seven-consecutive-day period if the employing motor carrier does not operate commercial motor vehicles every day of the week or 80 hours in an eight-consecutive-day period if the employing motor carrier operates commercial vehicles every day of the week.

19 VAC 30-20-220. Responsibilities of motor carriers--§ 395.13(c)(2).

A motor carrier shall complete the "Motor Carrier's Report of Compliance with this Notice" portion of ~~form S.P. 233 A (Virginia State Police Motor Carrier Safety Inspection) or~~ *the* Driver Vehicle Inspection Report and deliver the copy of the form either personally or by mail to the Department of State Police, ~~Office of Administrative Coordinator,~~ Motor Carrier Safety, at the address specified upon the form within 15 days following the date of the examination. If the motor carrier mails the form, delivery is made on the date it is postmarked.

19 VAC 30-20-250. Motor carrier's disposition--§ 396.9(d)(3)(ii).

Motor carriers shall return the completed ~~form S.P. 233 (Virginia State Police Motor Carrier Safety Inspection) or~~ Driver Vehicle Inspection Report to the Department of State Police at the address indicated on the report.

VA.R. Doc. No. R06-141; Filed December 16, 2005, 8:18 a.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22 VAC 40-141. Licensing Standards for Independent Foster Homes (amending 22 VAC 40-141-20, 22 VAC 40-141-30, 22 VAC 40-141-80 through 22 VAC 40-141-90, and 22 VAC 40-141-110 through 22 VAC 40-141-210).**

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

Effective Date: February 22, 2006.

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

Summary:

The amendments reconfigure the current regulation text by separating certain paragraphs and sentences into more discrete units of information for compliance purposes. The content does not change. The Division of Licensing Programs uses a Division of Licensing Programs Help and Information Network (DOLPHIN) to manage information about applicants and regulated providers. It also serves as a management tool for licensing staff. The current regulation, effective February 1, 2005, is not configured to provide the discrete elements required by the DOLPHIN system.

22 VAC 40-141-20. Legal authority.

A. The licensed independent foster parent is permitted by law to accept children for care who are entrusted to the provider by the parents or legal guardians or whose parents have signed a placing agreement authorizing the child's temporary placement in the independent foster home. A temporary entrustment agreement transfers custody of the child from the parents or legal guardians to the independent foster parents. A placing agreement authorizes the child's placement in the independent foster home while allowing the parents or guardians to maintain legal custody.

B. The local juvenile and domestic relations court must approve the temporary entrustment agreement if the child is to remain in the placement for more than 90 days.

C. Individuals are exempt from licensure if they only provide care to children who are born to or adopted by the individual or children of relatives or personal friends.

D. Subdivision A 4 of § 16.1-278.2 of the Code of Virginia referenced in the definition of an independent foster home refers to the placement decisions for children by local boards of social services or a public agency designated by the community policy and management team. Subdivision 6 of § 16.1-278.4 of the Code of Virginia refers to the court transfer of legal custody from the parent to another individual or agency. Subdivision 13 of § 16.1-278.8 of the Code of Virginia refers to the court's disposition of delinquent juveniles. Individuals receiving children under these provisions are not subject to licensure under this regulation.

E. Section 63.2-1734 of the Code of Virginia establishes the authority of the State Board of Social Services to promulgate regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed by § 63.2-1701 of the Code of Virginia. Regulations shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. Section 63.2-1712 of the Code of Virginia states that it shall be a misdemeanor to operate or engage in the activities of a child welfare agency without first obtaining a license.

22 VAC 40-141-30. General requirements.

A. Children placed in independent foster homes by their parents or legal guardian shall not remain in care longer than 180 days.

Exception: A child's placement in the independent foster home may exceed 180 days for reasons of parental illness/recuperation or military deployment if that was the reason for the placement and the provider refers the child to the local department of social services and makes a request for an assessment of the care and custody of the child to determine if additional services or evaluations are necessary.

B. For a child placed in the independent foster home by a temporary entrustment agreement, if it appears that the child cannot be returned to the child's parent or guardian within 90 days of the date of placement, the provider shall petition the local juvenile and domestic relations court within 30 days of placement to request an assessment of the care and custody of the child.

~~Exception: A child's placement in the independent foster home may exceed 180 days for reasons of parental illness/recuperation or military deployment if that was the reason for the placement and the provider refers the child to the local department of social services and makes a request for an assessment of the care and custody of the child to determine if additional services or evaluations are necessary.~~

~~B.~~ *C.* Providers shall be at least 21 years of age.

~~C.~~ *D.* Providers shall have either a bachelor's degree in a field related to family services, child care and development, social work or education or a high school diploma or a G.E.D. and at least one year of experience providing care to children in the age range to be placed in the home.

E. Providers who accept children with special needs shall have experience or training directly relevant to the developmental levels and special needs of the children in care.

~~D.~~ *F.* The provider shall be responsible for the home's day-to-day operation and for meeting licensing requirements.

22 VAC 40-141-80. Medical requirements for provider, assistant and household members.

A. Within 90 days prior to the initial application, the applicant for licensure as an independent foster home provider, each assistant and each adult member of the household shall undergo an assessment for risk of tuberculosis infection and disease.

1. The applicant shall provide documentation from the health department, a physician, or a physician's designee that each individual is "free from tuberculosis in a communicable form."

2. Individuals needing additional testing to determine the absence of tuberculosis in a communicable form shall obtain a tuberculin skin test and:

~~1.~~ *a.* The statement shall include the type of test used, the date of the test, and the test results.

~~2.~~ *b.* The statement shall be signed and dated by a physician, the physician's designee, or an official of a local health department.

B. If an individual is not able to receive a tuberculin test for health reasons, this shall be documented by a physician.

1. The physician's statement shall also include the date when the test can be safely administered.

2. The individual shall obtain the tuberculin test no later than 30 days after the date indicated by the physician.

C. An individual who had a positive reaction to a tuberculin skin test and whose physician certifies the absence of communicable tuberculosis shall obtain chest x-rays on an annual basis for the following two years.

1. The statement shall document the date of the x-rays ~~and~~.

2. The statement shall be signed by a licensed physician, the physician's designee, or an official of a local health department.

D. Any individual who, upon examination or as a result of tests, shows indication of communicable tuberculosis or a physical condition that may jeopardize the safety of children in care shall be removed from contact with children and, where indicated, from food served to children.

E. Contact may resume when a licensed physician certifies that the risk to children has been eliminated or substantially reduced.

~~E.~~ *F.* The provider, any assistants, and any adult household members shall undergo subsequent screening or testing, as appropriate, every two years thereafter.

~~F.~~ *G.* Any individual who comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms shall, within 30 days of exposure or development, receive an evaluation to indicate the absence of tuberculosis in a communicable form.

22 VAC 40-141-85. Temporary entrustment agreement requirements.

A. A written temporary entrustment agreement or placing agreement shall be received on every child placed directly by the child's parents or guardians in the independent foster home.

B. Prior to entering into a temporary entrustment agreement, the provider shall consider*:*

1. The needs of the child and whether the home can meet those needs~~,~~*;*

2. The needs of any other children residing in the home~~,~~*;* and

3. The impact of the individual child joining the household.

~~B.~~ *C.* The temporary entrustment agreement shall be for placement of less than 180 days.

D. If the provider is aware at the time of admission that the placement will extend beyond 90 days, the provider shall petition the local juvenile and domestic relations court for approval of the entrustment agreement within 30 days of placement.

E. If the length of placement is not known at admission, the provider shall petition the court for approval as soon as the provider is aware that the placement will be for longer than 90 days.

~~C.~~ *F.* Each subsequent entrustment agreement for the same child shall be considered placement for longer than 90 days and shall receive approval by the local juvenile and domestic relations court.

~~D.~~ *G.* The entrustment agreement shall not extend beyond the child's 18th birthday.

~~E.~~ *H.* The parents or guardians may request the return of a child at any time prior to the 90th day of placement without the court's approval.

I. The entrustment agreement shall be considered revoked upon the parents' or guardians' request.

~~F.~~ *J.* If the provider opposes the request for the child to return home or to a prior custodian, the provider shall immediately file the appropriate petition with the local juvenile and domestic relations court.

~~G.~~ *K.* When petitioning the local juvenile and domestic relations court for approval of an entrustment agreement, § 16.1-277.01 of the Code of Virginia requires that the licensed independent foster home, as a child welfare agency, file a foster care plan with the court.

L. The foster care plan shall meet the requirements established in § 16.1-281 of the Code of Virginia.

22 VAC 40-141-87. Placing agreement requirements.

A. A written placing agreement or temporary entrustment agreement shall be received on every child placed directly by the child's parents or guardians in the independent foster home.

B. Prior to entering into a placing agreement, the provider shall consider*:*

1. The needs of the child and whether the home can meet those needs~~,~~*;*

2. The needs of any other children residing in the home~~,~~*;* and

3. The impact of the individual child joining the household.

~~B.~~ *C.* A placing agreement shall:

1. Allow the child's parents or guardians to retain legal custody of the child during the placement in the independent foster home;

2. Be for a placement of less than 180 days. If the provider, at any time, becomes aware that the placement will exceed 179 days, the provider shall contact the local department of social services and request an assessment of the child and an evaluation of services needed and to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court;

3. Include identifying information, including*:*

a. Proof of identity of the child~~,~~*;*

b. The child's name~~,~~*;*

c. Date of birth~~,~~*;*

d. Sex*;* and

e. Date of placement;

4. Address the acquisition of and consent for medical treatments needed by the child and include Medicaid or other insurance information;

5. Address the rights and responsibilities of each party involved;

6. Address the responsibilities of the child's parents or legal guardians for financial support; and

7. Be signed by the child's parent or legal guardian and the foster parent no later than the child's placement in the independent foster home.

~~C.~~ *D.* A placing agreement shall not extend beyond the child's 18th birthday.

~~D.~~ *E.* The parents or guardians may request the return of a child at any time prior to the 180th day of a placing agreement.

F. The placing agreement shall be considered revoked upon the parents' or guardians' request.

~~E.~~ *G.* Each subsequent placing agreement for the same child shall be considered an extension of the placement and whenever the child has been in the independent foster home for a total of 180 days the provider shall contact the local department of social services and request an assessment of the child and an evaluation of services needed ~~and~~ to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court.

22 VAC 40-141-90. Supervision of children in care.

A. The provider is responsible at all times for the safety and supervision of children placed in the home.

B. A responsible adult shall always be available to substitute in case of an emergency ~~and~~*.*

C. There shall be documentation of the name, address, telephone number of this adult, along with a signed statement of agreement to serve as a substitute~~, shall be documented~~.

~~C.~~ *D.* Children shall be supervised in a manner which ensures that the caregiver is aware of what the children are doing at all times and can promptly assist or redirect activities when necessary.

~~D.~~ *E.* In deciding how closely to supervise children, providers shall consider:

1. The ages of the children;

2. Individual differences and abilities of the children;

3. The layout of the house and play area, including neighborhood circumstances or hazards; and

4. Risk activities children are engaged in.

~~E.~~ *F.* Children under the age of six and children with special needs shall be within sight or sound supervision at all times.

~~F.~~ *G.* Providers shall not bathe with a child unless recommended by a physician.

~~G.~~ *H.* Providers shall ensure the safety of children at all times during diapering.

22 VAC 40-141-110. Essentials for each child.

A. The diet for children shall be well-balanced and appropriate to the daily nutritional needs of each child.

B. Special diets shall be provided as prescribed by a physician or dentist for individual children and established religious dietary practices for each child shall be observed.

~~B.~~ *C.* Clothing, towels, wash cloths, toothbrushes, combs and hair brushes, and other personal needs shall be provided for each child on an individual basis and shall be kept clean and replaced as needed.

D. Clothing shall be kept clean, in good repair, and appropriate for the age and size of each child.

~~C.~~ *E.* Drinking water shall be available at all times unless prohibited by a physician's order.

~~D.~~ *F.* Normal activities of daily living such as meals appropriate to the child's nutritional needs, time for sleep and rest appropriate to the child's age, bathing, etc., shall be opportunities for teaching and guiding behavior.

G. To the extent that normal activities of daily living are used to teach and guide behavior, the provider's actions shall not be extreme, unusual or abusive.

22 VAC 40-141-120. Transportation of children.

A. The provider shall have transportation available at all times in case of an emergency.

B. Any individual who transports children shall have a valid driver's license and vehicle liability insurance.

~~B.~~ *C.* Providers and any individuals who transport children shall assure that all passengers use safety belts and child restraint devices in accordance with Virginia law.

~~C.~~ *D.* The provider and assistant transporting children shall not have driving violations on file with the Department of Motor Vehicles related to driving under the influence of alcohol or drugs, reckless driving, or any offense which places other occupants of the vehicle at risk within the five years prior to the application, and thereafter as a condition of continued licensure.

E. A copy of the provider's and the assistant's driving record shall be provided to the licensing representative upon application and at the time of submitting a renewal application.

F. Driving violations as described in this section shall be reported to the licensing representative within 24 hours.

~~D.~~ *G.* The provider shall not knowingly allow children to be transported by any person who has driving violations on file with the Department of Motor Vehicles related to driving under the influence of alcohol or drugs, reckless driving, or any other

offense that places other occupants of the vehicle at risk within the previous five years.

Exception: The parents or legal guardians of a child shall not be prohibited from transporting their child as a result of this requirement unless it poses an immediate danger to the health and safety of that child.

22 VAC 40-141-130. Medical care of children.

A. The provider shall have the name, address and telephone number of each child's physician easily accessible.

B. The provider shall have first aid supplies easily accessible to adults in the home, but not accessible to children under the age of 13.

C. First aid supplies shall include ~~scissors, tweezers, sterile nonstick gauze pads, adhesive bandages in assorted sizes, a sealed package of alcohol wipes or antiseptic cleansers, a thermometer, a chemical cold pack if an ice pack is not available, first aid instruction manual or cards, an insect bite or sting preparation, one triangular bandage, current activated charcoal and syrup of ipecac to be used only when instructed by the regional poison control center or child's physician, flexible roller or stretch gauze, disposable nonporous gloves, and an eye dressing or pad.~~*:*

1. Scissors;

2. Tweezers;

3. Sterile nonstick gauze pads;

4. Adhesive bandages in assorted sizes;

5. A sealed package of alcohol wipes or antiseptic cleansers;

6. A thermometer;

7. A chemical cold pack if an ice pack is not available;

8. First aid instruction manual or cards;

9. An insect bite or sting preparation;

10. One triangular bandage;

11. Current activated charcoal and syrup of ipecac to be used only when instructed by the regional poison control center or child's physician;

12. Flexible roller or stretch gauze;

13. Disposable nonporous gloves; and

14. An eye dressing or pad.

D. The provider shall receive medical history information, including*:*

1. Immunizations received~~.~~*; and*

2. Documentation for each child at the time of placement~~. E. At the time of placement, the provider shall receive documentation~~ of a physical examination of the child completed within 90 days before placement, or the child shall receive a physical examination within 30 days after placement. The current form required by the Virginia Department of Health or any other form which provides the same information to report immunizations received and the results of the physical examination shall be used.

Exception: If a child's parent objects to the child receiving immunizations or a physical examination on religious grounds, the parent must submit a signed statement noting the objection on religious grounds and certifying to the best of the parent's knowledge, the status of the child's health.

~~F.~~ *E.* The provider shall ensure that the child receives necessary medical care and follow-up.

~~G.~~ *F.* The provider shall*:*

1. Give prescription drugs to children in care only in accordance with an order signed by a licensed physician or authentic prescription label*;* and ~~shall~~

2. Keep all prescription and nonprescription medications inaccessible to children under the age of 13 and stored as instructed by the physician or pharmacist.

~~1.~~ *a.* The provider shall keep in the child's record daily documentation of all prescription and nonprescription medication administered to a child in care.

Exception: Providers are not required to record the amount of diaper ointment or sunscreen applied.

~~2.~~ *b.* Out-of-date and unused medications shall be properly discarded or returned to the child's parent or guardian.

~~H.~~ *G.* The provider may permit self-administration of medication by a child in care if:

1. The child is physically and mentally capable of properly taking medication without assistance.

2. The provider maintains a written statement from the parent or a physician documenting the child's capacity to take medication without assistance.

3. The provider assures that the child's medications and any other medical supplies are not accessible to children under the age of 13.

~~I.~~ *H.* The provider shall report all major illnesses, injuries, accidents, missing children, the death of a child, and any placement of a child outside of the foster home *within 24 hours* to ~~the child's parent and to~~*:*

1. The licensing representative ~~within 24 hours~~*; and*

2. The child's parent.

I. If the provider is not able to contact the parent or guardian, attempted contacts shall be documented.

J. The provider shall receive written authorization for routine and emergency medical and dental care for each child.

22 VAC 40-141-140. Disease prevention.

A. Children's hands shall be washed with soap and water before eating meals or snacks, after toileting, and after any contact with body fluids.

B. The provider and assistant shall wash their hands with soap or a germicidal cleansing agent after ~~diapering a child,~~

~~helping a child with toileting, personal toileting, any contact with body fluids, and before handling food, feeding or helping a child with feeding.~~*:*

1. Diapering a child;

2. Helping a child with toileting, personal toileting, any contact with body fluids; and

3. Before handling food, feeding or helping a child with feeding.

C. When a child's clothing or diaper becomes wet or soiled, it shall be changed immediately.

D. When a child's diaper is changed, the soiled area shall be thoroughly cleaned with a disposable wipe.

~~D. The provider shall keep surfaces for preparing and eating food sanitary.~~

E. Surfaces used for changing diapers shall be used for that purpose alone.

F. Diapering surfaces shall be washed with soap and water or a germicidal agent after each use.

G. The provider shall keep surfaces for preparing and eating food sanitary.

22 VAC 40-141-150. Discipline of children.

A. Discipline shall be constructive in nature and emphasize positive approaches to managing the child's behavior.

1. The provider shall establish rules and expectations that encourage and teach desired behaviors and discourage undesired behavior.

2. The provider shall explain the house rules and expectations and the behavior management approach to each child who is old enough to understand.

B. There shall be no physical punishment, rough play or severe disciplinary action administered to the body such as, but not limited to, spanking, striking or hitting with a part of the body or an implement, pinching, pulling or roughly handling a child, shaking a child, forcing a child to assume an uncomfortable position (e.g., standing on one foot, keeping arms raised above or horizontal to the body), restraining to restrict movement through binding or tying, enclosing in a confined space, or using exercise as punishment.

C. Physical restraint shall not be used on children in care. "Physical restraint" means restraining a child's body movements by means of "physical crisis intervention techniques" or a therapeutic intervention utilizing adult physical contact only, as a short-term, emergency means of managing out-of-control behavior. It is not intended to mean everyday, commonly-accepted parenting practices and interventions such as holding a child to prevent falling or crossing into the path of a moving vehicle, or holding a child's hand to prevent placing it on a hot stove, etc.

D. The provider shall not*:*

1. Make threats;

2. Make belittling remarks about any child, the child's family, the child's race, religion, or cultural background;

3. Use profanity; or

4. Make other statements that are frightening or humiliating to the child.

E. When separation or time-out is used as a discipline technique, it shall be brief and appropriate to the child's developmental level and circumstances.

F. The child who is separated from others shall be*:*

1. In a safe, lighted, and well-ventilated place; ~~shall~~

2. Not ~~be~~ confined or locked in a room or compartment; and ~~shall be~~

3. Within hearing and vision of the provider or assistant at all times if under the age of 13 or diagnosed with special needs.

G. Children age 13 and older shall be within hearing or vision of the provider or assistant at all times when separated from others for disciplinary reasons.

H. Children under the age of 13 or those with special needs shall not be placed in time-out for periods of time exceeding one minute for each year of age.

I. Time-out shall not be used for children under two years of age.

~~F.~~ *J.* The provider shall not subject children to cruel, severe, humiliating, or unusual actions.

~~G.~~ *K.* The provider shall not delegate discipline or permit punishment of a child by another child or by an adult not known to the child.

~~H.~~ *L.* The provider shall not deny a child contact or visits with his family as a method of discipline.

22 VAC 40-141-160. Activities for children.

A. The provider shall provide daily indoor and outdoor recreational and other activities appropriate to the needs, interests, and abilities of the children in care.

B. Each child shall also be permitted to have individual free time as appropriate to the child's age and ability.

22 VAC 40-141-170. Abuse and neglect reporting responsibilities of providers.

A. The provider shall immediately report any suspected abuse and neglect of any child in care to child protective services and to the licensing representative.

B. The provider shall comply with § 63.2-1509 of the Code of Virginia.

22 VAC 40-141-180. Services to children.

A. The provider shall arrange for necessary services, as specified in the foster care service plan or individual service plan, and as recommended by a licensed physician or other professional working with the child, where applicable. These services may include, but are not limited to:

1. Professional evaluations and counseling;

2. Educational services and tutoring; and

3. Transportation to necessary appointments and services.

Note: Individually planned interventions intended to reduce or ameliorate any diagnosed physical, mental or emotional disabilities should be performed by, in conjunction with, or under the written direction of a licensed practitioner.

B. The provider shall enroll each school-age child in school within five days after placement when school is in session.

C. The provider shall promote the child's education by*:*

1. Giving the child educational guidance and counseling in the child's selection of courses~~,~~*;*

2. Establishing contact with the child's school~~,~~*;* and

3. Working with the child's school to promote academic achievement and to resolve any problems brought to the provider's attention by the school.

D. In accordance with § 16.1-281 of the Code of Virginia, the independent foster home, as a licensed child-welfare agency, shall prepare and submit to the local juvenile and domestic relations court a foster care service plan on every child entrusted to the provider by an entrustment agreement (i) within 30 days of signing the child's entrustment agreement for placements of 90 days or more or (ii) within 60 days of signing the entrustment agreement for placements for less than 90 days, unless the child is returned to the child's parents or guardians within 60 days of placement in the independent foster home.

E. The foster care service plan shall include:

1. The reasons the child is placed with the independent foster home;

2. A summary of the child's situation at the time of placement in relation to the child's family. The summary shall include information about*:*

a. The child's health*;* and

b. The child's educational status;

3. The permanency planning goal recommended for the child, including the projected length of stay in the home;

4. A description of the needs of the child and the child's family;

5. The programs, care, services, and other support that the independent foster home will offer or arrange for the child and the child's parents or guardians to meet those needs;

6. The target dates for completion of the services provided or arranged for the child and the child's family;

7. The participation, conduct, and financial support that will be sought from and the responsibilities of the child's parents or guardians;

8. The visitation or other contacts to be held between the child and the child's parents or guardians;

9. In writing and where appropriate for children age 16 and older, the programs and services which will help the child prepare for the transition from foster care to independent living; and

10. A copy of the independent foster home license.

~~E.~~ *F.* For every child placed in the independent foster home by a placing agreement, the provider, with the assistance of the parents or legal guardians, shall prepare an individualized service plan at the time of admission. ~~The written individualized service plan shall outline the services needed and those that will be provided to the child and his family and identify the goals and objectives designed to reunite the child with his family.~~

G. Copies of the child's individualized service plan shall be provided to the parents or legal guardians, to the child, if age 13 or older or upon the child's request, and a copy filed in the child's record.

H. The written individualized service plan shall:

1. Outline the services needed and those that will be provided to the child and his family; and

2. Identify the goals and objectives designed to reunite the child with his family.

I. The individualized service plan shall describe:

1. The reasons why the child is placed in the independent foster home;

2. A summary of the child's situation at the time of placement in relation to the child's family, including a statement of the child's health and educational status;

3. A description of the child's needs;

4. The goals for the child, including the projected length of placement in the independent foster home;

5. The programs, care, services and other means of support that the independent foster home will offer or the arrangements for the child and the child's parent or guardian to provide services or supports;

6. Projected dates for completion of services provided or arranged for the child;

7. Projected level of involvement of the child's parents or guardians and visitation arrangements;

8. Where appropriate for children age 16 and older, the programs and services that will help the child prepare for independent living~~;~~.

~~F.~~ *J.* The individualized service plan shall be updated at least every 30 days.

~~G.~~ *K.* In accordance with federal and state law, the provider shall ensure that the child's health and safety are the paramount concern throughout the placement, case planning, service provision and review process.

~~H.~~ *L.* If consistent with the child's health and safety, the foster care plan or individualized service plan shall be designed to support reasonable efforts which lead to the return of the child

to his parents or guardians within the shortest feasible time, which shall be specified in the plan.

~~I.~~ *M.* If the provider determines that it is not reasonably likely that the child can be returned to the child's prior family within a feasible time, consistent with the best interests of the child, and in a separate section of the foster care plan or individualized service plan, the provider shall:

1. Describe the reasons for this conclusion; and

2. Determine and describe the opportunities for the court to consider placing the child with a relative or for the court to refer the child and the child's family to the local department of social services for further services and permanency planning.

~~J.~~ *N.* The provider shall submit the child's foster care plan or individualized service plan at the time of petitioning the local juvenile and domestic relations court for approval of the entrustment agreement or to assess the care and custody of the child, whichever is appropriate.

~~K.~~ *O.* The provider shall participate in all court hearings involving the child, as long as the child is placed in the independent foster home.

~~L.~~ *P.* The provider shall include*:*

1. The child whenever possible and appropriate to the child's age and development~~,~~*;*

2. The parents or prior guardians of the child~~,~~*;* and

3. Professionals involved with the child in the development of the foster care service plan or individualized service plan.

~~M.~~ *Q.* The provider shall follow the requirements of § 16.1-282 related to the review of the foster care service plan and shall petition the local juvenile and domestic relations court within five months of the court's approval of the entrustment agreement or within five months of the dispositional hearing at which the initial foster care plan was reviewed.

22 VAC 40-141-190. Physical accommodations in the independent foster home.

A. The home shall be clean and have sufficient space and furnishings for each child receiving care in the home to include:

1. Space to meet the needs of the foster family in addition to that required for the foster children~~, including~~*;*

2. Bedrooms which are not used as passageways and which have doors for privacy;

~~2.~~ *3.* Space for each child to keep clothing and other personal belongings;

~~3.~~ *4.* Indoor bathing and toilet facilities in good working order with a door for privacy~~.~~*;*

5. At least one toilet, basin, and tub or shower shall be available for every eight persons;

~~4.~~ *6.* A separate, comfortable bed for each child and sufficient bedding to ensure cleanliness and comfort. A crib that meets current Consumer Product Safety Commission standards (16 CFR Parts 1508 and 1509) shall be provided for infants and children not developmentally ready to sleep in a bed. Exception: Two siblings of the same sex may occupy a double bed; and

~~5.~~ *7.* Sleeping space on the first floor for children unable to use stairs unassisted, except children who can easily be carried.

B. All rooms used by children shall be heated to at least 68°F in winter, dry and well-ventilated.

C. A child-safe, mechanical cooling device, e.g., an electric fan or air conditioner, shall be used when the temperature inside the room exceeds 80°F.

~~C.~~ *D.* All doors and windows used for ventilation shall be screened.

~~D.~~ *E.* Rooms used by children shall be well-lighted for activities and the comfort of children.

~~E.~~ *F.* The home shall have a working telephone available to all household members for use in case of emergency.

G. The telephone number shall be provided to*:*

1. The licensing representative~~, to~~*;*

2. Parents and legal guardians of children placed in the home~~,~~*;* and ~~to~~

3. Children when they are away from the home.

~~F.~~ *H.* No more than four children shall occupy one bedroom.

1. Children of the opposite sex over the age of two shall not share a bedroom.

2. Children shall not share a bed or bedroom with the provider or other adult.

~~G.~~ *I.* There shall be at least three feet between each bed and sufficient space for each child to move about safely.

~~H.~~ *J.* There shall be provision for isolation of sick children.

~~I.~~ *K.* If the licensing representative observes conditions that indicate the need for an inspection by the local health department and makes this request of the provider, the provider shall comply and provide a copy of the report to the department.

~~J.~~ *L.* The provider shall ensure that a smoke-free environment is provided in rooms accessible to children while children are in care.

22 VAC 40-141-200. Home safety.

A. The provider shall have a plan for seeking assistance from police, firefighters, poison control, and medical professionals in an emergency.

B. The telephone numbers for ~~each~~ *police, firefighters, poison control, and medical professionals* shall be posted next to each telephone.

~~B.~~ *C.* The home and grounds*:*

1. Shall be in good physical repair ~~and~~*;*

2. Shall be free of litter, debris, peeling or chipped paint, hazardous materials, and infestations of rodents and insects*;* and

3. Shall present no hazard to the health and safety of the children receiving care.

~~C.~~ *D.* The provider shall*:*

1. Have a written, posted emergency evacuation plan*;* and

2. Rehearse the plan at least monthly.

E. Within the first 48 hours of a child's placement in the home, the provider shall review the plan with each child who is old enough to understand.

~~D.~~ *F.* If the provider possesses firearms, ammunition, and other weapons, the provider shall keep the firearms unloaded and locked ~~as well as the ammunition~~ and other weapons locked.

G. Ammunition shall be locked in a separate location.

~~E.~~ *H.* The provider shall keep cleaning supplies and other toxic substances*:*

1. Stored away from food*;* and

2. Locked or out of the reach of children under the age of 13.

~~F.~~ *I.* When infants or children who are not developmentally ready to climb or descend stairs are in the home, the provider shall have protective barriers installed securely at each opening to stairways.

~~G.~~ *J.* Swimming and wading pools shall be set up according to the manufacturer's instructions.

K. Outdoor swimming pools shall be enclosed by safety fences and gates with child-resistant locks.

L. Wading pools shall be*:*

1. Emptied~~,~~ *and* stored away when not in use*;* and

2. Filled with clean water before the next use.

~~H.~~ *M.* Radiators, oil and wood burning stoves, floor furnaces, portable electric space heaters, fireplaces, and similar heating devices used in areas accessible to children under the age of 13 shall have protective barriers or screens.

~~I.~~ *N.* All interior and exterior stairways with over three risers shall have hand rails at a height accessible to the children in the home.

~~J.~~ *O.* Independent foster homes that provide care to preschool-age children or to developmentally delayed children of comparable maturity to a preschool child shall have protective, child-resistant covers over all electrical outlets.

P. The covers shall not be of a size to present a swallowing or choking hazard.

~~K.~~ *Q.* The provider shall comply with the requirements for state regulated care facilities relating to smoke detectors and fire extinguishers.

~~L.~~ *R.* Infants shall be placed to sleep on a firm, tight-fitting mattress in a crib that meets current safety standards.

S. To reduce the risk of suffocation, soft bedding of any kind shall not be used under or on top of the infant including, but not limited to, pillows, quilts, comforters, sheepskins, or stuffed toys.

~~M.~~ *T.* Infants shall be placed on their backs when sleeping or napping unless otherwise directed by the child's physician.

U. If an individual child's physician contraindicates placing the child in this position, the provider shall maintain a written statement, signed by the physician, in the child's record.

~~N.~~ *V.* Bunk beds or double decker beds shall have safety rails or mechanisms in place to reduce the risk of falls.

1. Children under age 10 shall not use the upper levels of a double decker or bunk bed.

2. Children of any age who have motor or developmental delays shall not use the upper bunk.

~~O.~~ *W.* Pets shall be immunized for rabies and shall be treated for fleas, ticks, worms or other diseases as needed.

~~P.~~ *X.* Providers shall instruct children on safe and hygienic procedures to follow when handling, feeding or in close proximity to animals.

22 VAC 40-141-210. Record requirements.

A. The provider shall maintain a separate record with written information on each child in care.

B. Records shall be kept for at least one year from the date of discharge.

C. Information in the child's record shall include:

1. The entrustment agreement or placing agreement between the provider and parent. The *entrustment* agreement ~~shall be signed on or before the date the child is placed in the home and~~ *or placing agreement* shall include:

a. Identifying information, including proof of identity~~,~~ on the child*,* including ~~the name, date of birth, sex, and date of placement;~~*:*

(1) Name;

(2) Date of birth;

(3) Sex; and

(4) Date of placement;

b. The fees for foster care and other expenses and payment arrangements, including financial support from the parents or guardians;

c. The child's*:*

(1) Social security number~~,~~*;*

(2) Medicaid or other insurance carrier and number~~,~~*;* and

(3) Other information necessary to secure services for the child, including permission to receive medical and dental care;

d. Arrangements for visits by parents and other family members;

e. Rights and obligations of the child, the parents or guardians, and the independent foster home; and

f. Signatures of the parent or guardian and the independent foster parent~~.~~*;*

~~A copy of the agreement shall be given to the parent or guardian;~~

2. Name, address and telephone numbers of parents and public or private agencies involved with the child, including the name of the assigned agency worker where appropriate;

3. The reason the child is placed in the independent foster home;

4. Name and telephone number of persons to be called in an emergency when the responsible person cannot be reached;

5. Names of persons who are authorized to call or visit the child;

6. Medical information pertinent to the health care of the child, including a list of all prescription and nonprescription medication the child receives;

7. Copies of the foster care or individualized service plans;

8. Correspondence and other documentation related to the child, including school records;

9. Reports of accidents, major injuries, illnesses and serious incidents, such as runaways, destruction of property, assaults on others and suicide threats or attempts;

10. The copy of the petition filed with the juvenile and domestic relations court if the child cannot return home within the time frames designated by the entrustment or placing agreement ~~and~~*;*

11. Copies of all related documents received from the court;

~~11.~~ *12.* Services provided each week to the child by the provider and by other resources and services provided to the parent or guardian by the provider, if applicable, or by other resources, when known; and

~~12.~~ *13.* Reasons the child was discharged and the date of discharge from the home.

D. The agreement shall be signed on or before the date the child is placed in the home.

E. A copy of the agreement shall be given to the parent or guardian.

~~B.~~ *F.* Within 30 days after discharge, the provider shall prepare a brief summary of the child's behavioral, educational, and medical progress while in the home, and a statement as to whether the goals of placement were accomplished.

G. A copy of this report shall be*:*

1. Given to the parents or legal guardians within 45 days of discharge*;* and

2. Sent to the local juvenile and domestic relations court whenever the court has approved the entrustment agreement and the foster care service plan or a petition has been made to the court.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: **24 VAC 30-121. Comprehensive Roadside Management Program (adding 24 VAC 30-121-10 through 24 VAC 30-121-40).**

Statutory Authority: §§ 33.1-12 and 33.1-223.2:9 of the Code of Virginia.

Effective Date: February 22, 2006.

Agency Contact: Brian Waymack, State Roadside Manager, Department of Transportation, Asset Management Division, Monroe Tower, 1401 East Broad Street, attn: Brookfield, Richmond, VA 23219, telephone (804) 662-7512, FAX (804) 662-9405, or e-mail brian.waymack@vdot.virginia.gov.

Summary:

The regulation sets forth the requirements applicable to all individuals or community groups that wish to work through local governments to landscape portions of highway rights-of-way. This regulation includes procedures for approval and criteria used to evaluate each proposal, and is intended to serve as a reference resource for parties involved in the planning, design, development, and maintenance of corridors and gateways into localities.

Revisions to the proposed version primarily deal with clarifying allowable activities under the program, establishing more detailed specifications for signage, ensuring that the program will not conflict with existing outdoor advertising regulation participants, and allowing more flexibility in the location of signs along primary and secondary highways.

CHAPTER 121.
COMPREHENSIVE ROADSIDE MANAGEMENT PROGRAM.

24 VAC 30-121-10. Purpose.

The Comprehensive Roadside Management Program (program) is administered by the Virginia Department of Transportation (department), and enables private businesses, civic organizations, communities, individuals and local governments an opportunity to improve the appearance and safety of the state maintained right-of-way or real property, herein referred to as right-of-way, by participating in the project development, establishment, and maintenance of landscaping activities within the state-maintained right-of-way.

This chapter sets forth policies and procedures governing the program.

24 VAC 30-121-20. Participation.

A. Eligible entities. A local government, private business, community, individual, or civic organization may fully fund the development, establishment, [~~*and*~~ *or*] *maintenance* [*, or any combination of these,*] *of landscaping a segment of the right-of-way upon application* [*to,*] *and approval* [~~*of*~~ *by,*] *a designated department representative. Such entities are eligible to participate as:*

1. A single local government;

2. A local government partnership between one or more contiguous local governments; or

3. A private business, civic organization, community or individual through sponsorship by a local government or local government partnership. Such entities are eligible to participate as a donor through the local government by providing to the local government cash or noncash contributions.

B. Acknowledgement signs. Signs acknowledging the name or logo, or both, of participating entities may be authorized for erection at the project site in accordance with 24 VAC 30-121-40 D 2. However, no acknowledgment signs installed pursuant to this program shall remain in place for more than 10 years.

C. In addition to the specifications in 24 VAC 30-121-40 D 2, in order to be recognized on an acknowledgement sign, an entity must provide a minimum cash or in-kind contribution to the permittee for the landscaping activity as specified below. Such contribution shall [~~*guarantee the*~~ *allow an*] *acknowledgement sign for five years* [*, unless the need arises for removal or relocation of the sign*]*. Cost of the acknowledgement sign shall not count toward the minimum contribution requirement.*

1. Noncontrolled access primary and secondary highways: $7,500 contribution.

2. Controlled access primary and secondary highways: $8,500 contribution.

3. Interchanges on controlled access primary and secondary highways: $10,000 contribution.

4. Interstate interchanges: $20,000 contribution.

24 VAC 30-121-30. Application requirements.

A. All program activities must be applied for by the local governments within the jurisdiction in which the activity is proposed to occur in accordance with the General Rules and Regulations of the Commonwealth Transportation Board (24 VAC 30-20-20 and 24 VAC 30-20-80) and the Land Use Permit Manual (24 VAC 30-150). The Land Use Permit Manual and the general rules may be obtained from the [~~*Local Assistance*~~ *Asset Management*] *Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219, or by accessing the Virginia Administrative Code website at http://leg1.state.va.us/000/reg/TOC24030.HTM.*

1. Single activity or segment permit. A local government may apply for a permit for each individual proposed activity or for all proposed activities on a specific route.

2. Jurisdiction-wide permit. A local government may apply for a jurisdiction-wide permit to cover all proposed activities occurring within that local government's jurisdictional boundaries on the right-of-way. Such jurisdiction-wide permits must be renewed on an annual basis from the date of permit issuance.

B. The application shall be in the form prescribed by [~~*24 VAC 30-150*~~ *the Land Use Permit Manual*] *and shall at a minimum include:*

1. The name, telephone number, and complete mailing address of the local government and the authorized local government representative who shall be officially designated by the local government as having full administrative and operational authority over all proposed activities;

2. A maintenance agreement that outlines obligated specific maintenance activities and responsibilities, projected maintenance costs, and related funding commitments necessary to ensure areas are maintained and performing as originally permitted; and

3. A formal resolution [*of endorsement*] *from the local governing body, adopted subsequent to a public hearing during which the proposed landscaping activities are made available for review. The local governing body shall provide written notification to the department of its intention to hold such a hearing no later than 14 days prior to such hearing. Such notification shall be made to the Asset Management Division Administrator, Virginia Department of Transportation, 1401 East Broad Street, Richmond, Virginia 23219.*

24 VAC 30-121-40. Conditions.

A. In order to participate in the program, each project must comply with the Land Use Permit Manual [~~*(24 VAC 30-150)*~~] *and the general, site, and design considerations specified in this section.*

B. General considerations. The following general considerations apply to any permitted activity:

1. Qualifications. All work shall be performed by qualified local government personnel or qualified individuals acting as an agent of the permitted local government.

2. Compliance. Such work shall comply with all departmental specifications, standards, policies, and guidance and all applicable federal, state, and local government policies, laws, regulations, and ordinances.

3. Improvement. Any permitted activity must ensure a net improvement to existing right-of-way conditions and impose no net operational or financial burden to the department as determined by the department.

4. The permittee shall be responsible for the maintenance of the permitted areas in perpetuity. In the event the permittee fails to adequately maintain the improvements, the

department may, at its discretion, revoke the permit. Prior to such revocation, the department may, at its discretion and at the permittee's expense, return the permitted area to its original condition.

5. The master plan, project concept plan, sketches, drawings, estimates, specifications, and descriptive text of all activities and any required federal, state, or local permits shall be available for review by the department at all times.

C. Site considerations. For sites to be approved by the department, the following site conditions must be met. The site must:

1. Not be scheduled for future construction as defined within the department's current six-year improvement plan, which would conflict with the activities proposed on the project;

2. Contain sufficient right-of-way to reasonably permit planting and landscaping operations without conflicting with safety, geometric, and maintenance considerations;

3. Not contain overhead or underground utilities, driveways, pavement, sidewalks, or highway system fixtures including traffic signage or signalization that will conflict with the planting or landscaping operations proposed under the project; and

4. Not obstruct or interfere with existing drainage conditions along the site.

D. Design considerations. For sites to be approved by the department, the following design considerations must be met.

1. The project design shall not include the following design elements:

a. Lighting;

b. Flagpoles or pennant poles;

c. Fountains or water features;

d. Landscaping that depicts or represents any logo, name, or constitutes an advertisement in any form; [~~*or*~~]

e. Statuary, sculpture, or other art objects [~~,~~ *;*]

[*f. Pruning or cutting within highway rights-of-way of vegetation with trunk base diameter greater than four inches, unless approved by the District Roadside Manager*;

g. Any improvements intended to provide greater visibility to any existing or future business, advertisement or advertising structure; or

h. Any improvements that obscure or interfere with the view of existing lawfully erected advertising structures from the main traveled way.]

2. Acknowledgement signs and structures installed pursuant to this program must meet the following design specifications:

a. Panels per sign structure: a maximum of two acknowledgement panels per sign structure.

b. Panel dimensions: 6 feet wide by 20 inches tall; 3 inches corner radii; 1.5 inch – 2 inches thick.

c. Sign material: high density sign foam or equivalent.

d. Background color options: dark blue [*(Pantone Matching System #288 or equivalent as determined by the Asset Management Division)*]*, dark burgundy* [*(Pantone Matching System #188 or equivalent as determined by the Asset Management Division)*] *, dark green* [*(Pantone Matching System #349 or equivalent as determined by the Asset Management Division)*] *, or off-white* [*(Pantone Matching System Cool Gray 1 or equivalent as determined by the Asset Management Division)*] *.*

e. Sign border: must be inset 1 inch from outside edge to a 3/4-inch wide border formed by sandblasting or routing a depth of 1/4-inch to1/2-inch; color must be [~~*white*~~ *off-white (Pantone Matching System Cool Gray 1 or equivalent as determined by the Asset Management Division)*] *if dark background or dark* [*blue (Pantone Matching System #288 or equivalent as determined by the Asset Management Division), dark burgundy (Pantone Matching System #188 or equivalent as determined by the Asset Management Division), or dark green (Pantone Matching System #349 or equivalent as determined by the Asset Management Division)*] *if* [~~*white*~~ *off-white*] *background.*

f. Acknowledgement content: a single sponsoring entity may be represented per panel; the representation may be placed within but no closer than 1/2 [-] *inch inside the border and formed by sandblasting or routing a depth of 1/4 inch to 1/2 inch.*

[*g. The words "Landscaping by" must be included in the upper left hand area of the border and must be a minimum of three inches tall. The border must be broken and the color of the "Landscaping by" must be the same as the border.*

h. Installation: the bottom of the sign at its closet point to the ground shall not be greater than 30 inches above the ground. The distance between panels shall not exceed four inches. Post height shall not exceed five inches above the top of the highest panel, with the top one inch trimmed at a 45-degree angle. Post stain color must be a solid gray (Pantone Matching System # 423 or equivalent as determined by the Asset Management Division).]

3. In the event an acknowledgement sign structure or panel is damaged, the permittee shall be responsible for repairing or replacing the sign.

4. Acknowledgement sign structures installed pursuant to this program may be placed within the right-of-way at the following locations:

a. Noncontrolled access primary and secondary highways [*with speed limits of 45 mph or less*]*: no greater than one acknowledgement sign structure per direction per* [~~*1/2*~~ *1/4*] *mile of main traveled way.*

[*b. Noncontrolled access primary and secondary highways with speed limits greater than 45 mph: one*

acknowledgement sign structure per direction per 1/2 mile of main traveled way.

c. Controlled access primary and secondary highways with speed limits of 45 mph or less: no greater than one acknowledgement sign structure per direction per 1/4 mile of main traveled way except as specified in subdivision 4 e of this subsection.]

[~~*b.*~~ *d.*] *Controlled access primary and secondary highways* [*with speed limits greater than 45 mph*]*: no greater than one acknowledgement sign structure per direction per 1/2 mile of main traveled way except as specified in subdivision 4* [~~*c*~~ *e*] of *this subsection.*

[~~*c.*~~ *e.*] *Interchanges on controlled access interstates, primary and secondary highways: no greater than one acknowledgement sign structure per turning roadway* [~~*with no more than one panel per acknowledgement sign structure*~~].

NOTICE*:* The form used in administering 24 VAC 30-121, Comprehensive Roadside Management Program, is listed and printed below.

FORMS

Land Use Permit Manual Application Form (Revised 10/2003).

PERMIT APPLICATION
Rev. 10/2003

Land Use Permit Application No._____
Commonwealth of Virginia
Department of Transportation

RETURN TO VDOT RESIDENCY OR PERMIT OFFICE ADDRESS

APPLICATION is hereby made for permit as shown on the accompanying plan or sketch and as described below. Said activity(s) will be done under and in accordance with the rules and regulations of the Commonwealth Transportation Board of Virginia, in so far as said rules are applicable thereto and any agreement between the parties herein before referred to. Where applicable agreements may be attached and made a part of the permit assembly including any cost responsibilities covering work under permit. Applicant agrees to maintain work in a manner as approved upon its completion. Applicant also hereby agrees and is bound and held responsible to the owner for any and all damages to any other installations already in place as a result of work covered by resulting permit. Applicants to whom permits are issued shall at all times indemnify and save harmless the Commonwealth Transportation Board members of the Board, the Commonwealth and all Commonwealth employees, agents, and offices, from responsibility, damage, or liability arising from the exercise of the privileges granted in such permit to the extent allowed by law. In consideration of the issuance of a permit the applicant agrees to waive for itself, successors in interest or assigns any entitlements it may otherwise have or have hereafter under the Uniform Relocation and Assistant Act of 1972 as amended in event the Department or its successor, chooses to exercise its acknowledged right to demand or cause the removal of any or all fixtures, personality of whatever kind or description that may hereafter be located, should this application be approved.

TYPE OR PRINT CLEARLY

Social Security or Tax ID number _____ **Contact Name** _____
Owner Name _____ **E-mail Address** _____
Address _____ **Phone Number (** ____ **)** _____**-**_____
City _____**State** _____**Zip Code**_____ **Emergency Number (** ____ **)** _____**-**_____
Fax Number (____ **)** _____**-**_____

Social Security or Tax ID number _____ **Contact Name** _____
Agent Name _____ **E-mail Address** _____
Address _____ **Phone Number (** ____ **)** _____**-**_____
City _____**State** _____**Zip Code**_____ **Emergency Number (** ____ **)** _____**-**_____
Fax Number (____ **)** _____**-**_____

Permit Term Requested _____ **Fees Enclosed $**_____ **Check Number** _____ **Coupon Number(s)** _____
Money Order _____ **Other** _____ **The estimated cost of work to be performed on VDOT Right of Way $**_____

Surety Information: **Surety Company Name** _____
Amount of Surety $ _____ **Obligation Amount $**_____
Check # _____ **Bond #**_____ **ILC #** _____
[ ] Corporate Surety [ ] Resolution [ ] Ordinance [ ] Waived

The Surety Posted by Owner ( ) or Agent ( )

Applicant has provided proof of the following requirements in accordance as defined in Code of Virginia section 2.2-1151.1.

(1) The utility company has registered as an operator with the appropriate notification center.

(2) Attached is a notarized affidavit, that the utility owner has notified the commercial and residential developer, owner of commercial or multifamily real estate, or local government entities with a property interest in any parcel of land located adjacent to the property over which the land use is being requested, that application for the permit has been made.

Request Permission: To perform the following activity(s)_____
_____
_____
_____
_____
_____as per attached plans.

Location: Tax Map Number _____ Applicant Job No._____
Geographically in County / Town / City of_____ On Highway Route and /or Name_____
Between Route _____ St. Name _____ Latitude _____ Longitude_____
And Route_____ St. Name_____ Latitude_____ Longitude_____

[ ] IF APPLICABLE, I AGREE TO PAY THE FULL SALARY AND EXPENSES OF A STATE ASSIGNED INSPECTOR IN CONJUNCTION WITH THIS PROJECT, COVERED BY ACCOUNT RECEIVABLE NUMBER.

Signature of applicant _____ **Title**_____ **Date** _____
Signature of agent _____ **Title**_____ **Date** _____

All applicable items on this form must be completed before your request can be considered. Recheck information furnished to avoid delay. Prepayment Required - make Remittance payable to Virginia Department of Transportation.

VDOT USE ONLY

Receipt is hereby acknowledged of CHECK_____ COUPON_____ M.O._____ In The Amount of $_____
Permit Fee $_____ Cash Surety $ _____. VDOT Reference Number _____
Signed _____ VDOT.
Original Copy To Permit Office Copy To District Office Copy To Applicant

VA.R. Doc. No. R04-174; Filed December 21, 2005, 11:41 a.m.

TITLE 13. HOUSING

VIRGINIA MANUFACTURED HOUSING BOARD

Title of Regulation: **13 VAC 6-20. Manufactured Housing Licensing and Transaction Recovery Fund Regulations (amending 13 VAC 6-20-10, 13 VAC 6-20-80, 13 VAC 6-20-120, and 13 VAC 6-20-350).**

Statutory Authority: § 36-85.18 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until March 28, 2006.
(See Calendar of Events section for additional information)

Effective Date: April 12, 2006.

Agency Contact: Curtis McIver, Associate Director, Virginia Manufactured Housing Board, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7161, FAX (804) 371-7090.

Basis: Section 36-85.18 of the Code of Virginia establishes the power and duty of the Virginia Manufactured Housing Board to promulgate regulations in accordance with the APA to carry out the provisions of the chapter. The authority of the Virginia Manufactured Housing Board to promulgate the regulations is mandatory.

Purpose: Chapter 430 of the 2005 Acts of Assembly amended § 36-85.16 of the Code of Virginia in the definition of a "new" manufactured home. Since the regulations promulgated by the board cannot conflict with the Code of Virginia provisions, this amendment is necessary for the regulations to comport with the Code of Virginia. The purpose of the second amendment is to correct in four locations in the regulations the title of a referenced standard that has been repealed and replaced by the Board of Housing and Community Development.

The amendments to this regulation are made to correlate regulatory definitions to the definitions in statute and to correct and update references within the regulation; therefore, these amendments will not impact public heath, safety or welfare.

Rationale for Using Fast-Track Process: The rationale for using the fast track process is that the amendments proposed by the board are not discretionary amendments. The amendment to the definition of "new manufactured home" was adopted by Chapter 430 of the 2005 Acts of Assembly. The board is simply making the same change to the definition in the regulations. The Board of Housing and Community Development has previously repealed the Industrialized Building and Manufactured Home Safety Regulations and replaced that regulation with the Manufactured Home Safety Regulations. This proposed amendment corrects the title and VAC numbers of the referenced regulation.

Substance: In the definition of "Code," correct the title of the referenced regulation. In the definition of "New manufactured home" add the language that was added by Chapter 430 of the 2005 Acts of Assembly. In addition, correct the title and VAC number of the referenced regulation in 13 VAC 6-20-80, 13 VAC 6-20-120 and 13 VAC 6-20-350.

Issues: The primary advantages to the public will be to have the regulations reference the correct title and VAC number and to have a clear determination of what constitutes a new manufactured home resulting in less confusion for consumers and industry businesses. There are no known primary disadvantages for the public.

The primary advantages to the agency will be to have regulations that refer to the correct title of referenced documents and that comport with the Code of Virginia. There are no known primary disadvantages.

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 Virginia Manufactured Housing Board (board) proposes to amend the regulatory definition of "new manufactured home" to incorporate a change made in the Code of Virginia during the last legislative session. Additionally, the board proposes to change this regulation to eliminate references to another, now repealed, regulation (Industrialized Building and Manufactured Home Safety Regulations) and insert references to the appropriate replacement regulation number and title (13 VAC 5-95, Manufactured Home Safety Regulations).

Estimated economic impact. During the last few years, the manufactured home industry has been in a downward spiral. Wholesale shipments of manufactured homes fell about 65% nationwide from 1998 to 2004, from 372,000 to 130,802.[1] This reduction in wholesale home shipments has mirrored a corresponding decline in retail manufactured home sales. Several sources[2] attribute the decline in manufactured home sales to customer base demographics; elderly people on fixed

[1] These numbers were obtained from the Virginia Manufactured and Modular Housing Association and represent total domestic shipments of manufactured homes.
[2] Larry Barrett of *Baseline* Magazine and the 10-K annual report for Cavalier Homes Incorporated, released on March 31, 2005, are two of those sources.

incomes and younger people with low incomes and/or spotty credit records are the most likely purchasers of manufactured homes. During the last economic downturn, these groups had increased home loan default rates even though the housing market in general was a particularly robust bright spot in an otherwise sluggish economy. These increased default rates led to tightening credit requirements in the sector of the lending industry that handles manufactured home loans.

Because of these prevailing dynamics in the manufactured home market, some retail sellers of manufactured homes have gone out of business and had their sales stock resold at wholesale auction to other retail sellers. This sales stock was typically at least several years old. Other retail sellers moved stock that sat unsold for years by wholesale reselling to retail sellers in other states that had less weak manufactured home markets.

Under current regulation and old statute, all these manufactured homes could be sold as new, with all mandatory new home warranties from the manufacturer, so long as they had not been previously sold at the retail level. This has been true for all homes no matter how long the span between the time the home is manufactured and the time it is sold to the end homeowner, and no matter how many times the home has been moved and subjected to wear and tear because of resale at the wholesale level.

Pursuant to legislation passed during the 2005 General Assembly session (Code of Virginia § 36-85.16), the board proposes to place a cap of two years on the time in which a manufactured home can be sold as a new manufactured home at the retail level.

This means that retail purchasers of manufactured homes that are more than two years old will receive more complete information, in the form of written notice of the home's used status and lack of general warranty, from the retail seller. Although purchasers of homes more than two years old will lose the benefit of a mandatory one year warranty, they will gain the ability to make informed decisions about their purchase. Consumers can use this information, for instance, to negotiate a purchase price that is more appropriate for a used home rather than paying full retail price. They also will be more alert for problems with the home that arise from more frequent movement and use. The proposed regulation is likely to provide a net benefit for retail purchasers of manufactured homes.

The proposed regulatory change is likely to benefit manufacturers of these homes as well. They will not have to cover the repairs of manufactured homes as if they were new when, in reality, they had been subject to wear and tear at the wholesale level for as many as 4 or 5 years.

Retail sellers of manufactured homes will likely lose revenue in the short run because they will have to sell as used homes that they currently market as new. This loss is likely to only be accrued in the short run. In the long run, retail sellers will be motivated to more tightly control their inventory so that homes can be sold in a more timely fashion. This regulatory change is likely to provide a net benefit to the citizens of Virginia.

Businesses and entities affected. There are 3 factories that produce manufactured homes and operate in the Commonwealth. An additional 50 manufacturers are licensed to sell their homes to retail dealers in Virginia. There are 266 licensed retail sellers of manufactured homes in the Commonwealth. All of these businesses and all retail purchasers of manufactured homes will be affected by this regulatory change.

Localities particularly affected. All localities in the Commonwealth will be affected by the proposed regulation.

Projected impact on employment. The proposed regulation's impact on employment is likely to be slightly negative, at least in the short run. Revenues for retail dealers of manufactured homes are likely to fall in the short run which may lead to fewer employment opportunities in this field. As retail dealers tighten inventories in response to the proposed regulation, wholesale orders are likely to fall which may lead to fewer employment opportunities in factories that produce manufactured homes. This loss will be at least partially offset by decreased costs associated with mandatory warranties that will no longer have to be provided for manufactured homes more than two years old.

Effects on the use and value of private property. Revenues for retail dealers of manufactured homes are likely to fall in the short run. As retail dealers tighten inventories in response to the proposed regulation, wholesale orders are likely to fall which will decrease revenues for the manufacturers of these homes. This loss will be at least partially offset by decreased costs associated with mandatory warranties that will no longer have to be provided for manufactured homes more than two years old.

Small businesses: costs and other effects. There are 3 factories that produce manufactured homes and operate in the Commonwealth. An additional 50 manufacturers are licensed to sell their homes to retail dealers in Virginia. There are 266 licensed retail sellers of manufactured homes in the Commonwealth. All of these are small businesses with less than 500 employees. Since the date of manufacture is easily accessible in the paperwork that is already required for a manufactured home sale, there should be no reporting or recordkeeping costs. Retail sellers of manufactured homes will incur minor administrative costs in generating the required notice of used status for the purchaser.

Small businesses: alternative method that minimizes adverse impact. The proposed regulatory change is mandated by legislative code change and is not subject to alteration by the board.

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 of DPB.

Summary:

Chapter 430 of the 2005 Acts of Assembly amends the definition of "new manufactured home" in the Code of Virginia. This amendment incorporates the language from the Code of Virginia in the regulations for the definition of "new manufactured home" to address manufactured homes sold from one dealer to another before being sold to a consumer. If the manufactured home is sold from one

dealer to another and then sold to a consumer within two years of the date of manufacture of the home, the home must be sold as a new manufactured home. If the sale to the consumer occurs more than two years after the date of manufacture of the home, the home must be sold as used and the consumer must be advised, in writing, of the effect of the used status of the home on the warranty issued with the home.

In addition, changes are made to correct references to another regulation that is cited within this regulation.

13 VAC 6-20-10. Definitions.

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

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under Chapter 4.2 (§§ 36-85.16 et seq.) of Title 36 of the Code of Virginia.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code and the ~~Industrialized Building and~~ Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for manufactured homes.

"Dealer/manufacturer sales agreement" means a written contract or agreement between a manufactured housing manufacturer and a manufactured housing dealer whereby the dealer is granted the right to engage in the business of offering, selling, and servicing new manufactured homes of a particular line or make of the stated manufacturer of such line or make. The term shall include any severable part or parts of such sales agreement which separately provides for selling or servicing different lines or makes of the manufacturer.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

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

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"HUD" means the United States Department of Housing and Urban Development.

"Licensed" means the regulant has met all applicable requirements of this chapter, paid all required fees, and been authorized by the board to manufacture or offer for sale or sell manufactured homes in accordance with this chapter.

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

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or "salesperson" means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer to sell or offer to sell; or to buy or offer to buy; or to negotiate the purchase, sale or exchange; or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home ~~which~~ *that* (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles *and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer within two years of the date of manufacture, the home is still considered new and must continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale*.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by Chapter 4.2 (§§ 36-85.16 et seq.) of Title 36 of the Code of Virginia to be licensed by the board.

"Regulations" or "these regulations" means the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

"Relevant market area" means the geographical area established in the dealer/manufacturer sales agreement and agreed to by both the dealer and the manufacturer in the agreement.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Standards" means the Federal Manufactured Home Construction and Safety Standards adopted by the U.S. Department of Housing and Urban Development.

"Statement of Compliance" means the statement that the regulant licensed by the board will comply with the Manufactured Housing Licensing and Transaction Recovery Fund Law, this chapter and the orders of the board.

"Supplier" means the original producers of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

"Warranty" means any written assurance of the manufacturer, dealer or supplier or any promise made by a regulant in connection with the sale of a manufactured home that becomes part of the basis of the sale. The term "warranty" pertains to the obligations of the regulant in relation to materials, workmanship, and fitness of a manufactured home for ordinary and reasonable use of the home for the term of the promise or assurance.

13 VAC 6-20-80. Dealer responsibility for inspections; other items.

A. The dealer shall inspect every new manufactured home unit upon delivery from a manufacturer. If a dealer becomes aware of a noncompliance or an imminent safety hazard, as defined in ~~Section 1200.210~~ *13 VAC 5-95-10* of the ~~Industrialized Building and~~ Manufactured Home Safety Regulations, in a manufactured home, the dealer shall contact the manufacturer, provide full information concerning the problem, and request appropriate action by the manufacturer. No dealer shall sell a new manufactured home if he becomes aware that it contains a noncompliance or an imminent safety hazard.

B. The dealer shall inspect every new manufactured home unit prior to selling to determine that all items of furniture, appliances, fixtures and devices are not damaged and are in place and operable.

C. A dealer shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

D. If the dealer provides for the installation of any manufactured home he sells, the dealer shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

E. On each home sold by the dealer, the dealer shall collect the applicable title fees and title tax for the manufactured home and forward such fees and taxes to the Virginia Department of Motor Vehicles.

13 VAC 6-20-120. Broker responsibility for inspections; other items.

A. The broker shall inspect every used manufactured home unit prior to completion of sale. No broker shall sell a used manufactured home, if he becomes aware that it contains an imminent safety hazard as defined in ~~Section 1200.210~~ *13 VAC 5-95-10* of the ~~Industrialized Building and~~ Manufactured Home Safety Regulations.

Exception: A broker may sell a used manufactured home in which he is aware of an imminent safety hazard if the buyer is advised of the imminent safety hazard in writing by the broker and is further advised that building permits may be required from the local building official for repair of the imminent safety hazard.

B. A broker shall not alter or cause to be altered any manufactured home to which a HUD label has been affixed if such alteration or conversion causes the manufactured home to be in violation of the standards.

C. If the broker provides for the installation of any manufactured home he sells, the broker shall be responsible for making sure the installation of the home meets the manufacturer's installation requirements and the Code.

D. On each home sold by the broker, the broker shall collect the applicable title tax and title fees for the manufactured home and forward such fees and taxes to the Virginia Department of Motor Vehicles.

13 VAC 6-20-350. Warranty service; time limits; rejection of claim.

A. Any defect which is determined to be an imminent safety hazard as defined in ~~Section 1200.210~~ *13 VAC 5-95-10* of the ~~Industrialized Building and~~ Manufactured Home Safety Regulations to life and health shall be remedied within three days of receipt of the written notice of the warranty claim. Defects which may be considered as imminent safety hazards

to life and health include, but are not limited to, any of the following:

1. Inadequate heating in freezing weather.
2. Failure of sanitary facilities.
3. Electrical shock hazards.
4. Leaking gas.
5. Major structural failure.

The board may suspend this three-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural disasters.

B. All other defects shall be remedied within 45 days of receipt of the written notice of the warranty claim unless a bona fide reason exists for not remedying the defect within the time period. If the responsible party has a bona fide reason for not meeting the 45-day time period, he shall respond to the claimant in writing, with a copy to the board, explaining the reason or reasons and stating what further action is contemplated regarding the warranty service.

C. Department staff handling consumer complaints under the Code shall also review the complaints for warranty service obligations under this part, and shall make initial determinations of defects and imminent safety hazards to life and health as defined by the Code. Any disagreements between department staff and regulants or responsible parties regarding these determinations shall be resolved by the board. If a regulant or responsible party disputes the determination of an imminent safety hazard to life or health by the staff and asks for a ruling by the board, the three-day time period for remedying the hazard shall not be enforced unless the board agrees to the determination. If the board determines that the defect is an imminent safety hazard, it shall immediately notify the responsible party of the determination. The responsible party shall have three days from receipt of this notice to remedy the hazard.

D. Within the time limits specified in subsections A and B of this section, the responsible party shall either resolve the claim or determine that it is not justified. Whenever a regulant determines that a claim for warranty service is not justified, in whole or in part, he shall immediately notify the claimant in writing that the claim or a part of the claim is rejected. This notice shall explain to the claimant why the claim or specific parts of the claim are rejected and that the claimant is entitled to complain or file an appeal to the board. The notice shall provide the claimant with the complete address of the board.

VA.R. Doc. No. R06-164; Filed January 3, 2006, 1:13 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Title of Regulation: **4 VAC 20-20. Pertaining to the Licensing of Fixed Fishing Devices (amending 4 VAC 20-20-50).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: December 28, 2005, through January 27, 2006.

Agency Contact: Deborah R. Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendment continues to exempt the 2005 current pound net licensees from the requirement to fish their pound nets or system of nets or poles in order to maintain their priority rights to existing established locations. This exemption applies to the license year 2005 only.

4 VAC 20-20-50. Priority rights; renewal by current licensee.

A. Applications for renewal of license for existing fixed fishing devices may be accepted by the officer beginning at 9 a.m. on December 1 of the current license year through noon on January 10 of the next license year providing the applicant has met all requirements of law and this chapter. Any location not relicensed during the above period of time shall be considered vacant and available to any qualified applicant after noon on January 10.

B. Except as provided in ~~subsection~~ *subsections* C *and D* of this section, a currently licensed fixed fishing device must have been fished during the current license year in order for the licensee to maintain his priority right to such location. It shall be mandatory for the licensee to notify the officer, on forms provided by the commission, when the fixed fishing device is ready to be fished in the location applied for, by a complete system of nets and poles, except as provided in subsection D of this section, for the purpose of visual inspection by the officer. Either the failure of the licensee to notify the officer when the fixed fishing device is ready to be fished or the failure by the licensee actually to fish the licensed device, by use of a complete system of nets and poles, except as provided in subsection D of this section, shall terminate his right or privilege to renew the license during the period set forth in subsection A of this section of this chapter, and he shall not become a qualified applicant for such location until 9 a.m. on February 1. Any application received from an unqualified applicant under this subsection shall be considered as received at 9 a.m. on February 1; however, in the event of the death of a current license holder, the priority right to renew the currently held locations of the deceased licensee shall not expire by reason of failure to fish said locations during the year for which they were licensed, but one additional year shall be and is hereby granted to the personal representative or lawful beneficiary of the deceased licensee to license the location in the name of the estate of the deceased licensee for purposes of fishing said location or making valid assignment thereof.

C. During the effective period of 4 VAC 20-530, which establishes a moratorium on the taking and possession of American shad in the Chesapeake Bay and its tributaries, any person licensed during 1993 to set a staked gill net who chooses not to set that net during the period of the moratorium may maintain his priority right to the stake net's 1993 location by completing an application for a fixed fishing device and submitting it to the officer. No license fee shall be charged for the application.

D. During ~~2004~~ *2005*, current pound net licensees shall not be required to fish their pound nets or establish a complete system of nets and poles in order to renew their licenses or maintain their priority rights to such locations for ~~2005~~ *2006*. Beginning in 2005 current pound net licensees with a licensed pound net located in the National Marine Fisheries Service Prohibited Pound Net Leader area shall not be required to fish their pound nets or establish a complete system of nets and poles in order to renew their licenses or maintain their priority rights to such locations for any subsequent year until such time that this prohibited area is no longer in effect.

VA.R. Doc. No. R06-153; Filed December 22, 2005, 10:23 a.m.

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Title of Regulation: **4 VAC 20-950. Pertaining to Black Sea Bass (amending 4 VAC 20-950-47 and 4 VAC 20-950-48).**

Statutory Authority: §§ 28.2-201, 28.2-204.1 and 28.2-210 of the Code of Virginia.

Effective Dates: January 1, 2006, through January 30, 2006.

Agency Contact: Deborah R. Cawthon, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or e-mail debbie.cawthon@mrc.virginia.gov.

Summary:

The amendments reduce the 2006 directed commercial fishery quota on black sea bass to 631,380 pounds, reduce the black sea bass bycatch quota to 118,082 pounds, and delete a reference of 2005 as it relates to bycatch requirements.

4 VAC 20-950-47. Commercial harvest quotas.

A. The ~~2004~~ *2006* directed commercial fishery black sea bass quota is ~~635,025 pounds, and the 2005 quota is 642,323~~ *631,380* pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The ~~2004~~ *2006* bycatch commercial fishery black sea bass quota is ~~118,764~~ *118,082* pounds ~~and the 2005 quota is 120,169 pounds~~. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount the quota overage shall be deducted from the following year's bycatch fishing quota.

4 VAC 20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. A person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. ~~From January 1, 2005, to December 31, 2005,~~ It shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, in any one day, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, provided the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel. When it is projected and announced that 85% of the bycatch fishery quota has been be taken, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, but not more than 1,000 pounds, provided the total weight of black sea bass aboard the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel.

D. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

E. The commission sets aside 17,000 pounds of the annual commercial fishery black sea bass quota for distribution to all qualified applicants granted an exception by the commission from the requirements of 4 VAC 20-950-46 B based upon medical conditions, or other hardship, which limited the applicant's ability to fish for black sea bass during the qualifying period. In granting an exception, the commission will give preference to those applicants who can demonstrate the greater levels of participation in the black sea bass fishery during and after the qualifying period or document an apprenticeship or helper status in the black sea bass fishery. Any applicant who is granted an exception by the commission shall receive a portion of the 17,000 pounds; however, no portion shall exceed the lowest individual fishery quota, in pounds, at the beginning of the season. There shall be no transfer of quota received by applicants to the exception process for a period of five years after receipt of that quota. Any portion of the 17,000 pounds not allotted by the commission to the qualified applicants as of November 1 shall be added to the annual bycatch quota described in 4 VAC 20-950-47 B.

VA.R. Doc. No. R06-152; Filed December 22, 2005, 10:23 a.m.

TITLE 12. HEALTH

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Title of Regulation: **12 VAC 35-45. Regulations for Providers of Mental Health, Mental Retardation, Substance Abuse, and Brain Injury Residential Services for Children (amending 12 VAC 35-45-10, 12 VAC 35-45-70, and 12 VAC 35-45-80; adding 12 VAC 35-45-210).**

Statutory Authority: § 37.2-203 of the Code of Virginia and Chapter 725 of the 2005 Acts of Assembly.

Effective Dates: December 30, 2005, through December 29, 2006.

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or e-mail leslie.anderson@co.dmhmrsas.virginia.gov.

Preamble:

Chapter 725 of the 2005 Acts of Assembly (HB2826) requires that the State Mental Health, Mental Retardation and Substance Abuse Services Board adopt regulations for licensing providers of brain injury services. This legislation also requires that the provisions of the act become effective within 280 days of its enactment. The board is adopting these emergency regulations to comply with this legislation.

This action will amend the existing Regulations for Providers of Mental Health, Mental Retardation, and Substance Abuse Residential Services for Children to include provisions for licensing providers of brain injury services. The existing regulations provide standards for licensing providers of residential treatment services for children with mental illness, mental retardation or substance use disorders and are an addendum to 22 VAC 42-10, which are generic standards governing a wide variety of residential facilities licensed by the Departments of Mental Health, Mental Retardation and Substance Abuse Services (department), Social Services, Education, and Juvenile Justice. The standards in this addendum or "Mental Health Module" as it is operationally called, cover a wide range of residential services from small group homes to large residential treatment facilities. The proposed regulatory action adds a definition of "brain injury" and incorporates brain injury service into the definition of "services" that are governed by this regulation. Several other definitions have been added or revised to encompass brain injury services. The regulations have been revised to require providers of brain injury services to maintain policies and structured programs to reduce or ameliorate the effects of brain injury and adds "neurobehavioral service" to the scope of services that may be part of a structured program. The amended regulation also includes requirements for the staff and supervision of residential facilities for persons with brain injury.

CHAPTER 45.
REGULATIONS FOR PROVIDERS OF MENTAL HEALTH, MENTAL RETARDATION ~~AND~~, SUBSTANCE ABUSE*, AND BRAIN INJURY* RESIDENTIAL SERVICES FOR CHILDREN.

12 VAC 35-45-10. Definitions.

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

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help a resident obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, ~~or~~ social *, or cognitive* functioning.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities, which provide for support and problem solving. Such interventions take place between provider staff and the resident, families, or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

"Department" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Medication" means prescribed and over-the-counter drugs.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to a resident by (i) persons legally permitted to administer medications or (ii) the resident at the direction and in the presence of persons legally permitted to administer medications.

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, which affect an individual's ability to function successfully in the community.

"On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, *cognitive,* or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services must include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, *neurobehavioral services,* and family therapy necessary to treat the child. Active treatment shall be

required. The service must provide active treatment or training beginning at admission and it must be related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs, including but not limited to personal care, habilitation or academic educational needs of the resident.

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent a resident receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the resident in an instance in which there is an imminent risk of a resident harming himself or others, including staff when nonphysical interventions are not viable and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the resident for medical, diagnostic, or surgical purposes and the related post-procedure care processes when the use of such a device is not a standard practice for the resident's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit when the resident does not have the option to remove the device. The device may limit a resident's movement and prevent possible harm to the resident (e.g., bed rail or geri-chair) or it may create a passive barrier to protect the resident (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the resident receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the resident's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent a resident from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:

a. To intervene in or redirect a potentially dangerous encounter in which the resident may voluntarily move away from the situation or hands-on approach; or

b. To quickly de-escalate a dangerous situation that could cause harm to the resident or others.

"Serious incident" means:

1. Any accident or injury requiring treatment by a physician;

2. Any illness that requires hospitalization;

3. Any overnight absence from the facility without permission;

4. Any runaway; or

5. Any event that affects, or potentially may affect, the health, safety or welfare of any resident being served by the provider.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Service" or "services" means individually planned interventions intended to reduce or ameliorate mental illness, mental retardation or substance addiction or abuse through care and treatment, training, habilitation or other supports that are delivered by a provider to residents with mental illness, mental retardation, or substance addiction or abuse. *Service also means planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.*

"Social skill training" means activities aimed at developing and maintaining interpersonal skills.

"Time out" means assisting a resident to regain emotional control by removing the resident from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

12 VAC 35-45-70. Service description; required elements.

A. The provider shall develop, implement, review and revise its services according to the provider's mission and shall have that information available for public review.

B. Each provider shall have a written service description that accurately describes its structured program of care and treatment consistent with the treatment, habilitation, or training needs of the residential population it serves. Service description elements shall include:

1. The mental health, substance abuse ~~or~~, mental retardation*, or brain injury* population it intends to serve;

2. The mental health, substance abuse ~~or~~, mental retardation*, or brain injury* interventions it will provide;

3. Provider goals;

4. Services provided; and

5. Contract services, if any.

12 VAC 35-45-80. Minimum service requirements.

A. At the time of the admission of any resident, the provider shall identify in writing, the staff member responsible for providing the social services outlined in the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-10).

B. The provider shall have and implement written policies and procedures that address the provision of:

1. Psychiatric care;

2. Family therapy; and

3. Staffing appropriate to the needs and behaviors of the residents served.

C. The provider shall have and implement written policies and procedures for the on-site provision of a structured program of care or treatment of residents with mental illness, mental retardation, ~~or~~ substance abuse*, or brain injury*. The provision, intensity, and frequency of mental health, mental retardation, ~~or~~ substance abuse*, or brain injury* interventions shall be based on the assessed needs of the resident. These interventions, applicable to the population served, shall include, but are not limited to:

1. Individual counseling;

2. Group counseling;

3. Training in decision making, family and interpersonal skills, problem solving, self-care, social, and independent living skills;

4. Training in functional skills;

5. Assistance with activities of daily living (ADL's);

6. Social skills training in therapeutic recreational activities, e.g., anger management, leisure skills education and development, and community integration;

7. Providing positive behavior supports;

8. Physical, occupational and/or speech therapy; ~~and~~

9. Substance abuse education and counseling~~.~~ *; and*

10. Neurobehavioral services for individuals with brain injury.

D. Each provider shall have formal arrangements for the evaluation, assessment, and treatment of the mental health *or brain injury* needs of the resident.

12 VAC 35-45-210. Additional requirements for residential facilities for individuals with brain injury.

A. The provider of brain injury services shall employ or contact with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized service plans, crises, staff training, and service design.

B. Child care staff in brain injury residential services shall have two years experience working with children with disabilities.

C. A program director who holds a master's degree in psychology, is a nurse licensed in Virginia, is a rehabilitation professional licensed in Virginia, or is a Certified Brain Injury Specialist shall have at least one year of clinical experience working with individuals with brain injury. Program directors who hold a bachelor's degree in the field of institutional management, social work, education, or other allied discipline shall have a minimum of two years of experience working with individuals with brain injury.

/s/ Mark R. Warner
Governor
December 30, 2005

VA.R. Doc. No. R06-160; Filed December 30, 2005, 2:42 p.m.

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Title of Regulation: **12 VAC 35-105. Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services (amending 12 VAC 35-105-20, 12 VAC 35-105-30, 12 VAC 35-105-590, and 12 VAC 35-105-660).**

Statutory Authority: § 37.2-203 of the Code of Virginia and Chapter 725 of the 2005 Acts of Assembly.

Effective Dates: December 30, 2005, through December 29, 2006.

Agency Contact: Leslie Anderson, Director, Office of Licensing, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218, telephone (804) 371-6885, FAX (804) 692-0066, or e-mail leslie.anderson@co.dmhmrsas.virginia.gov.

Preamble:

Chapter 725 of the 2005 Acts of Assembly (HB2826) requires that the State Mental Health, Mental Retardation and Substance Abuse Services Board adopt regulations for licensing providers of brain injury services. This legislation also requires that the provisions of the act become effective within 280 days of its enactment. The board is adopting these emergency regulations to comply with this legislation.

This action will amend the existing Rules and Regulations for the Licensing of Providers of Mental Health, Mental Retardation and Substance Abuse Services to include provisions for licensing providers of brain injury services. The amendment adds a definition of "brain injury" and incorporates brain injury service providers into the definition of service "provider" that is subject to the licensing provisions. Several other definitions have been added or revised to encompass the providers of brain injury services. The description of providers that are issued licenses has also been expanded to include providers that offer services to persons with brain injury services under the Medicaid Brain Injury Waiver or in a residential service. The amended regulation also includes requirements for provider staffing and supervision of brain injury services and adds requirements for the individualized services plan that address the specific needs of individuals receiving brain injury services.

12 VAC 35-105-20. Definitions.

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

"Abuse" (§ 37.1-1 of the Code of Virginia) means any act or failure to act, by an employee or other person responsible for

the care of an individual receiving services that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving services. Examples of abuse include, but are not limited to, the following:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates or humiliates the person;

4. Misuse or misappropriation of the person's assets, goods or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice or the person's individual service plan;

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individual service plan.

"Activities of daily living" (ADLs) mean personal care activities and include bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service that includes orientation to service goals, rules and requirements, and assignment to appropriate employees.

"Behavior management" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized service plan and written policies and procedures governing service expectations, treatment goals, safety and security.

"Behavioral treatment" or "positive behavior support program" means any set of documented procedures that are an integral part of the interdisciplinary treatment plan and are developed on the basis of a systemic data collection such as a functional assessment for the purpose of assisting an individual receiving services to achieve any or all of the following: (i) improved behavioral functioning and effectiveness; (ii) alleviation of the symptoms of psychopathology; or (iii) reduction of serious behaviors. A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include, but are not limited to, anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help an individual obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes or conditions specific to physical, mental, behavioral, cognitive, or social functioning.

"Case management service" means assisting individuals and their families to access services and supports that are essential to meeting their basic needs identified in their individualized service plan, which include not only accessing needed mental health, mental retardation and substance abuse services, but also any medical, nutritional, social, educational, vocational and employment, housing, economic assistance, transportation, leisure and recreational, legal, and advocacy services and supports that the individual needs to function in a community setting. Maintaining waiting lists for services, case management tracking and periodically contacting individuals for the purpose of determining the potential need for services shall be considered screening and referral and not admission into licensed case management.

"Clubhouse service" means the provision of recovery-oriented psychosocial rehabilitation services in a nonresidential setting on a regular basis not less than two hours per day, five days per week, in which clubhouse members and employees work together in the development and implementation of structured activities involved in the day-to-day operation of the clubhouse facilities and in other social and employment opportunities through skills training, peer support, vocational rehabilitation, and community resource development.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services or his authorized agent.

"Community gero-psychiatric residential services" means 24-hour nonacute care in conjunction with treatment in a setting that provides less intensive services than a hospital, but more intensive mental health services than a nursing home or group home. Individuals with mental illness, behavioral problems, and concomitant health problems (usually age 65 and older), appropriately treated in a geriatric setting, are provided intense supervision, psychiatric care, behavioral treatment planning, nursing, and other health related services. An Interdisciplinary Services Team assesses the individual and develops the services plan.

"Community intermediate care facility/mental retardation (ICF/MR)" means a service licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services in which care is provided to individuals who have mental retardation *or a developmental disability due to brain injury,* who are not in need of nursing care, but who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities must comply with Title XIX of the Social Security Act standards, provide health or rehabilitative services, and provide active

treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation brought to the attention of the department that a licensed provider violated these regulations.

"Consumer service plan" or "CSP" means that document addressing all needs of recipients of home and community-based care developmental disability services (IFDDS Waiver), in all life areas. Supporting documentation developed by service providers is to be incorporated in the CSP by the support coordinator. Factors to be considered when these plans are developed may include, but are not limited to, recipient ages, level of functioning, and preferences.

"Corrective action plan" means the provider's pledged corrective action in response to noncompliances documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Corporal punishment" means punishment administered through the intentional inflicting of pain or discomfort to the body (i) through actions such as, but not limited to, striking or hitting with any part of the body or with an implement; (ii) through pinching, pulling or shaking; or (iii) through any similar action that normally inflicts pain or discomfort.

"Crisis" means a situation in which an individual presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration.

"Crisis stabilization" means direct, intensive intervention to individuals who are experiencing serious psychiatric or behavioral problems, or both, that jeopardize their current community living situation. This service shall include temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent out-of-home placement. This service shall be designed to stabilize recipients and strengthen the current living situations so that individuals can be maintained in the community during and beyond the crisis period.

"Day support service" means the provision of individualized planned activities, supports, training, supervision, and transportation to individuals with mental retardation or related conditions*, or brain injury,* to improve functioning or maintain an optimal level of functioning. Services may enhance the following skills: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social, medication management, and transportation. Services provide opportunities for peer interaction and community integration. Services may be provided in a facility (center based) or provided out in the community (noncenter based). Services are provided for two or more consecutive hours per day. The term "day support service" does not include services in which the primary function is to provide extended sheltered or competitive employment, supported or transitional employment services, general education services, general recreational services, or outpatient services licensed pursuant to this chapter.

"Day treatment services" means the provision of coordinated, intensive, comprehensive, and multidisciplinary treatment to individuals through a combination of diagnostic, medical, psychiatric, case management, psychosocial rehabilitation, prevocational and educational services. Services are provided for two or more consecutive hours per day.

"Department" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Discharge" means the process by which the individual's active involvement with a provider is terminated by the provider.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and coordinates planning for aftercare services.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means mental health, mental retardation or substance abuse services available 24 hours a day and seven days per week that provide crisis intervention, stabilization, and referral assistance over the telephone or face-to-face for individuals seeking services for themselves or others. Emergency services may include walk-ins, home visits, jail interventions, pre-admission screenings, and other activities designed to stabilize an individual within the setting most appropriate to the individual's current condition.

"Group home residential service" means a congregate residential service providing 24-hour supervision in a community-based, home-like dwelling. These services are provided for individuals needing assistance, counseling, and training in activities of daily living or whose service plan identifies the need for the specific type of supervision or counseling available in this setting.

"Home and noncenter based" means that a service is provided in the home or other noncenter-based setting. This includes but is not limited to noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"Individual" or "individual receiving services" means a person receiving care or treatment or other services from a provider licensed under this chapter whether that person is referred to as a patient, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving services of the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan of action to meet the needs and preferences of an individual.

"Inpatient psychiatric service" means a 24-hour intensive medical, nursing care and treatment provided for individuals

with mental illness or problems with substance abuse in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living ~~(IADL)~~" *or "IADLs"* means ~~social tasks (e.g., meal preparation, shopping, housekeeping, laundry, and money management)~~ *meal preparation, housekeeping, laundry, and managing money*. ~~An individual's~~ *A person's* degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by ICT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including such individuals who also have a diagnosis of mental retardation. Services are usually time limited provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. These services include crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other services; and emergency response.

"Intensive outpatient service" means treatment provided in a concentrated manner (involving multiple outpatient visits per week) over a period of time for individuals requiring stabilization. These services usually include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding a violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report or other information that comes to the attention of the department.

"Legally authorized representative" means a person permitted by law to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and participation in human research for an individual who lacks the mental capacity to make these decisions.

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, or certification as a psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility, under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication error" means that an error has been made in administering a medication to an individual when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the proper method is not used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented psychosocial rehabilitation services to individuals with long-term, severe psychiatric disabilities including skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in their individualized service plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS Services are provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental retardation" means substantial subaverage general intellectual functioning that originates during the development period and is associated with impairment in adaptive behavior. It exists concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work.

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others he requires care and treatment, or with mental disorder or functioning classifiable under the diagnostic criteria from the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, Fourth Edition, 1994, that affects the well-being or behavior of an individual.

"Neglect" means the failure by an individual or provider responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse (§ 37.1-1 of the Code of Virginia). This definition of neglect also applies to individuals receiving in-home support, crisis stabilization, and day support under the IFDDS *or Brain Injury* Waiver *and individuals receiving residential brain injury services*.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, which affect an individual's ability to function successfully in the community.

"Opioid treatment service" means an intervention strategy that combines treatment with the administering or dispensing of opioid agonist treatment medication. An individual-specific, physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment.

"Outpatient service" means a variety of treatment interventions generally provided to individuals, groups or families on an hourly schedule in a clinic or similar facility or in another location. Outpatient services include, but are not limited to, emergency services, crisis intervention services, diagnosis and evaluation, intake and screening, counseling, psychotherapy, behavior management, psychological testing and assessment, chemotherapy and medication management services, and jail based services. "Outpatient service" specifically includes:

1. Services operated by a community services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia;

2. Services funded wholly or in part, directly or indirectly, by a community services board established pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means the provision within a medically supervised setting of day treatment services that are time-limited active treatment interventions, more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

The individuals to be served by PACT are individuals who have severe symptoms and impairments not effectively remedied by available treatments or who, because of reasons related to their mental illness, resist or avoid involvement with mental health services.

"Provider" means any person, entity or organization, excluding an agency of the federal government by whatever name or designation, that ~~provides~~ *delivers (i)* services to ~~individuals~~ *persons* with mental illness, mental retardation, or substance ~~addiction or~~ abuse ~~including the detoxification, treatment or rehabilitation of drug addicts through the use of the controlled drug methadone or other opioid replacements or provides in home support, crisis stabilization, or day support under~~*; (ii) services to persons who receive day support, in-home support, or crisis stabilization services funded through* the IFDDS Waiver*; (iii) services to individuals under the Brain Injury Waiver; or (iv) residential services for persons with brain injury*. ~~Such~~ *The* person, entity or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board ~~as defined in § 37.1-194.1 of the Code of Virginia~~, behavioral health authority ~~as defined in § 37.1-243 of the Code of Virginia~~, private provider, and any other similar or related person, entity or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia. ~~It does not include any person providing uncompensated services to a family member.~~

"Psychosocial rehabilitation service" means care or treatment for individuals with long-term, severe psychiatric disabilities, which is designed to improve their quality of life by assisting them to assume responsibility over their lives and to function as actively and independently in society as possible, through the strengthening of individual skills and the development of environmental supports necessary to sustain community living. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified Brain Injury Professional (QBIP)" means a clinician in the health professions who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: a person with a master's degree in

psychology from a college or university with at least one year of clinical experience; (iv) social worker: a person with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college, with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) Certified Brain Injury Specialist; (vi) registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

"Qualified Developmental Disabilities Professional (QDDP)" means an individual possessing at least one year of documented experience working directly with individuals who have related conditions and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or an individual holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified Mental Health Professional (QMHP)" means a clinician in the health professions who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis; including a (i) physician: a doctor of medicine or osteopathy; (ii) psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) psychologist: an individual with a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness; (v) Registered Psychiatric Rehabilitation Provider (RPRP) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS); (vi) registered nurse licensed in the Commonwealth of Virginia with at least one year of clinical experience; or (vii) any other licensed mental health professional.

"Qualified Mental Retardation Professional (QMRP)" means an individual possessing at least one year of documented experience working directly with individuals who have mental retardation or other developmental disabilities and is one of the following: a doctor of medicine or osteopathy, a registered nurse, or holds at least a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, and psychology.

"Qualified Paraprofessional in Brain Injury (QPPBI)" means an individual with at least a high school diploma and two years experience working with individuals with disabilities.

"Qualified Paraprofessional in Mental Health (QPPMH)" means an individual who must, at a minimum, meet one of the following criteria: (i) registered with the International Association of Psychosocial Rehabilitation Services (IAPSRS) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) an Associate's Degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to persons with a diagnosis of mental illness; or (iii) a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP providing services to persons with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Related conditions" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. Attributable to cerebral palsy, epilepsy or any other condition, other than mental illness, that is found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of persons with mental retardation, and requires treatment or services similar to those required for these persons;

2. Manifested before the person reaches age 22;

3. Likely to continue indefinitely; and

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

a. Self-care;

b. Understanding and use of language;

c. Learning;

d. Mobility;

e. Self-direction; or

f. Capacity for independent living.

"Residential crisis stabilization service" means providing short-term, intensive treatment to individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit.

"Residential service" means a category of service providing 24-hour care in conjunction with care and treatment or a training program in a setting other than a hospital. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include, but are not limited to: residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, *neurobehavioral services,* and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health ~~or~~, substance abuse

~~treatment~~, *or neurobehavioral* service in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Individuals providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or in a sponsored residential home.

"Restraint" means the use of an approved mechanical device, physical intervention or hands-on hold, or pharmacologic agent to involuntarily prevent an individual receiving services from moving his body to engage in a behavior that places him or others at risk. This term includes restraints used for behavioral, medical, or protective purposes.

1. A restraint used for "behavioral" purposes means the use of an approved physical hold, a psychotropic medication, or a mechanical device that is used for the purpose of controlling behavior or involuntarily restricting the freedom of movement of the individual in an instance in which there is an imminent risk of an individual harming himself or others, including staff; when nonphysical interventions are not viable; and safety issues require an immediate response.

2. A restraint used for "medical" purposes means the use of an approved mechanical or physical hold to limit the mobility of the individual for medical, diagnostic, or surgical purposes and the related post-procedure care processes, when the use of such a device is not a standard practice for the individual's condition.

3. A restraint used for "protective" purposes means the use of a mechanical device to compensate for a physical deficit, when the individual does not have the option to remove the device. The device may limit an individual's movement and prevent possible harm to the individual (e.g., bed rail or gerichair) or it may create a passive barrier to protect the individual (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities, and the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not standard treatment for the individual's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands-on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands-on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes: (i) to intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands-on approach or (ii) to quickly de-escalate a dangerous situation that could cause harm to the individual or others.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the preliminary assessment of an individual's appropriateness for admission or readmission to a service.

"Seclusion" means the involuntary placement of an individual receiving services alone, in a locked room or secured area from which he is physically prevented from leaving.

"Serious injury" means any injury resulting in bodily hurt, damage, harm or loss that requires medical attention by a licensed physician.

"Service" or "services" means ~~individually~~ *(i)* planned *individualized* interventions intended to reduce or ameliorate mental illness, mental retardation or substance ~~addiction or~~ abuse through care and treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation, or substance ~~addiction or~~ abuse. ~~Service also means in-home support, day support, and crisis stabilization services provided to individuals under the IFDDS Waiver.~~ *Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services; (ii) day support, in home support, and crisis stabilization services provided to individuals under the IFDDS Waiver; and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided under the Brain Injury Waiver or in residential services for persons with brain injury.*

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the natural process of withdrawal from excessive use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise and provide programmatic, financial, and service support to families or individuals (sponsors) providing care or treatment in their own homes.

"State authority" means the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services.

This is the agency designated by the Governor to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse" means the use, without compelling medical reason, of alcohol and other drugs which results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals. Services strengthen individual skills and provide environmental supports necessary to attain and sustain independent community residential living. They include, but are not limited to, drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Time out" means assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12 VAC 35-105-30. Licenses.

A. Licenses are issued to providers who offer services to one or a combination of the ~~four~~ *following* disability groups: persons with mental illness, persons with mental retardation, persons with substance addiction or abuse problems, ~~or~~ persons with related conditions served under the IFDDS Waiver *or persons with brain injury served under the Brain Injury Waiver or in a residential service*.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;
2. Clubhouse;
3. Community gero-psychiatric residential;
4. Community intermediate care facility-MR;
5. Crisis stabilization (residential and nonresidential);
6. Day support;
7. Day treatment;
8. Group home residential;
9. Inpatient psychiatric;
10. Intensive Community Treatment (ICT);
11. Intensive in-home;
12. Intensive outpatient;
13. Medical detoxification;
14. Mental health community support;
15. Opioid treatment;
16. Outpatient;
17. Partial hospitalization;
18. Program of assertive community treatment (PACT);
19. Psychosocial rehabilitation;
20. Residential treatment;
21. Respite;
22. Social detoxification;
23. Sponsored residential home;
24. Substance abuse residential treatment for women with children;
25. Supervised living; and
26. Supportive in-home.

C. A license addendum describes the services licensed, the population served, specific locations where services are provided or organized and the terms, and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of beds each location may serve.

12 VAC 35-105-590. Provider staffing plan.

A. The provider shall design and implement a staffing plan including the type and role of employees and contractors that reflects the:

1. Needs of the population served;
2. Types of services offered;
3. The service description; and
4. The number of people served.

B. The provider shall develop a transition staffing plan for new services, added locations, and changes in capacity.

C. The following staffing requirements relate to supervision.

1. The provider shall describe how employees, volunteers, contractors and student interns are to be supervised in the staffing plan.

2. Supervision of employees, volunteers, contractors and student interns shall be provided by persons who have experience in working with the population served and in providing the services outlined in the service description. In addition, supervision of mental health services shall be performed by a QMHP and supervision of mental retardation services shall be performed by a QMRP or an employee or contractor with experience equivalent to the educational requirement. Supervision of IFDDS Waiver services shall be performed by a QDDP or an employee or contractor with equivalent experience. *Supervision of Brain Injury Waiver services or residential services shall be performed by a QBIP or an employee or contractor with equivalent experience.*

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans. This responsibility may be delegated to an employee or contractor who is a QMHP, QMRP, ~~or~~ QDDP, or *QBIP or* who has equivalent experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs, speech, language or hearing problems or other needs where specialized training is necessary.

E. The provider of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff in brain injury services shall meet the qualifications of a QPPBI and successfully complete an approved training curriculum on brain injuries within six months of employment.

12 VAC 35-105-660. Individualized services plan (ISP).

A. The provider shall develop a preliminary individualized services plan for the first 30 days. The preliminary individualized services plan shall be developed and implemented within 24 hours of admission and shall continue in effect until the individualized services plan is developed or the individual is discharged, whichever comes first.

B. The provider shall develop an individualized services plan for each individual as soon as possible after admission but no later than 30 days after admission. Providers of short-term services must develop and implement a policy to develop individualized services plans within a time frame consistent with the expected length of stay of individuals. Services requiring longer term assessments may include the completion of those as part of the individualized services plan as long as all appropriate services are incorporated into the individualized services plan based on the assessment completed within 30 days of admission and the individualized services plan is updated upon the completion of assessment.

C. The individualized services plan shall address:

1. The individual's needs and preferences.

2. Relevant psychological, behavioral, medical, rehabilitation and nursing needs as indicated by the assessment;

3. Individualized strategies, including the intensity of services needed;

4. A communication plan for individuals with communication barriers, including language barriers; and

5. The behavior treatment plan, if applicable.

D. The provider shall comply with the human rights regulations in regard to participation in decision-making by the individual or legally authorized representative in developing or revising the individualized services plan.

E. The provider shall involve family members, guardian, or others, if appropriate, in developing, reviewing, or revising, at least annually, the individualized service plans consistent with laws protecting confidentiality, privacy, the human rights of individuals receiving services (see 12 VAC 35-115-60) and the rights of minors.

F. Employees or contractors responsible for implementation of an individualized services plan shall demonstrate a working knowledge of the plan's goals, objectives and strategies.

G. The provider shall designate a person who will develop and implement individualized service plans.

H. The provider shall implement the individualized services plan and review it at least every three months or whenever there is a revised assessment. These reviews shall evaluate the individual's progress toward meeting the plan's objectives. The goals, objectives and strategies of the individualized services plan shall be updated, if indicated.

I. The individualized service plan shall be consistent with the CSP for individuals served by the IFDDS Waiver.

J. In brain injury services, the individualized services plan shall be reassessed and revised more frequently than annually, consistent with the individual's course of recovery.

/s/ Mark R. Warner
Governor
December 30, 2005

VA.R. Doc. No. R06-162; Filed December 30, 2005, 2:40 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Title of Regulation: **18 VAC 85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (adding 18 VAC 85-20-400, 18 VAC 85-20-410 and 18 VAC 85-20-420).**

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Effective Dates: December 21, 2005, through December 20, 2006.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Medicine is required to comply with amendments to the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), which exempt doctors of medicine or osteopathic medicine who mix, dilute or reconstitute drugs from the definition of compounding. The requirement is contained in the second enactment clause in Chapter 475 of the 2005 Acts of Assembly. The key provisions of the new sections include the definition and requirements for "immediate-use" sterile mixing, diluting or reconstituting; requirements for low-, medium- or high-risk sterile mixing, diluting or reconstituting; and the responsibilities of the supervising doctor.

In addition, the law requires establishment of standards for facilities in which the mixing, diluting or reconstituting of sterile drug products occurs and for the transportation of such drugs.

PART IX.
MIXING, DILUTING OR RECONSTITUTING OF DRUGS FOR ADMINISTRATION.

18 VAC 85-20-400. Requirements for immediate-use sterile mixing, diluting or reconstituting.

A. For the purposes of this chapter, the mixing, diluting, or reconstituting of sterile manufactured drug products, when there is no direct contact contamination and administration begins within eight hours of the completion time of preparation shall be considered immediate-use. If manufacturers' instructions or any other accepted standard specifies or indicates an appropriate time between preparation and administration of less than eight hours, the mixing, diluting or reconstituting shall be in accordance with the lesser time. No direct contact contamination means that there is no contamination from touch, gloves, bare skin or secretions from the mouth or nose. Emergency drugs used in the practice of anesthesiology and administration of allergens may exceed eight hours after completion of the preparation, provided there is compliance with all other requirements of this section.

B. Doctors of medicine or osteopathic medicine who engage in immediate-use mixing, diluting or reconstituting shall:

1. Ensure that all personnel under their supervision who are involved in immediate-use mixing, diluting or reconstituting are appropriately and properly trained in and utilize the practices and principles of sanitization techniques, aseptic manipulations and solution compatibility. Evidence of such training by a doctor of medicine or osteopathic medicine shall be documented and maintained in personnel files. For the purposes of this chapter, aseptic manipulations shall mean to:

a. Design a specific site, such as a countertop, in an area of the practice facility where personnel traffic is restricted and activities that may contribute to microbial contamination (e.g., eating, food preparation, placement of used diagnostic devices and materials and soiled linens) are prohibited.

b. Sanitize the preparation area with 70% isopropanol in water that does not contain added ingredients, such as dyes and glycerin.

c. Thoroughly wash hands to wrists with detergent or soap and potable water. Substitution of hand washing by treatment with sanitizing agents containing alcohol and/or 70% isopropanol in water is acceptable.

d. Don clean gloves that do not contain powdered lubricants, without touching non-sterile materials.

e. Sanitize necks of ampuls to be opened and stoppers of vials to be needle-punctured with isopropanol.

f. Avoid direct contact contamination of sterile needles, syringes, and other drug administration devices and sites on containers of manufactured sterile drug products from which drugs are administered. Sources of direct contact contamination include, but are not limited to, touch by personnel and non-sterile objects, human secretions, blood, and exposure to other non-sterile materials.

2. Establish procedures for verification of the accuracy of the product that has been mixed, diluted, or reconstituted to include a second check performed by a doctor of medicine or osteopathic medicine or a pharmacist or by a physician assistant or a licensed nurse who has been specifically trained pursuant to subdivision 1 of this subsection in immediate-use mixing, diluting or reconstituting, unless such mixing, diluting or reconstituting is performed by a doctor of medicine or osteopathic medicine, a pharmacist or a certified registered nurse anesthetist.

3. Provide a designated, sanitary work space and equipment appropriate for aseptic manipulations.

4. Document or ensure that personnel under his supervision documents in the patient record or other readily-retrievable record that identifies the patient and the following: the names of drugs mixed, diluted or reconstituted, the date of preparation, and the date of administration as evidence that the mixing, diluting or reconstituting was immediate-use.

5. Develop and maintain a policy and procedure manual for the procedures to be followed in mixing, diluting or reconstituting of sterile products and for the training of personnel pursuant to subdivision 1 of this subsection.

C. Any mixing, diluting or reconstituting of drug products that are hazardous to personnel shall be performed consistent with requirements of all applicable federal and state laws and regulations for safety and air quality, to include but not be limited to those of the Occupational Safety and Health Administration (OSHA). For the purposes of this chapter, Appendix A of the National Institute for Occupational Safety and Health publication (NIOSH Publication No. 2004-165), Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings is incorporated by reference for the list of hazardous drug products and can be found at www.cdc.gov/niosh/docs/2004-165.

18 VAC 85-20-410. Requirements for low-, medium- or high-risk sterile mixing, diluting or reconstituting.

A. Any mixing, diluting or reconstituting of sterile products that does not meet the criteria for immediate-use as set forth in 18 VAC 85-20-400 A shall be defined as low-, medium-, or high-risk compounding under the definitions of Chapter 797 of the U.S. Pharmacopeia (USP).

B. Until July 1, 2007, all low-, medium-, or high-risk mixing, diluting or reconstituting of sterile products shall comply with the standards for immediate-use mixing, diluting or reconstituting as specified in 18 VAC 85-20-400. Beginning July 1, 2007, doctors of medicine or osteopathic medicine who engage in low-, medium-, or high-risk mixing, diluting or reconstituting of sterile products shall comply with all applicable requirements of USP Chapter 797. Subsequent changes to the USP Chapter 797 shall apply within one year of the official announcement by USP.

C. A current copy, in any published format, of USP Chapter 797 shall be maintained at the location where low-, medium- or high-risk mixing, diluting or reconstituting of sterile products is performed.

18 VAC 85-20-420. Responsibilities of doctors who mix, dilute or reconstitute drugs in their practices.

A. Doctors of medicine or osteopathic medicine who delegate the mixing, diluting or reconstituting of sterile drug products for administration retain responsibility for patient care and shall monitor and document any adverse responses to the drugs.

B. Doctors who engage in the mixing, diluting or reconstituting of sterile drug products in their practices shall disclose this information to the board in a manner prescribed by the board, and are subject to unannounced inspections by the board or its agents.

DOCUMENTS INCORPORATED BY REFERENCE

Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings, Appendix A, Drugs Considered Hazardous, NIOSH Publication No. 2004-165, National Institute for Occupational Safety and Health.

/s/ Mark R. Warner
Governor
Date: December 20, 2005

VA.R. Doc. No. R06-147; Filed December 21, 2005, 1:51 p.m.

* * * * * * * *

Title of Regulation: **18 VAC 85-130. Regulations Governing the Practice of Licensed Midwives (adding 18 VAC 85-130-10 through 18 VAC 85-130-170).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957.9 of the Code of Virginia.

Effective Dates: December 21, 2005, through December 20, 2006.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Building, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, or e-mail william.harp@dhp.virginia.gov.

Preamble:

The adoption of an emergency regulation by the Board of Medicine is required to comply with amendments to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, mandating the licensure of midwives and the third enactment clause in Chapters 719 and 917 of the 2005 Acts of Assembly, which states: "That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment."

The key provisions of the new regulation include the qualifications for licensure (which are established in the Code), the requirements for disclosure to a client seeking midwifery care (which are largely set out in the Code), and the standards for ethical practice (which are taken from the standards of the North American Registry of Midwives and the standards set for all professions licensed by the board).

CHAPTER 130.
REGULATIONS GOVERNING THE PRACTICE OF LICENSED MIDWIVES.

PART I.
GENERAL PROVISIONS.

18 VAC 85-130-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2957.7 of the Code of Virginia.

"Midwife"

"Practicing midwifery"

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

"Board" means the Virginia Board of Medicine.

"Client" means a person receiving midwifery care and shall be considered synonymous with the word "patient."

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI as set out in the Drug Control Act.

"CPM" means the Certified Professional Midwife credential issued by the North American Registry of Midwives.

"NARM" means the North American Registry of Midwives.

18 VAC 85-130-20. Public participation.

A separate board regulation, 18 VAC 85-10-10 et seq., provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18 VAC 85-130-30. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as a midwife shall be $277.

2. The fee for biennial active license renewal shall be $312; the additional fee for late renewal of an active license within one renewal cycle shall be $105.

3. The fee for biennial inactive license renewal shall be $168; the additional fee for late renewal of an inactive license within one renewal cycle shall be $55.

4. The fee for reinstatement of a license that has expired for a period of two years or more shall be $367 in addition to the late fee for each year in which the license has been lapsed, not to exceed a total of four years. The fee shall be submitted with an application for licensure reinstatement.

5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be $10.

6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied shall be $2,000.

7. The fee for a duplicate wall certificate shall be $15.

8. The fee for a duplicate renewal license shall be $5.

9. The fee for a returned check shall be $25.

PART II.
REQUIREMENTS FOR LICENSURE AND RENEWAL OF LICENSURE.

18 VAC 85-130-40. Criteria for initial licensure.

A. An applicant for board licensure shall submit:

1. The required application on a form provided by the board and the application fee as prescribed in 18 VAC 85-130-30;

2. Evidence satisfactory to the board of current certification as a CPM; and

3. A report from NARM indicating whether there has ever been any adverse action taken against the applicant.

B. If an applicant has been licensed or certified in another jurisdiction, he shall provide on the application information on the status of each license or certificate held and on any disciplinary action taken or pending in that jurisdiction.

18 VAC 85-130-45. Practice while enrolled in an accredited midwifery education program.

A person may perform tasks related to the practice of midwifery under the direct and immediate supervision of a licensed doctor of medicine or osteopathy, a certified nurse midwife, or a licensed midwife while enrolled in an accredited midwifery education program or during completion of the North American Registry of Midwives' Portfolio Evaluation Process Program without obtaining a license issued by the board until he has taken and received the results of any examination required for CPM certification or for a period of three years, whichever occurs sooner. For good cause shown, a person may request that the board grant any extension of time beyond the three years, for a period not to exceed one additional year.

18 VAC 85-130-50. Biennial renewal of licensure.

A. A licensed midwife shall renew his license biennially during his birth month in each odd-numbered year by:

1. Paying to the board the renewal fee as prescribed in 18 VAC 85-130-30; and

2. Attesting to having current, active CPM certification by NARM.

B. A licensed midwife whose license has not been renewed by the first day of the month following the month in which renewal is required shall not be considered licensed in Virginia.

C. An additional fee to cover administrative costs for processing a late application renewal shall be imposed by the board as prescribed by 18 VAC 85-130-30.

18 VAC 85-130-60. Inactive licensure.

A. A licensed midwife who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license.

1. The holder of an inactive license shall not be required to maintain current, active certification by NARM.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice midwifery in Virginia.

B. An inactive licensee may reactivate his license by:

1. Payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure for the biennium in which the license is being reactivated; and

2. Submission of documentation of having current, active certification by NARM.

C. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provision of this chapter.

18 VAC 85-130-70. Reinstatement.

A. A licensed midwife who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit to the board a reinstatement application,

information on practice and licensure in other jurisdictions for the period in which the license was lapsed in Virginia, proof of current, active certification by NARM, and the fee for reinstatement of his license as prescribed in 18 VAC 85-130-30.

B. A licensed midwife whose license has been revoked by the board and who wishes to be reinstated must make a new application to the board, hold current, active certification by NARM, and pay the fee for reinstatement of a revoked license as prescribed in 18 VAC 85-130-30.

PART III.
PRACTICE STANDARDS.

18 VAC 85-130-80. Disclosure requirements.

A licensed midwife shall provide written disclosures to any client seeking midwifery care. The licensed midwife shall review each disclosure item and obtain the client's signature as evidence that the disclosures have been received and explained. Such disclosures shall include:

1. A description of the licensed midwife's qualifications, experience, and training;

2. A written protocol for medical emergencies, including hospital transport, particular to each client;

3. A statement as to whether the licensed midwife has hospital privileges;

4. A statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances;

5. A description of the midwives' model of care;

6. A copy of the regulations governing the practice of midwifery;

7. A statement as to whether the licensed midwife carries malpractice or liability insurance coverage, and if so, the extent of that coverage;

8. An explanation of the Virginia Birth-Related Neurological Injury Compensation Fund and a statement that licensed midwives are currently not covered by the Fund; and

9. A description of the right to file a complaint with the Board of Medicine and with NARM and the procedures and contact information for filing such complaint.

18 VAC 85-130-90. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18 VAC 85-130-100. Client records.

A. Practitioners shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.

B. Practitioners shall provide client records to another practitioner or to the client or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage client records and shall maintain timely, accurate, legible and complete client records. Practitioners shall clearly document objective findings, decisions and professional actions based on continuous assessment for on-going midwifery care.

D. Practitioners shall document a client's decisions regarding choices for care, including informed consent or refusal of care. Practitioners shall clearly document when a client's decisions or choices are in conflict with the professional judgment and legal scope of practice of the licensed midwife.

E. Practitioners shall maintain a client record for a minimum of six years following the last client encounter with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention six years from the last client encounter regardless of the age of the child;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the client or his personal representative; or

3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

F. From December 21, 2005, practitioners shall in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.

G. When a practitioner is closing, selling or relocating his practice, he shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client.

18 VAC 85-130-110. Practitioner-client communication; termination of relationship.

A. Communication with clients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately inform a client or his legally authorized representative of the client's assessment and prescribed plan of care. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure directed by the practitioner.

2. A practitioner shall present information relating to the client's care to a client or his legally authorized representative in understandable terms and encourage participation in the decisions regarding the client's care.

3. Before any invasive procedure is performed, informed consent shall be obtained from the client. Practitioners shall inform clients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent licensed midwife practicing in Virginia would tell a client. In

the instance of a minor or a client who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

B. Termination of the practitioner/client relationship.

1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make a copy of the client record available, except in situations where denial of access is allowed by law.

2. Except as provided in § 54.1-2962.2 of the Code of Virginia, a practitioner shall not terminate the relationship or make his services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.

18 VAC 85-130-120. Practitioner responsibility.

A. A practitioner shall:

1. Transfer care immediately in critical situations that are deemed to be unsafe to a client or infant and remain with the client until the transfer is complete;

2. Work collaboratively with other health professionals and refer a client or an infant to appropriate health care professionals when either needs care outside the midwife's scope of practice or expertise; and

3. Base choices of interventions on empirical and/or research evidence that would indicate the probable benefits outweigh the risks.

B. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow apprentices or subordinates to jeopardize client safety or provide client care outside of the apprentice's or subordinate's scope of practice or area of responsibility. Practitioners shall delegate client care only to those who are properly trained and supervised; and

3. Exploit the practitioner/client relationship for personal gain.

18 VAC 85-130-130. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted or free, for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the client and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall disclose the complete name of the board which conferred the certification when using or authorizing the use of the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for his practice.

E. A licensee of the board shall not advertise information which is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

18 VAC 85-130-140. Vitamins, minerals and food supplements.

A. The recommendation or direction for the use of vitamins, minerals or food supplements and the rationale for that recommendation shall be documented by the practitioner. The recommendation or direction shall be based upon a reasonable expectation that such use will result in a favorable client outcome, including preventive practices, and that a greater benefit will be achieved than that which can be expected without such use.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in doses that would be contraindicated based on the individual client's overall medical condition and medications.

C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

18 VAC 85-130-150. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.1-179 of the Code of Virginia, or hospital as defined in § 32.1-123 of the Code of Virginia. Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by Title 42, § 1320a-7b(b) of the United States Code, as amended, or any regulations promulgated thereto.

18 VAC 85-130-160. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior which:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or

2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a client.

1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a client until the client-practitioner relationship is terminated.

2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former client.

Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client shall mean: spouse or partner, parent or child, guardian, or legal representative of the client.

E. Sexual contact between a supervisor and a trainee or apprentice shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.

18 VAC 85-130-170. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

NOTICE: The forms used in administering 18 VAC 85-130, Regulations Governing the Practice of Licensed Midwives, are not being published, however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

Instructions for Completing a Licensed Midwife Application (eff. 10/05).

Application for a License to Practice as a Licensed Midwife (eff. 10/05).

Form A, Claims History (eff. 10/05).

Form C, Licensure Verification (eff. 10/05).

/s/ Mark R. Warner
Governor
Date: December 20, 2005

VA.R. Doc. No. R06-146; Filed December 21, 2005, 1:52 p.m.

EXECUTIVE ORDER NUMBER 1 (2002) (Revised December 16, 2005)

EQUAL OPPORTUNITY

By virtue of the authority vested in me as Governor, I hereby declare that it is the firm and unwavering policy of the Commonwealth of Virginia to assure equal opportunity in all facets of state government.

This policy specifically prohibits discrimination on the basis of race, sex, color, national origin, religion, sexual orientation, age, or political affiliation, or against otherwise qualified persons with disabilities.

State appointing authorities and other management principals are hereby directed to take affirmative measures, as determined by the Director of the Department of Human Resource Management, to emphasize the recruitment of qualified minorities, women, disabled persons, and older Virginians to serve at all levels of state government. This directive does not permit or require the lowering of bona fide job requirements, performance standards, or qualifications to give preference to any state employee or applicant for state employment.

Allegations of violations of this policy shall be brought to the attention of the Office of Equal Employment Services of the Department of Human Resource Management. No state appointing authority, other management principals, or supervisors shall take retaliatory actions against persons making such allegations.

Any state employee found in violation of this policy shall be subject to appropriate disciplinary action.

The Secretary of Administration is directed to review annually state procurement, employment, and other relevant policies for compliance with the non-discrimination mandate contained herein, and shall report to the Governor his findings together with such recommendations as he deems appropriate. The Director of the Department of Human Resource Management shall assist in this review.

This Executive Order supersedes and rescinds Executive Order Number Two (98), Equal Opportunity, issued by Governor James S. Gilmore III on January 17, 1998.

This Executive Order shall become effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 16th day of December, 2005.

/s/ Mark R. Warner
Governor

EXECUTIVE ORDER NUMBER 103 (2005)

PROMOTING DIVERSITY AND EQUAL OPPORTUNITY FOR SMALL, WOMAN- AND MINORITY-OWNED BUSINESS ENTERPRISES IN STATE PROCUREMENT

Background

Securing the economic health and vitality of all of the Commonwealth's businesses is critical to the future of Virginia and to the quality of life of all Virginians. Promoting and helping to grow the Commonwealth's enterprises is an integral part of Virginia's overall economic development mission, supporting its efforts toward job creation, community empowerment and economic revitalization.

An important element of expanding economic opportunities to all Virginians lies in providing opportunities for small businesses, including businesses owned by women and minorities, to participate in the purchasing programs of the state.

The Commonwealth acknowledges that historically, businesses owned by women and minorities have not sufficiently benefited from such commercial opportunities. Despite this history, Virginia is fully committed to the principals of equal opportunity.

The Commonwealth's commitment has been evidenced, in part, by Executive Order 29 (EO 29) and the accompanying guidelines to all state agencies and public bodies. EO 29 enhances the equal opportunity and nondiscrimination requirements set forth in the Virginia Public Procurement Act (VPPA). The Commonwealth's commitment has also been evidenced by our Small, Woman, and Minority Business (SWAM) Procurement initiative, designed to improve the participation of these businesses in the purchasing programs of the state. This effort has yielded improved results over the last year: both minority and woman-owned business participation levels have grown from the combined 1.27 percent level documented by the Commonwealth's Procurement Disparity Study to an approximate level of 2 percent for minorities and 2.4 percent for women. Prior to EO 29, erroneously reported totals for minority business participation typically averaged 5-7 percent. Though improved, both levels remain substantially below our targets for minority-owned businesses and for businesses owned by women.

In addition, small business participation in state contracting, formerly held to be approximately 20 percent, has been, in fact, a mere 8-10 percent. Combined SWAM business participation, despite our progress, hovers below 15 percent, significantly less than the established statewide goal of 40 percent.

SWAM purchasing reports have shown that small businesses, including businesses owned by women and minorities, continue to lag behind in their participation in the state's purchasing initiatives. These businesses, representing nearly 99 percent of all Virginia businesses, are the backbone of the state's economy and they represent the Commonwealth's best

hope for a prosperous future. Consequently, the policy of promoting small businesses, including businesses owned by women and minorities, will benefit all members of the Virginia family.

Diversifying the state's contracting is a challenging effort that takes more than four years. This objective transcends gubernatorial administrations, and thereby requires a long-term institutional commitment.

Initial Efforts

During my Administration, we have undertaken a number of efforts that have begun to change course. These actions include:

1. Summer 2002: We issued Executive Order Number 29 (2002) directing all Cabinet members and heads of all state agencies and public bodies to implement the equal opportunity and nondiscrimination requirements set forth in the Virginia Public Procurement Act ("VPPA"), § 2.2-4310(A), Code of Virginia (2005), which prohibits all public bodies from discriminating in government contracts on the basis of race, religion, color, sex, or national origin, and requires them to include in solicitations companies included in a list assembled by the Department of Minority Business Enterprise (DMBE).

2. Fall 2002: We discovered and rectified significant errors in the database causing the historical over-reporting of expenditures with small, woman and minority firms.

3. Winter/Spring 2003: We championed the need for a study of disparities in the state's procurement programs and won unanimous legislative passage of S.J. 359.

4. January 2004: We released the Procurement Disparity Study of the Commonwealth of Virginia (the "Study") after an accelerated and detailed investigation. The Study found that total Commonwealth spending with woman- and minority-owned business enterprises in fiscal years 1998-2002 (study period) was very low at a combined level of 1.27 percent of total spending.

5. Winter/Spring 2004: We collaborated with the General Assembly to unanimously pass HB 1145 amending the VPPA to authorize and encourage the Governor and localities to implement remedial programs when a rational basis for small business enhancement exists or analysis documents statistically significant disparity between the availability and utilization of woman- and minority-owned businesses. The legislation took effect July 2004.

6. July 2004: We developed and implemented the Commonwealth's Remediation Plan for all executive branch agencies and institutions. The Plan established the overall aspirational objective of 40 percent for small business participation, directed all state agencies and institutions to develop purchasing programs by September 1, 2004, and established within DMBE a certification program for all Small Business Enterprises, Minority Business Enterprises, and Woman Business Enterprises participating in the remediation program.

7. Fall 2004: We allowed agencies and institutions to set aside up to 30 percent of their discretionary funds for contracts with small businesses in accordance with their respective SWAM Plans.

8. Spring 2005: We unveiled an On-Line Certification Service at DMBE to provide an easy and convenient method for SWAM and DBE certifications.

9. Summer 2005: We began weekly reporting by secretariat, with the Director of the Department of Minority Business Enterprise attending and presenting at every cabinet meeting.

10. Fall 2005: Quarterly results were the best measured to date.

On the strength of these efforts, the participation levels of SWAM businesses in state contracting awards have improved significantly. However, the actual awards are still disappointing compared to the representation of these businesses in Virginia's economy.

Continuing Efforts

It is clear that the Commonwealth must continue on its course toward affording small businesses the opportunity to compete equitably for the Commonwealth's business. The following directives currently in place are therefore hereby continued:

1. The statewide aspirational goal of 40 percent of the Commonwealth's discretionary spending in combined prime and sub contracts for small businesses including businesses owned by women and minorities.

2. The annual written action plan required of agencies and institutions to facilitate the participation of small businesses, including businesses owned by women and minorities. The plans shall be developed and submitted to DMBE and the appropriate Cabinet Secretary on September 1 of each Fiscal Year.

3. The requirement that each agency and institution designate, yearly, a Procurement Champion to ensure nondiscrimination in the solicitation and awarding of contracts.

4. The requirement for DMBE certification of small businesses and of woman-owned and minority-owned businesses to ensure reliable and consistent reporting of their participation in the Commonwealth's purchasing programs.

5. The definitions established and incorporated in the certification procedures of DMBE for small business enterprise (SBE), women's business enterprise (WBE), and minority business enterprise (MBE). Also continued is the definition established for a disadvantaged business enterprise (DBE).

6. The requirement that the Department of General Services (DGS) and the Virginia Information Technology Agency promulgate guidance on SWAM purchasing in all relevant purchasing manuals and make available to all purchasing officials.

7. The implementation of small business enhancement tools, including, but not limited to, the small business set-aside, unbundling of selected State contracts, small

procurements under $5,000, and early posting of potential contract awards.

8. The requirement that each prime contractor whose procurement bid included a SWAM participation component submit evidence and certification of compliance with the SWAM Procurement Plan on or before the request for final payment. Final payment, under the contract, may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payments.

9. The requirement that each contracting or certifying agency or institution, in cooperation with DMBE and DGS, contractually provide for appropriate auditing of vendors and contracts in order to assure compliance with certification requirements, SWAM subcontracting plans, and other required provisions. Such audits shall include the right to make on-site audits and review documents at any time during the term of the applicable contract or certification.

10. The inclusion of progress toward achievement of SWAM objectives as an evaluation criteria for the chief executive officer for each agency and institution. Also continued is the use of said criteria in the evaluation of senior management and procurement personnel by the agency head or chief executive officer.

11. The requirement that state agencies and institutions work together with DMBE and the Department of Business Assistance to seek to increase the number of qualified minority and woman-owned businesses who are available to do business with the Commonwealth.

12. The updating by DMBE of statistics of SWAM participation, by gender and ethnicity, in relevant purchasing categories according to the findings identified in periodic statistical analyses of the availability and utilization of SWAM businesses in the purchasing programs of the Commonwealth, and submission of recommendations to the Governor. DMBE shall be responsible for making information on trends in SWAM participation available to the Cabinet and to the agencies, in order that current information on the state's progress toward remediating the disparity identified with woman-owned and minority-owned businesses is made available to decision-makers.

New Directives

I hereby direct the following:

1. Include all certified woman-owned and minority-owned firms in the definition of certified small business when said definition is utilized for procurement actions;

2. Require a Small Business Subcontracting Plan in all contracts over $100,000;

3. Direct purchasing officers to modify evaluation criteria to prevent qualified companies from being excluded from state business based on narrow definitions of prior experience;

4. Require all applicable purchasing manuals to fully incorporate the new SWAM procedures, including all agencies, institutions, colleges and universities and political subdivisions subject to the VPPA;

5. Require all agencies, institutions, colleges, and universities to post future procurement opportunities on a new section of the eVA website for the public to see at anytime and encourage all public bodies to post on this website;

6. Require certified small business participation in every RFP for professional and non-professional services (with allowance for good faith efforts which shall be prescribed by DMBE in cooperation with the Department of General Services and the Virginia Information Technology Agency and incorporated in the relevant purchasing manuals);

7. Allow small business participation plan(s) to be used as weighted criteria to evaluate proposals;

8. Allow award to a qualified, reasonably priced, certified small business even if it is other than the lowest bidder or most successful offeror for all procurements, including construction; and

9. Include SWAM payment data and eVA commitments in VITA's new statewide management system.

These SWAM directives are designed to increase the overall pool of qualified vendors and thereby expand competitive access. They allow agencies and institutions to continue to seek quality products and services at competitive prices while at the same time advancing the Commonwealth's objectives of promoting small businesses and providing equal opportunity in state purchasing.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and the laws of the Commonwealth, including but not limited to Title 2.2 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, Executive Order Number 29 (2002) is hereby rescinded. I direct the Cabinet and the heads of all executive branch agencies and public bodies to implement and advance this Executive Order to promote diversity and equal opportunity in state procurement activities for Virginia's small businesses, including businesses owned by women and minorities.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2006, unless amended or rescinded by further executive order. Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of December 2005.

/s/ Mark R. Warner
Governor

EXECUTIVE ORDER NUMBER 104 (2005)

CREATING THE GOVERNOR'S MOTORCYCLE ADVISORY COUNCIL

Importance of the Initiative

Motorcycling is an increasingly popular form of transportation and recreation and a significant contributor to the

marketplace. Tourism, business development, and charitable fundraising throughout the Commonwealth benefit significantly each year from the motorcycling community. There are over a quarter million licensed motorcyclists in Virginia, and over nine million motorcyclists nationwide, many of whom travel to Virginia to enjoy riding in the Commonwealth. Responsible riding by motorcyclists and the general driving public's awareness of motorcyclists in their midst create important transportation safety issues. More than 9,000 Virginians enroll in motorcycle safety training classes each year.

In 2004 the Commonwealth's Secretaries of Commerce and Trade, Public Safety, and Transportation initiated the "MotorcycleVIRGINIA!" initiative to explore ways to promote motorcycle related tourism, business development, and safety in the Commonwealth. The working group leading this effort has been composed of representatives of relevant state agencies from those secretariats and stakeholders in the tourism, business, and motorcycle communities. The working group has produced and distributed more than 50,000 "Watch for Motorcycles" awareness bumper stickers and has initiated a Website funded by a National Highway Traffic Safety Administration grant and donations to promote its goals (www.motorcycleva.com). The Governor's Motorcycle Advisory Council is created to perpetuate and expand upon the success of the working group.

The Council

The Council membership shall be appointed by the Governor and serve at his pleasure, and shall include a chairman designated by the Governor. The Council will include one member of the House of Delegates and one member of the Senate of Virginia. The Council will include a representative from each of the following state agencies: Department of Alcoholic Beverage Control, Virginia Economic Development Partnership, Department of Motor Vehicles, Department of State Police, Department of Transportation, and the Virginia Tourism Authority. The Council shall include one representative from among Virginia's sheriffs, one representative from among its police chiefs, and one member representing the Board of Transportation Safety. There shall be sixteen citizen members, reflecting, but not exclusive to, the hospitality and tourism industry, motorcycle related business, motorcycle safety training organizations, and motorcycling advocacy groups. The Secretaries of Commerce and Trade, Public Safety, and Transportation shall serve as ex officio members.

The Council's responsibilities shall include the following:

1. Promote motorcycle related safety in the Commonwealth, including rider responsibility and community awareness of motorcycles;

2. Promote motorcycle related tourism and hospitality throughout Virginia, to the benefit of the Virginia tourism and hospitality industry, Virginia motorcyclists, and motorcyclists from other states and nations visiting the Commonwealth;

3. Promote motorcycle related business entrepreneurship, including two-wheeled aspects of the Virginia Motorsports Initiative;

4. Serve as a liaison between the motorcycling community and state agencies whose policies may affect motorcycling;

5. Function as a venue for shared imagination and discussion regarding the future role of motorcycling in Virginia's transportation scheme economically, environmentally, and culturally.

The Council shall make a report of its activities by October 1, 2006. The Council shall meet at the call of the chairman.

Council Staffing and Funding

Necessary staff support for the Council's work during its existence shall be furnished by the Department of Motor Vehicles. An estimated 100 hours of staff time annually will be required to support the Council and no additional state funding shall be necessary to support the Council. Other financial support shall be developed from grants and donations.

Council members shall serve without compensation.

This Executive Order shall be effective December 15, 2005, and shall remain in full force and effect until December 15, 2006, unless sooner amended or rescinded by further executive order or directive.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day December, 2005.

/s/ Mark R. Warner
Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Periodic Review of Regulations

The Department of Environmental Quality will conduct a periodic review of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements, 9 VAC 25-640. The purpose of the review is to determine whether the regulations should be terminated, amended or retained in their current form. The review of the regulations will be guided by the principles listed in Executive Order Number Twenty-One (2002) and § 2.2-4007.1 of the Code of Virginia.

The department and the board are seeking public comments on the review of any issue relating to the regulations including whether (i) the regulations are effective in achieving their goals; (ii) the regulations are essential to protect the health, safety or welfare of citizens or for the economical performance of important governmental functions; (iii) there are available alternatives for achieving the purpose of the regulations; (iv) there are less burdensome and less intrusive alternatives for achieving the purpose of the regulations; and (iv) the regulations are clearly written and easily understandable by the affected persons. In addition, the department and the board are seeking public comments on ways to minimize the economic impact on small businesses in a manner consistent with the purpose of the regulations.

The purpose of the regulations is to require operators of aboveground storage tanks (AST) and pipeline facilities to demonstrate that they have adequate financial resources to perform their responsibility to contain and clean up any oil discharges which may occur at their facilities. The regulations establish which operators must provide financial responsibility, the types of financial responsibility mechanisms and the requirements for maintaining these mechanisms. Section 62.1-44.34:16 of the Code of Virginia requires that these regulations be promulgated. These regulations are designed to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to provide the necessary procedures and rules by which the statute may be administered. To view the full text of the regulation, go to: http://www.deq.virginia.gov/tanks/pdf/9vac640.pdf.

Comments on the above regulation are welcome and will be accepted until February 22, 2006. Comments should be sent to Leslie D. Beckwith, Post Office Box 10009, Richmond, VA 23240-0009 (deliveries can be made to 629 East Main Street, Richmond, Virginia), telephone (804) 698-4123, FAX (804) 698-4237, or e-mail ldbeckwith@deq.virginia.gov. Note: Please include your full name and mailing address when providing public comment.

Notice of Rescheduled Public Meeting and Revised Public Comment Period

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 Northumberland County, Virginia.

All impaired segments are located wholly within Northumberland County with the exception of the Mill Creek segments, these are in part located in Westmoreland County. These areas are described in the following publications:

1) Growing Area 14 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Numbers 123, Mill Creek & Cloverdale Creek, effective 7 June 1996, 2 June 1997, 5 June 1998, 15 May 2001, 24 June 2002, 4 August 2004, and 17 May 2005 respectively.

2) Growing Area 15 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Numbers 22, Dividing Creek and Prentiss Creek, effective 27 February 1997, 17 February 1999, 25 February 1998, 17 June 1999, 21 April 2000, 1 May 2002, 25 April 2003, and 3 May 2005 respectively.

3) Growing Area 13 and 14 as described in Virginia Department of Health, Notice and Description of Shellfish Area Condemnation Number 89 and 220, Great Wicomico River, effective 30 May 1996, 28 May 1997, 19 May 1999, 26 April 2000, 15 March 2001, 3 April 2002, 4 April 2003, 16 April 2004, and 4 March 2005.

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 TMDLs has been rescheduled for January 26, 2006, from 7 p.m. to 9 p.m. at the Northumberland Public Library, located at 7204 Northumberland Highway in Heathsville, Virginia. In case of inclement weather, the meeting will be held on January 30, 2006. Directions can be obtained by calling Chris French at (804) 521-5124.

The public comment period will begin on January 26, 2006, and end at 5 p.m. on February 25, 2006. 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.

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments

Pursuant to the provisions of §§ 2.2-613 and 15.2-2903(6) of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Commerce and Trade and Governor Warner, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates on local governments that they administer. Such mandates are either new (in effect for at least 24 months), newly identified, or have been previously assessed more than four years ago. In conducting these assessments, agencies will follow the process established by Executive Memorandum 1-98 which became effective October 13, 1998, succeeding Executive Memorandum 5-94. These mandates are abstracted in the Catalog of State and Federal Mandates on Local Governments as published by the Commission on Local Government.

For further information contact Ted McCormack, Associate Director, Commission on Local Government (e-mail ted.mccormack@dhcd.virginia.gov or telephone (804) 786-6508) or visit the commission's website at www.dhcd.virginia.gov/CD/CLG.

STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS
Approved Schedule of Assessment Periods - February 2006 through April 2007
Executive Agency Assessment of Cataloged Mandates

AGENCY Mandate Short Title	CATALOG NUMBER	ASSESSMENT PERIOD
AGRICULTURE AND CONSUMER SERVICES, DEPARTMENT OF		
Plastic Pesticide Container Recycling Grant	SAF.VDACS007	2/1/06 to 4/30/06
COMMUNITY COLLEGE SYSTEM, VIRGINIA		
Administration of Apprenticeship Related Instruction	SOE.VCCS001	2/1/07 to 4/30/07
COMPENSATION BOARD		
Jail Revenues and Expenditure Reporting	SOA.CB005	2/1/06 to 3/31/06
CONSERVATION AND RECREATION, DEPARTMENT OF		
Federal Clean Water Act-Sec 319 Nonpoint Source Pollution	SNR.DCR011	3/1/06 to 5/31/06
Virginia Land Conservation Foundation Grants	SNR.DCR012	3/1/06 to 5/31/06
CRIMINAL JUSTICE SERVICES, DEPARTMENT OF		
Alcohol Detoxification Center Grant	SPS.DCJS007	7/1/06 to 9/30/06
Training Standards for Criminal Justice Personnel	SPS.DCJS008	7/1/06 to 9/30/06
Crime Victim Services Grant	SPS.DCJS011	7/1/06 to 9/30/06
Juvenile Accountability Incentive Block Grant	SPS.DCJS023	7/1/06 to 9/30/06
EDUCATION, DEPARTMENT OF		
Superintendent Required	SOE.DOE001	4/1/06 to 5/31/06
No Child Abuse/Molestation Offense Certification Required	SOE.DOE003	4/1/06 to 5/31/06
Licensed Principals and Assistant Principals	SOE.DOE005	4/1/06 to 5/31/06
Annual Report to State by School Board	SOE.DOE015	4/1/06 to 5/31/06
Records of Non-Resident Students with Disabilities	SOE.DOE016	6/1/06 to 7/31/06
Verification of Student Immunization	SOE.DOE018	6/1/06 to 7/31/06
Triennial Census	SOE.DOE020	6/1/06 to 7/31/06
Provision of Free Education	SOE.DOE022	6/1/06 to 7/31/06
Provision of Free Textbooks	SOE.DOE023	6/1/06 to 7/31/06
Length of School Term	SOE.DOE025	8/1/06 to 9/30/06
Funds for Driver Education Standards	SOE.DOE050	8/1/06 to 9/30/06
Vocational Advisory Council	SOE.DOE066	8/1/06 to 9/30/06
Vocational Education Student Organizations	SOE.DOE067	8/1/06 to 9/30/06
Special Education Plan	SOE.DOE071	10/1/06 to 11/30/06
Special Education Program Standards	SOE.DOE074	10/1/06 to 11/30/06
Notification to Parents of Students with Vision/Hearing Impairments	SOE.DOE093	10/1/06 to 11/30/06
Virginia Public School Construction Grants	SOE.DOE104	10/1/06 to 11/30/06
ENVIRONMENTAL QUALITY, DEPARTMENT OF		
Solid Waste Management Facility Operator Certification	SNR.DEQ005	6/1/06 to 8/31/06
Solid Waste Management Facility Permit	SNR.DEQ006	6/1/06 to 8/31/06

Vegetative Waste Management/Composting Regulations	SNR.DEQ009	3/1/06 to 5/31/06
Litter Receptacles in Public Places	SNR.DEQ011	3/1/06 to 5/31/06
Fees for Solid Waste Management Facility Permits	SNR.DEQ012	9/1/06 to 11/30/06
Hazardous Waste Management Requirements	SNR.DEQ016	9/1/06 to 11/30/06
Medical Waste Management Requirements	SNR.DEQ017	10/1/06 to 12/31/06
Hazardous Materials Transportation	SNR.DEQ018	10/1/06 to 12/31/06
Underground Storage Tank	SNR.DEQ019	6/1/06 to 8/31/06
Virginia Pollution Discharge Elimination Permit	SNR.DEQ020	6/1/06 to 8/31/06
Virginia Water Protection Permit	SNR.DEQ021	7/1/06 to 9/30/06
Virginia Pollution Abatement Permit	SNR.DEQ022	7/1/06 to 9/30/06
Ground Water Withdrawal Permit	SNR.DEQ023	8/1/06 to 10/31/06
Surface Water Withdrawal Permit	SNR.DEQ024	8/1/06 to 10/31/06
Aboveground Storage Tank Contingency Plans	SNR.DEQ025	6/1/06 to 8/31/06
Water Quality Improvement Fund (WQIF) Point Source Program	SNR.DEQ029	9/1/06 to 11/30/06
Exceptional Waters Notification	SNR.DEQ033	9/1/06 to 11/30/06
FORESTRY, DEPARTMENT OF		
Volunteer Fire Assistance Program	SAF.DOF002	5/1/06 to 7/31/06
Forest Protection Sums	SAF.DOF003	5/1/06 to 7/31/06
Urban and Community Forestry Assistance Program	SAF.DOF004	5/1/06 to 7/31/06
HOUSING AND COMMUNITY DEVELOPMENT, DEPARTMENT OF		
Appalachian Regional Commission (ARC) Program	SCT.DHCD005	6/1/06 to 8/31/06
LIBRARY OF VIRGINIA, THE		
State Certified Librarian	SOE.LVA001	2/1/07 to 4/30/07
Library Operations Standards	SOE.LVA003	2/1/07 to 4/30/07
MARINE RESOURCES COMMISSION		
Wetlands Zoning Ordinance in Tidewater	SNR.MRC001	3/1/06 to 5/31/06
Coastal Primary Sand Dune Zoning Ordinance	SNR.MRC002	3/1/06 to 5/31/06
MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES, DEPARTMENT OF		
Support Services for Community Services Board	SHHR.DMHMRSAS006	2/1/06 to 4/30/06
Development of Comprehensive State Plan	SHHR.DMHMRSAS009	5/1/06 to 7/31/06
Chief Administrative Officer	SHHR.DMHMRSAS014	10/1/06 to 12/31/06
MOTOR VEHICLES, DEPARTMENT OF		
Community Traffic Safety Grant	STO.DMV003	6/1/06 to 8/31/06
Local Vehicle Registration Program	STO.DMV005	6/1/06 to 8/31/06
PORT AUTHORITY, VIRGINIA		
Port Assistance Grant	STO.VPA001	2/1/06 to 4/30/06
SOCIAL SERVICES, DEPARTMENT OF		
Administration of the Energy Assistance Program	SHHR.DSS001	4/1/06 to 6/30/06
Merit System of Personnel Administration	SHHR.DSS002	2/1/06 to 4/30/06
Social Services Admin/Record Retention and Reporting	SHHR.DSS008	4/1/06 to 6/30/06
Annual Budget Required	SHHR.DSS009	3/1/06 to 5/31/06
Long-Term Care Screening Team Participation Required	SHHR.DSS012	7/1/06 to 9/30/06
Office Space Compliance Required	SHHR.DSS014	4/1/06 to 6/30/06
Administration of the Food Stamp Program	SHHR.DSS016	4/1/06 to 6/30/06
Temporary Assistance for Repatriates	SHHR.DSS021	4/1/06 to 6/30/06
Eligibility for AFDC - Foster Care	SHHR.DSS023	7/1/06 to 9/30/06
Temporary Assistance to Needy Families (TANF)	SHHR.DSS063	4/1/06 to 6/30/06
Virginia Initiative for Employment not Welfare (VIEW)	SHHR.DSS064	4/1/06 to 6/30/06
STATE POLICE, DEPARTMENT OF		
Concealed Handgun Authorization/Permit	SPS.VSP011	3/1/06 to 5/31/06
Registration of Machine Guns	SPS.VSP013	6/1/06 to 8/31/06
Protective Order Reporting	SPS.VSP015	9/1/06 to 11/30/06

TRANSPORTATION, VIRGINIA DEPARTMENT OF		
Road and Bridge Standards	STO.VDOT017	5/1/06 to 7/31/06
Americans with Disabilities Act	STO.VDOT027	5/1/06 to 7/31/06

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Notice of Public Comment Period on Virginia's State Application - Grant Award Under Part C of the Individuals with Disabilities Education Act

The Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services announces a Public Comment Period and is accepting comment on Virginia's State Application for Federal Fiscal Year 2006 Grant Award Under Part C of the Individuals with Disabilities Education Act which has been completed and submitted to the United States Department of Education.

The Commonwealth of Virginia is making this document available for a 60-day period beginning January 23, 2006, and will conclude on March 25, 2006. There will also be a 30-day public comment period that will begin on February 23, 2006, and conclude on March 25, 2006. The application is available on the website (www.infantva.org) under the section "What's New."

For a printed copy of the application or to submit public comment contact to Karen Durst, Part C Technical Consultant, Department of Mental Health, Mental Retardation and Substance Abuse Services, Infant & Toddler Connection of Virginia, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-9844, FAX (804) 371-7959, or email karen.durst@co.dmhmrsas.virginia.gov.

STATE CORPORATION COMMISSION

December 7, 2005

Administrative Letter 2005 – 14

TO: All Companies licensed to Write Accident and Sickness Insurance in Virginia and Interested Parties

RE: Medicare Part D Marketing

Please distribute to the appropriate personnel within your company in addition to all appointed agents

The purpose of this letter is to alert all companies and individuals who are or may become engaged in the marketing and sale of the Medicare prescription drug benefit, Medicare Part D, of applicable state oversight and enforcement authority relating to marketing activities.

Since October 1, 2005, marketing activity for the Medicare prescription drug benefit has been permissible. According to the Centers for Medicare & Medicaid Services (CMS), only **state-licensed insurance agents** may engage in marketing activity. The Medicare Modernization Act does not preempt state agent licensing laws. Agents engaged in the marketing and sale of the Medicare prescription drug plans are subject to all applicable Virginia laws and regulations, including those relating to good faith and fair dealing, the suitability of sale, and the prohibitions against misrepresentation, churning, and high pressure sales tactics. The Bureau of Insurance (the Bureau) will investigate any and all allegations of misconduct relating to Part D marketing, and will take appropriate action against any person found to be in violation of these laws or regulations. CMS will refer complaints it receives about Virginia agents to the Bureau of Insurance.

In recent weeks, the Bureau has specifically been made aware of some practices which the Bureau considers inappropriate for the market involved and strongly cautions against engaging in such activity. Companies and agents should consult Virginia law and regulations, as well as all CMS guidelines and publications for additional instructions and information relating to these and other practices.

- Agents should not take advantage of the Medicare beneficiary's lack of knowledge to offer or sell other insurance products for which the beneficiary may not be suited.
- Implying or suggesting that an agent is affiliated or associated with Medicare, or that a particular product has been approved or endorsed by Medicare is misrepresentation. The Bureau will take enforcement action against any individual who misrepresents his or her status or affiliation, or who misrepresents a product.
- Agents should not solicit the Part D benefit door-to-door uninvited. This is an abuse identified in the CMS Guidelines.
- Suggesting or implying that an individual must drop an existing Medicare Supplement plan or must purchase a particular Medicare Supplement plan in order to qualify for the Part D benefit is misrepresentation.

Finally, the Bureau expects and requires that all persons marketing and selling the Medicare Part D product in Virginia are licensed and appointed as required by law.

Questions regarding this letter may be directed to Raymond O. Anderson, Supervisor, Life and Health Agents Investigation, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9494, FAX (804) 371-9821.

We appreciate your consideration of this matter.

/s/ Alfred W. Gross
Commissioner of Insurance

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on December 28, 2005. The orders may be viewed at the State Lottery Department, 900 E. Main Street,

Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Eighty-Six (05)
Virginia's Instant Game Lottery 329; "Blackout Bingo" (effective 12/21/05)

Director's Order Number Eighty-Seven (05)
Virginia's Instant Game Lottery 699; "Wild 7's Doubler" (effective 12/21/05)

STATE WATER CONTROL BOARD

Proposed Consent Special Order for BASF Corporation

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Portsmouth, Virginia.

Public comment period: January 23, 2006, to February 21, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to BASF Corporation to address alleged violations of Virginia State Water Control Law. The location of the facility where the alleged violations occurred is 3340 West Norfolk Road, Portsmouth. The consent order describes a settlement to resolve an unpermitted discharge.

How to comment: DEQ accepts comments from the public by e-mail, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: John M. Brandt, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2010, FAX (757) 518-2003, or e-mail jmbrandt@deq.virginia.gov.

Proposed Consent Special Order for Evergreen Development Company L.L.C.

Citizens may comment on a proposed consent order for a property in Gloucester County, Virginia.

Public comment period: January 23, 2006, to February 22, 2006.

Purpose of notice: To invite the public to comment on a proposed consent order.

A consent order is issued to Evergreen Development Company L.L.C., to perform specific actions that will bring the property into compliance with the relevant law and regulations. It is developed cooperatively with the company and entered into by mutual agreement.

Project description: The State Water Control Board proposes to issue a consent order to Evergreen Development Company L.L.C., to address alleged violations of VWPP regulations. The location of the property where the violation occurred is at the intersection of Rt. 17 and Rt. 17 business in Gloucester County, Virginia. The consent order describes a settlement to restore unauthorized wetland impacts that occurred at the property and the payment of a civil charge.

How a decision is made: After public comments have been considered, the State Water Control Board will make a final decision.

How to comment: DEQ accepts comments from the public by e-mail, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period.

To review the consent order: The public may review the proposed consent order at the DEQ Piedmont Regional Office every workday by appointment or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5079, FAX (804) 527-5106, or e-mail ecakers@deq.virginia.gov.

Proposed Consent Special Order for Robert L. Magette

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Carrollton in Isle of Wight County, Virginia.

Public comment period: January 23, 2006, to February 21, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to Robert L. Magette to address alleged violations of the Virginia Pollutant Discharge Elimination System Permit Regulation. The location of the facility where the alleged violations occurred is Nike Park Road, Carrollton in Isle of Wight County. The consent order describes a settlement to resolve exceedances of permit effluent limits, failure to update and comply with the approved operations and maintenance manual, and failure to properly operate and maintain the facility. The consent order incorporates a schedule of corrective actions to ensure compliance with all the permit requirements, and requires payment of a civil charge.

How to comment: DEQ accepts comments from the public by e-mail, fax, or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests, and additional information: Caroline Huertas, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2107, FAX (757) 518-2003, or e-mail cmhuertas@deq.virginia.gov.

Proposed Consent Special Order for TCS Materials, Inc.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for facilities in Chesapeake and Virginia Beach, Virginia.

Public comment period: January 23, 2006, to February 21, 2006.

Consent order description: The State Water Control Board proposes to issue a consent order to TCS Materials, Inc. to address alleged violations of the VPDES General Permit for Ready-Mixed Concrete Plants. The locations of the facilities where the alleged violations occurred are 4606 Bainbridge Blvd, Chesapeake and 207 Parker Lane, Virginia Beach. The consent order describes a settlement to resolve the failure to comply with the annual storm water monitoring requirements. The consent order requires the facility to comply with its current permit and pay a civil charge.

How to comment: DEQ accepts comments from the public by e-mail, fax, or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests, and additional information: Caroline Huertas, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 518-2107, FAX (757) 518-2003, or e-mail cmhuertas@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, FAX (804) 692-0625.

Forms for Filing Material for Publication in *the Virginia Register of Regulations*

All agencies are required to use the appropriate forms when furnishing material for publication in the Virginia Register of Regulations. The forms may be obtained from: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

Internet: Forms and other Virginia Register resources may be printed or downloaded from the Virginia Register web page: http://register.state.va.us.

FORMS:

NOTICE of INTENDED REGULATORY ACTION-RR01
NOTICE of COMMENT PERIOD-RR02
PROPOSED (Transmittal Sheet)-RR03
FINAL (Transmittal Sheet)-RR04
EMERGENCY (Transmittal Sheet)-RR05
NOTICE of MEETING-RR06
AGENCY RESPONSE TO LEGISLATIVE OBJECTIONS-RR08
RESPONSE TO PETITION FOR RULEMAKING-RR13
FAST-TRACK RULEMAKING ACTION-RR14

CALENDAR OF EVENTS

Symbol Key
† Indicates entries since last publication of the *Virginia Register*
♿ Location accessible to persons with disabilities
☎ Teletype (TTY)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at www.vipnet.org 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

COMMONWEALTH COUNCIL ON AGING

† **January 25, 2006 - 11 a.m.** -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting. Public comments are welcome.

Contact: Marsha Mucha, Virginia Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9312.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia State Apple Board

January 25, 2006 - 11 a.m. -- Open Meeting
Holiday Inn Select-Koger South, 10800 Midlothian Turnpike, Richmond, Virginia. ♿

A meeting of the board to (i) approve the minutes of the last meeting held August 15, 2005, (ii) review its financial statement, and (iii) discuss old and new business. 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 Dave Robishaw at least five days before the meeting date so that suitable arrangements can be made.

Contact: Dave Robishaw, Secretary, Department of Agriculture and Consumer Services, 900 Natural Resources Dr., Suite 300, Charlottesville, VA 22903, telephone (434) 984-0573, FAX (434) 984-4156, e-mail david.robishaw@vdacs.virginia.gov.

Virginia Cattle Industry Board

† **February 23, 2006 - 3 p.m.** -- Open Meeting
The Inn at Virginia Tech, 901 Prices Fork Road, Blacksburg, Virginia ♿ (Interpreter for the deaf provided upon request)

A regular business meeting to (i) approve the minutes from the November 2005 meeting, (ii) review the board's financial statement and budget, (iii) give program updates for the state and national level, and (iv) hear an educational program using value-added cuts to increase overall beef carcass value. 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, e-mail bmckinnon@vacattlemen.org.

Virginia Horse Industry Board

January 31, 2006 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, 2nd Floor Meeting Room, Charlottesville, Virginia. ♿

A meeting to discuss marketing and promotional projects for 2006-07, budget items, and the upcoming grant submission and review cycle. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, 102 Governor St., 3rd Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, e-mail andrea.heid@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

† **January 27, 2006 - 9:30 a.m.** -- Open Meeting
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

A regular meeting. If canceled due to inclement weather, the meeting will be held on February 3, 2006.

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.

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January 30, 2006 - 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 Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-20, General Provisions,** and **9 VAC 5-40, Existing Stationary Sources (Rev. D04).** The purpose of the proposed action is to enlarge the scope of volatile organic compound and nitrogen oxides emissions control areas in order to include new ozone nonattainment areas.

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

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 gegraham@deq.virginia.gov.

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January 30, 2006 - 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 Air Pollution Control Board intends to amend regulations entitled **9 VAC 5-40, Existing Stationary Sources (Rev. H03).** The purpose of the proposed action is to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) from open burning and special incineration devices in Virginia's emissions control areas in order to attain and maintain the federal health-based air quality standard for ozone and nitrogen oxides.

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

Contact: Mary L. Major, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510 or e-mail mlmajor@deq.virginia.gov.

Small Business Environmental Compliance Advisory Board

† **January 24, 2006 - 10 a.m.** -- Open Meeting
Department of Environmental Quality, Fredericksburg Office, 806 Westwood Office Park, Fredericksburg, Virginia.

A regular meeting.

Contact: Richard G. Rasmussen, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4394, FAX (804) 698-4264, e-mail rgrasmussen@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

February 6, 2006 - 9 a.m. -- Open Meeting
February 21, 2006 - 9 a.m. -- Open Meeting
March 6, 2006 - 9 a.m. -- Open Meeting
March 20, 2006 - 9 a.m. -- Open Meeting
April 3, 2006 - 9 a.m. -- Open Meeting
† **April 17, 2006 - 9 a.m.** -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia.

An executive staff 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 curtis.coleburn@abc.virginia.gov.

ALZHEIMER'S DISEASE AND RELATED DISORDERS COMMISSION

January 24, 2006 - 10 a.m. -- Open Meeting
Virginia Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled meeting. Public comments welcome.

Contact: Cecily Slasor, Information Specialist, 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 cecily.slasor@vda.virginia.gov.

March 14, 2006 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Cecily Slasor, I and R Specialist, Department for the Aging, 1610 Forest Ave., Ste. 100, Richmond, VA 23229, telephone (804) 662-9338, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail cecily.slasor@vda.virginia.gov.

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

January 30, 2006 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Photogrammetry Committee to draft regulation wording for consideration by the APELSCIDLA Board in order to establish a regulatory program for photogrammetrists pursuant to Chapter 440 of the 2005 Acts of Assembly. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 1, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Architects Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 7, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Interior Designers Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 8, 2006 - 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. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 9, 2006 - 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. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

February 15, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the Land Surveyors Section to conduct board business. A portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8514 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: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

† **March 15, 2006 - 5:30 p.m.** -- Open Meeting
University of Virginia, Culbreth Lane, Campbell Hall, Room 158, Charlottesville, Virginia.

A meeting of the Architects Section to present information regarding architect licensure to the UVA professional practice class.

Contact: Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail APELSCIDLA@dpor.virginia.gov.

March 16, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting of the full board to conduct board business. 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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

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March 16, 2006 - 9 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

March 16, 2006 - 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 for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects is amending regulations entitled **18 VAC 10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.** The purpose of the proposed action is to amend the entry requirements for landscape architects who possess an LAAB-accredited degree in landscape architecture to require them to obtain three years of acceptable experience before being granted certification. Applicants could still be approved to take, and sit for, the examination prior to obtaining the required three years of experience; however, certification would not be awarded until such time as the three years of acceptable experience is obtained, documented, submitted, reviewed and approved.

Statutory Authority: §§ 54.1-201, 54.1-404 and 54.1-411 of the Code of Virginia.

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 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or e-mail apelscidla@dpor.virginia.gov.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

January 31, 2006 - 2 p.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia.

March 13, 2006 - 10 a.m. -- Open Meeting
Wytheville Town Offices, Wytheville Municipal Building, 150 East Monroe Street, Conference Room B, Wytheville, Virginia.

An informal fact-finding conference.

Contact: David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.virginia.gov.

February 1, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A regular meeting.

Contact: David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.virginia.gov.

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NOTE: CHANGE IN MEETING TIME
March 30, 2006 - 11 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4, Richmond, Virginia.

April 14, 2006 - 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 for Asbestos, Lead, and Home Inspectors is amending regulations entitled **18 VAC 15-20, Virginia Asbestos Licensing Regulations.** The purpose of the proposed action is to empower the board to deny license and approval as well as to take disciplinary action against those acting as or being ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business, and to require training providers to submit information electronically and include social security numbers to speed up application processing. The regulations having been reorganized to present the regulatory requirements in a format that is easier to understand.

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Contact: David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804)

367-2475, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.virginia.gov.

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March 30, 2006 - 9 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4, Richmond, Virginia.

April 14, 2006 - 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 for Asbestos, Lead, and Home Inspectors is amending regulations entitled **18 VAC 15-30, Virginia Lead-Based Paint Activities.** The purpose of the proposed action is to empower the board to deny license and approval as well as to take disciplinary action against those acting as or being ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business, and to require training providers to submit information electronically and include social security numbers to speed up application processing. The regulations having been reorganized to present the regulatory requirements in a format that is easier to understand.

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Contact: David Dick, Assistant Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail asbestos@dpor.virginia.gov.

ASSISTIVE TECHNOLOGY LOAN FUND AUTHORITY

January 26, 2006 - 10 a.m. -- Open Meeting
Assistive Technology Loan Fund Authority, 1602 Rolling Hills Drive, Suite 107, Richmond, Virginia.

A quarterly business meeting of the Board of Directors.

Contact: Joey Wallace, Interim Executive Director, Assistive Technology Loan Fund Authority, 1602 Rolling Hills Dr., Suite 107, Richmond, VA 23229, telephone (804) 662-9997, FAX (804) 662-9533, toll-free (866) 835-5976, e-mail joey.wallace@atlfa.org.

AUCTIONEERS BOARD

† **April 13, 2006 - 10 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. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Marian H. Brooks, Regulatory Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail auctioneers@dpor.virginia.gov

BOARD FOR BARBERS AND COSMETOLOGY

† **January 26, 2006 - 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: William H. Ferguson, II, Assistant Director, Board for Barbers and Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY ☎, e-mail barbercosmo@dpor.virginia.gov.

February 6, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the 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.

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March 7, 2006 - 10 a.m. -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

March 10, 2006 - 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 for Barbers and Cosmetology intends to adopt regulations entitled **18 VAC 41-60, Body-Piercing Regulations.** The purpose of the proposed action is to promulgate regulations governing the licensure and practice of body piercing as mandated by Chapter 869 of the 2002 Act of Assembly.

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

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 FOR THE BLIND AND VISION IMPAIRED

Rehabilitation Council for the Blind

March 11, 2006 - 10 a.m. -- Open Meeting
Department for the Blind and Vision Impaired, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Susan D. Payne, VR Program Director, Department for the Blind and Vision Impaired, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3390, toll-free (800) 622-2155, (804) 371-3140/TTY ☎, e-mail susan.payne@dbvi.virginia.gov.

BOARD FOR BRANCH PILOTS

February 1, 2006 - 8:30 a.m. -- Open Meeting
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

A meeting of the examination administrators. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the Department at 804-367-8514 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 Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.virginia.gov.

NOTE: CHANGE IN MEETING TIME AND LOCATION
February 2, 2006 - 10 a.m. -- Open Meeting
City of Hampton City Hall, 22 Lincoln Street, Hampton, 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 interpretive services should contact the department at 804-367-8514 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: Mark N. Courtney, Executive Director, Board for Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail branchpilots@dpor.virginia.gov.

STATE CHILD FATALITY REVIEW TEAM

March 10, 2006 - 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: Rae Hunter-Havens, Coordinator, State Child Fatality Review, 400 East Jackson St.; Richmond, VA 23219, telephone (804) 786-1047, FAX (804) 371-8595, toll-free (800) 447-1708, e-mail rae.hunter-havens@vdh.virginia.gov.

STATE BOARD FOR COMMUNITY COLLEGES

March 15, 2006 - 1:30 p.m. -- Open Meeting
The Prizery, 700 Bruce Street, South Boston, Virginia. (Interpreter for the deaf provided upon request)

Meetings of the Academic Committee, Student Affairs and Workforce Development Committee, and Budget and Finance Committee begin at 1:30 p.m. The Facilities Committee and the Audit Committee will meet at 3 p.m. The Personnel Committee will meet at 3:30 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 16, 2006 - 9 a.m. -- Open Meeting
Southern Virginia Higher Education Center, 820 Bruce Street, South Boston, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting. Public comment may be received upon notification at least five working days prior to the meeting.

Contact: D. Susan Hayden, Director of Public Relations, State Board for Community Colleges, VCCS, 101 N. 14th Street, 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY ☎.

COMPENSATION BOARD

January 25, 2006 - 11 a.m. -- Open Meeting
† **February 22, 2006 - 11 a.m.** -- Open Meeting
Compensation Board, 102 Governor Street, Richmond, Virginia.

A monthly board meeting.

Contact: Cindy Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 225-3308, FAX (804) 371-0235, e-mail cindy.waddell@scb.virginia.gov.

BOARD FOR CONTRACTORS

January 24, 2006 - 1:30 p.m. -- CANCELED
† **January 26, 2006 - 9 a.m.** -- Open Meeting
January 31, 2006 - 9 a.m. -- Open Meeting
† **February 2, 2006 - 9 a.m.** -- Open Meeting
† **February 7, 2006 - 9 a.m.** -- Open Meeting
† **February 14, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 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.

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† **February 16, 2006 - 1 p.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

March 24, 2006 - 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 for Contractors intends to amend regulations entitled **18 VAC 50-30, Individual License and Certification Regulations.** The purpose of the proposed action is to establish regulations for the certification of elevator mechanics and to amend the current regulations to reflect statutory changes, respond to changes in the industry and to revise language for clarity and ease of use.

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

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 14, 2006 - 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 barbara.woodhouse@vadoc.virginia.gov.

March 14, 2006 - 1 p.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor, 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 barbara.woodhouse@vadoc.virginia.gov.

March 15, 2006 - 9:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor, Room 3054, 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 barbara.woodhouse@vadoc.virginia.gov.

March 15, 2006 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, 3rd Floor Board Room, Richmond, Virginia.

A regular meeting of the full board to review and discuss all matters considered by board committees that require action 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 barbara.woodhouse@vadoc.virginia.gov.

BOARD OF DENTISTRY

February 3, 2006 - 9 a.m. -- Open Meeting
February 10, 2006 - 9 a.m. -- Open Meeting
March 17, 2006 - 9 a.m. -- Open Meeting
March 31, 2006 - 9 a.m. -- Open Meeting
† **April 21, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting of the Special Conference Committee to hold informal conferences. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail cheri.emma-leigh@dhp.virginia.gov.

March 2, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

Formal hearings. There will not be a public comment period.

Contact: Cheri Emma-Leigh, Operations Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail cheri.emma-leigh@dhp.virginia.gov.

March 3, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A general business meeting. There will be a public comment period during the first 15 minutes of the meeting.

Contact: Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail sandra.reen@dhp.virginia.gov.

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† **March 3, 2006 - 9 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia.

March 24, 2006 - 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 (i) establish requirements for licensure by credentials for dentists consistent with new provisions in the Dental Practice Act; (ii) extend the voluntary practice license to include dentists and hygienists who held in unrestricted license in Virginia at the time it expired or became inactive and eliminate the supervision requirement for dentists out of practice less than five years; and (iii) clarify certain terms and rules for consistency. The proposed regulation will replace an emergency regulation adopted by the Board of Dentistry in compliance with amendments to Chapter 27 of Title 54.1 and the third enactment clause of HB 2368 and SB 1127 enacted by the 2005 General Assembly.

Statutory Authority: §§ 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until March 24, 2006, to Sandra Reen, Executive Director, Board of Dentistry, Alcoa Bldg., 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9906, FAX (804) 662-7246, (804) 662-7197/TTY ☎, e-mail sandra.reen@dhp.virginia.gov.

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, e-mail elaine.yeatts@dhp.virginia.gov.

DESIGN BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

February 16, 2006 - 11 a.m. -- Open Meeting
March 16, 2006 - 11 a.m. -- Open Meeting
† **April 20, 2006 - 11 a.m.** -- Open Meeting
Department of General Services, 202 North Ninth Street, Room 412, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly meeting. Please contact the Division of Engineering and Buildings to confirm the meeting.

Contact: Rhonda M. Bishton, Administrative Assistant, Division of Engineering and Buildings, Department of General Services, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 786-3263, FAX (804) 371-7934, (804) 786-6152/TTY ☎, e-mail rhonda.bishton@dgs.virginia.gov.

BOARD OF EDUCATION

February 15, 2006 - 9 a.m. -- Open Meeting
March 22, 2006 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Main Lobby Level, Conference Rooms C and D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Public comment will be received. 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 margaret.roberts@doe.virginia.gov.

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January 31, 2006 - 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 20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia.** The purpose of the proposed action is to update standards for accreditation. The regulations were last amended in 2000. Since that time, public schools in Virginia have implemented more rigorous requirements for accountability both at the school level and the student level. Now that most Virginia schools are fully accredited, and the first high school class required to earn verified units of credit has graduated from high school, the board undertook a comprehensive review of the regulations to determine if there are changes that might be needed. Substantive changes proposed are related to additional options for

students to meet the requirements for graduation, the methodology for calculating accreditation ratings, greater flexibility for transfer students, more rigorous benchmarks for accreditation, and better defined sanctions for schools, superintendents, and school boards if a school loses its accreditation.

Statutory Authority: § 22.1-253.13:3 of the Code of Virginia.

Contact: Anne D. Wescott, Assistant Superintendent for Polity and Communications, Department of Education, P.O. Box 2121, Richmond, VA 23218, telephone (804) 225-2403, FAX (804) 225-2524 or e-mail anne.wescott@doe.virginia.gov.

Advisory Board on Teacher Education and Licensure

NOTE: CHANGE IN MEETING DATE
February 6, 2006 - 9 a.m. -- Open Meeting
March 20, 2006 - 9 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 margaret.roberts@doe.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 23, 2006 - 6 p.m. -- Open Meeting
Friends Community Church, 145 Palmer Avenue, Saltville, Virginia.

A public meeting on the development of a TMDL to address impairments of the North Fork Holston River in Smyth and Washington Counties. The public notice appears in the Virginia Register of Regulations on January 9, 2006. The public comment period begins on January 23, 2006, and ends on February 21, 2006.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

January 23, 2006 - 7 p.m. -- Open Meeting
Brookneal Community Center, 261 Main Street, Brookneal, Virginia.

A public meeting on the development of a TMDL to address impairments of the Staunton (Roanoke) River watershed located in Campbell, Pittsylvania, Halifax and Charlotte counties. The public notice appears in the Virginia Register of Regulations on January 9, 2006. The public comment period begins on January 23, 2006, and closes on February 22, 2006.

Contact: Kelly J. Wills, Department of Environmental Quality, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-5120, FAX (454) 582-5125, e-mail kjwills@deq.virginia.gov.

† **January 26, 2006 - 7 p.m.** -- Open Meeting
Northumberland Public Library, 7204 Northumberland Highway, Heathsville, Virginia.

The first public meeting on the development of fecal coliform TMDLs for shellfish propagation waters in Northumberland County. The revised public notice appears in the Virginia Register of Regulations on December 26, 2005. The public comment period begins on January 26, 2006, and ends on February 25, 2006.

Contact: Chris French, Department of Environmental Quality, 4949-A Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, e-mail rcfrench@deq.virginia.gov.

January 30, 2006 - 6 p.m. -- Open Meeting
Galax-Carroll Regional Library, 610 West Stuart Drive, Galax, Virginia.

A public meeting on the development of a TMDL to address bacteria impairments of Chestnut Creek in Galax and in Carroll and Grayson counties. The public notice appears in the Virginia Register of Regulations on January 9, 2006. The public comment period begins on January 30, 2006, and ends on February 28, 2006.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

February 6, 2006 - 6 p.m. -- Open Meeting
Hurley Elementary and Middle School, Hurley, Virginia.

A public meeting on the development of a TMDL to address impairments of Knox Creek and Pawpaw Creek in Buchanan County. The public notice appears in the Virginia Register of Regulations on January 9, 2006. The public comment period begins on February 6, 2006, and ends on March 7, 2006.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

February 13, 2006 - 6 p.m. -- Open Meeting
Pocahontas Presbyterian Church, 134 Moore Street, Pocahontas, Virginia.

A public meeting on the development of a TMDL to address impairments of Laurel Fork in Pocahontas and Tazewell County. The public notice appears in the Virginia Register of Regulations on January 9, 2006. The public comment period begins on February 13, 2006, and ends on March 7, 2006.

Contact: Nancy T. Norton, Department of Environmental Quality, 355 Deadmore St., Abingdon, VA 24212, telephone (276) 676-4807, FAX (276) 676-4899, e-mail ntnorton@deq.virginia.gov.

March 21, 2006 - 9 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

A meeting of the Ground Water Protection Steering Committee. The meeting will begin with a presentation by Scott Kudlas, DEQ Office of Water Supply Planning. Agency updates will follow the presentation; the meeting will adjourn by 11 a.m.

Contact: Mary Ann Massie, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4042, e-mail mamassie@deq.virginia.gov.

FORENSIC SCIENCE BOARD

† **February 8, 2006 - 10 a.m.** -- Open Meeting
Department of Forensic Science's Central Laboratory, 700 North 5th Street, Classroom 1, Richmond, Virginia.

A meeting to discuss program and fiscal goals, the development of long range programs, and other issues pertaining to the Department of Forensic Science.

Contact: Charlie Oates, Department Counsel, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-1006, e-mail charles.oates@dfs.virginia.gov.

DEPARTMENT OF FORENSIC SCIENCE

Scientific Advisory Committee

† **February 7, 2006 - 9 a.m.** -- Open Meeting
Department of Forensic Science's Central Laboratory, 700 North 5th Street, Classroom 1, Richmond, Virginia.

A meeting to discuss new scientific programs, laboratory protocols, and other issues pertaining to the Department of Forensic Science.

Contact: Charlie Oates, Department Counsel, Department of Forensic Science, 700 N. 5th St., Richmond, VA 23219, telephone (804) 786-1006, e-mail charles.oates@dfs.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 25, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A meeting of the Legislative/Regulatory Committee to discuss the rules and regulations that pertain to 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.

BOARD FOR GEOLOGY

April 5, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A regular meeting.

Contact: David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail geology@dpor.virginia.gov.

GOVERNOR'S EMS ADVISORY BOARD

NOTE: CHANGE IN MEETING DATE
† **February 9, 2006 - 3 p.m.** -- Open Meeting
The Place at Innsbrook, Richmond, Virginia.

A regularly scheduled meeting of the Regulation and Policy Committee to discuss and review proposed regulations for the upcoming revision process.

Contact: Michael D. Berg, Manager, Regulation and Compliance, Department of Health, 109 Governor St., UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, toll-free (800) 523-6019, e-mail michael.berg@vdh.virginia.gov.

† **February 10, 2006 - 1 p.m.** -- Open Meeting
The Place at Innsbrook, Glen Allen, Virginia

A quarterly meeting.

Contact: Gary R. Brown, Director, Office of Emergency Medical Services, Department of Health, 109 Governor St., Suite UB-55, Richmond, VA 23219, telephone (804) 864-7600, FAX (804) 864-7580, e-mail gary.brown@vdh.virginia.gov.

DEPARTMENT OF HEALTH

† **January 26, 2006 - 8:30 a.m.** -- Open Meeting
Crowne Plaza Richmond River District, 555 East Canal Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the Virginia HIV Community Planning Committee.

Contact: Elaine G. Martin, Community Planning Committee Co-Chair, Department of Health, 109 Governor St., Room 326, Richmond, VA 23219, telephone (804) 864-7962, FAX (804) 864-7983, e-mail elaine.martin@vdh.virginia.gov.

February 24, 2006 - 10 a.m. -- Open Meeting
April 7, 2006 - 10 a.m. -- Open Meeting
Department of Health, 109 Governor Street, 5th Floor Conference Room, Richmond, Virginia.

A meeting of the Sewage Handling and Disposal Advisory Committee to make recommendations to the commissioner regarding sewage handling and disposal policies, procedures and programs of the department.

Contact: Donald Alexander, Division Director, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7452, FAX (804) 864-7475, e-mail donald.alexander@vdh.virginia.gov.

DEPARTMENT OF HEALTH PROFESSIONS

† **February 3, 2006 - 2 p.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

March 24, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Health Professions intends to amend regulations entitled **18 VAC 76-20, Regulations Governing the Prescription Monitoring Program.** The purpose of the proposed action is to conform the rules of the Prescription Monitoring Program for reporting and disclosure to the changes made during the 2005 Session of the General Assembly. Regulations will (i) eliminate provisions that may stand as a barrier to the adoption of electronic requests and disclosures, (ii) provide criteria for requests from prescribers who are not licensed in Virginia and (iii) establish requirements for notification by a dispenser to his patients about requests for disclosure of prescription information in the program.

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Public comments may be submitted until March 24, 2006, to Ralph Orr, Director, Prescription Monitoring Program, 6603 West Broad Street, Richmond, VA 23230-1717.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6603 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114, e-mail elaine.yeatts@dhp.virginia.gov.

March 30, 2006 - 11 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia.

This is a working meeting of the Advisory Committee of the Prescription Monitoring Program for the purpose of reviewing data collected for the Program Evaluation Workplan and a progress report on the enhancement and expansion of the program. A review of Practitioner Notification Reports in other states will be given. The committee will discuss the development of criteria to provide these reports and the resource information that will be provided with them. Public comments will be received during this meeting.

Contact: Ralph Orr, PMP, Program Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9133, FAX (804) 662-9240, e-mail ralph.orr@dhp.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS

March 15, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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: 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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

State Building Code Technical Review Board

† **February 17, 2006 - 10 a.m.** -- Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia (Interpreter for the deaf provided upon request)

A meeting to hear appeals concerning the application of the building and fire regulations of the department and issues interpretations for recommendations for amendment or repeal of code provisions.

Contact: Vernon W. Hodge, Secretary, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7150.

DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

February 27, 2006 - Public comments may be submitted until this date.

Notice is hereby given that the Department of Human Resource Management intends to amend regulations entitled **1 VAC 55-20, Commonwealth of Virginia Health Benefits Program.** The purpose of the proposed action is to bring the state regulations in line with the Working Families Tax Relief Act (WFTRA). The current definition of a dependent is based on IRS regulations that allowed an employee to cover certain dependents without incurring imputed income based on the state's contribution to the

plan. WFTRA went into effect December 2004 and redefined who is considered a qualifying dependent for tax purposes under IRS § 152. WFTRA removes the requirement that a qualifying child be claimed by an employee as a dependent on his federal income tax return and sets up dependency criteria based on relationship, residency, age and self-support.

Statutory Authority: § 2.2-2818 of the Code of Virginia.

Contact: Charles Reed, Associate Director, Department of Human Resource Management, 101 N. 14th St., 13th Floor, Richmond, VA 23219, telephone (804) 786-3124, FAX (804) 371-0231 or e-mail charles.reed@dhrm.virginia.gov.

VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Wireless E-911 Services Board

March 8, 2006 - 10 a.m. -- Open Meeting
Richmond Plaza Building, 110 South 7th Street, 4th Floor Auditorium, Richmond, Virginia.

A regular board meeting.

Contact: Steve Marzolf, Public Safety Communications Coordinator, Virginia Information Technologies Agency, 411 E. Franklin St., 5th Floor, Suite 500, Richmond, VA 23219, telephone (804) 371-0015, FAX (804) 371-2277, toll-free (866) 482-3911, e-mail steve.marzolf@vita.virginia.gov.

INNOVATIVE TECHNOLOGY AUTHORITY

† **February 1, 2006 - 1 p.m.** -- Open Meeting
Virginia Economic Development Partnership, 901 East Byrd Street, 20th Floor, Presentation Center, Richmond, Virginia.

A meeting of the Board of Directors to elect board members.

Contact: Sharon Kozar, Executive Assistant, Innovative Technology Authority, 2214 Rock Hill Rd., Herndon, VA 20170, telephone (703) 689-3065, e-mail skozar@cit.org.

JAMESTOWN-YORKTOWN FOUNDATION

March 15, 2006 - 2 p.m. -- Open Meeting
Richmond area. (Interpreter for the deaf provided upon request)

A regular meeting of the Executive Committee of the Jamestown 2007 Steering Committee. This meeting is rescheduled from March 1, 2006. Please contact the Jamestown 2007 Office with questions.

Contact: Judy Leonard, Administrative Office Manager, Jamestown-Yorktown Foundation, 410 West Francis St., Williamsburg, VA 23185, telephone (757) 253-4253, FAX (757) 253-4950, e-mail judith.leonard@jyf.virginia.gov.

STATE BOARD OF JUVENILE JUSTICE

† **April 12, 2006 - 9 a.m.** -- Open Meeting
Shenandoah Valley Juvenile Center, 300 Technology Drive, Staunton, Virginia.

Meeting details will be provided closer to the meeting date.

Contact: Donald Carignan, Regulatory Coordinator, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0743, FAX (804) 371-0773, e-mail don.carignan@djj.virginia.gov.

STATE LIBRARY BOARD

January 27, 2006 - 8:15 a.m. -- Open Meeting
March 13, 2006 - 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 23219-8000, telephone (804) 692-3535, FAX (804) 692-3594, (804) 692-3976/TTY ☎, e-mail jtaylor@lva.lib.va.us.

BOARD OF LONG-TERM CARE ADMINISTRATORS

February 24, 2006 - 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 Long-Term Care Administrators intends to amend regulations entitled **18 VAC 95-20, Regulations Governing the Practice of Nursing Home Administrators.** The purpose of the proposed action is to amend educational requirements for initial licensure that have been problematic or confusing for some applicants and to clarify the existing regulations.

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

Public comments may be submitted until February 24, 2006, to Sandra K. Reen, Executive Director, Board of Long-Term Care Administrators, 6603 West Broad Street, Richmond, VA 23230.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

† **April 11, 2006 - 9:30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A general business meeting. There will be a 15-minute public comment period at the beginning of the meeting.

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

VIRGINIA MANUFACTURED HOUSING BOARD

† **March 26, 2006 -** 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 Manufactured Housing Board intends to amend regulations entitled **13 VAC 6-20, Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed action is to comply with statutory language and to correct references within the regulation.

Statutory Authority: § 36-85.18 of the Code of Virginia.

Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North 2nd Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090 or e-mail steve.calhoun@dhcd.virginia.gov.

MARINE RESOURCES COMMISSION

January 24, 2006 - 9:30 a.m. -- Open Meeting
February 28, 2006 - 9:30 a.m. -- Open Meeting
March 28, 2006 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue, 4th Floor, Newport News, Virginia. (Interpreter for the deaf provided upon request)

A monthly commission meeting.

Contact: 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

† **April 11, 2006 - 10 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor Conference Room, Richmond, Virginia.

A quarterly meeting.

Contact: Nancy Malczewski, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8096, FAX (804) 371-4981, (800) 343-0634/TTY ☎, e-mail nancy.malczewski@dmas.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

January 27, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled **12 VAC 30-120, Waivered Services.** The purpose of the proposed action is to conform the agency's regulations to recent federally approved changes to the Home and Community Based Services Mental Retardation Waiver Program that have resulted from the federally required waiver renewal process.

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

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail teja.stokes@dmas.virginia.gov.

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February 24, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled:

12 VAC 30-70, Methods and Standards for Establishing Payments Rates; Inpatient Hospital Services.
12 VAC 30-80, Methods and Standards for Establishing Payments Rates; Other Types of Care.
12 VAC 30-90, Methods and Standards for Establishing Payments Rates; Long-Term Care.

The purpose of the proposed action is to sunset intergovernmental financial transfers that are not being phased out by the federal government.

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

Contact: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680 or e-mail william.lessard@dmas.virginia.gov.

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February 24, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled **12 VAC 30-120, Waivered Services** and **12 VAC 30-141, Family**

Access to Medical Insurance Security Plan (FAMIS). The purpose of the proposed action is to exclude participants in the Virginia Birth-Related Neurological Injury Compensation Program from Medicaid and FAMIS managed care.

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

Contact: Daniel Plain, Managed Care Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958, FAX (804) 786-1680 or e-mail daniel.plain@dmas.virginia.gov.

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February 24, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled **12 VAC 30-60, Standards Established and Methods Used to Assure High Quality Care,** and **12 VAC 30-90, Methods and Standards for Establishing Payments Rates; Long-Term Care.** The purpose of the proposed action is to provide additional reimbursement ($10 per day) to nursing facilities (NF) for residents who require specialized treatment beds due to their having at least one treatable Stage IV pressure ulcer.

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

Contact: Teja Stokes, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-0527, FAX (804) 786-1680 or e-mail teja.stokes@dmas.virginia.gov.

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† **March 24, 2006 -** Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **Smiles for Children:**

12 VAC 30-50, Amount, Duration and Scope of Medical and Remedial Care Services.
12 VAC 30-120, Waivered Services.
12 VAC 30-141, Family Access to Medical Insurance Security Plan (FAMIS).

The purpose of the proposed action is to reshape the prior authorization regime for dental services and to enhance access to dental services for pediatric Medicaid recipients and for participants in the Family Access to Medical Insurance Security (FAMIS) program.

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

Contact: Sandra Brown, Project Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-1567, FAX (804) 786-1680 or e-mail sandra.brown@dmas.virginia.gov.

† **March 30, 2006 - 9 a.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, 13th Floor, Richmond, Virginia.

A meeting of the Pharmacy and Therapeutics Committee for the annual review of PDL Phases II and III.

Contact: Katina Goodwyn, Pharmacy Contract Manager, Department of Medical Assistance Services, 600 East Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-0428, FAX (804) 786-0973, (800) 343-0634/TTY ☎, e-mail katina.goodwyn@dmas.virginia.gov.

BOARD OF MEDICINE

January 26, 2006 - 9:30 a.m. -- Open Meeting
Clarion Hotel, 3315 Ordway Drive, Roanoke, Virginia.

† **January 31, 2006 - 9 a.m.** -- Open Meeting
Holiday Inn Select, 2801 Plank Road, Fredericksburg, Virginia.

A special conference committee will convene informal conferences to inquire into allegations that certain practitioners of medicine or other healing arts may have violated certain laws and regulations governing the practice of medicine. Further, the committee may review cases with board staff for case disposition, including consideration of consent orders for settlement. The committee will meet in open and closed sessions pursuant to the Code of Virginia. Public comment will not be received.

Contact: Renee S. Dixson, Discipline Case Manager, Board of Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY ☎, e-mail renee.dixson@dhp.virginia.gov.

January 27, 2006 - 8:30 a.m. -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A meeting of the Legislative Committee 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 23, 2006 - 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 and disciplinary matters as may be presented. 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.

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February 23, 2006 - 8:15 a.m. -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

March 24, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.** The purpose of the proposed action is to amend the educational requirements for graduates and former students of institutions not approved by an accrediting agency recognized by the board to specify that at least one of the required two years of postgraduate training or study in the United States or Canada must be as an intern or resident in a hospital or health care facility.

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until March 24, 2006, to 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.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

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† **February 23, 2006 - 8:15 a.m.** -- Public Hearing
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

March 24, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled **18 VAC 85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.** The purpose of the proposed action is to clarify that performance of a major conductive block for diagnostic or therapeutic purposes does not require the services of an anesthesiologist or a certified registered nurse anesthetist, but could be administered by a physician qualified by experience and training in such a procedure.

Statutory Authority: § 54.1-2400 and Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until March 24, 2006, to 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.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

† **April 7, 2006 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia.

A meeting of the Executive Committee to consider regulatory and disciplinary matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

Contact: William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY ☎, e-mail william.harp@dhp.virginia.gov.

Advisory Board on Acupuncture

† **February 8, 2006 - 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 regulations of acupuncture. 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 Athletic Training

† **February 9, 2006 - 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 regulations of athletic training. 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 Midwifery

† **February 10, 2006 - 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 regulations of midwifery. 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 Occupational Therapy

† **February 7, 2006 - 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 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 Physicians Assistants

† **February 9, 2006 - 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 regulations of physician assistants. 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 Radiologic Technology

† **February 8, 2006 - 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 regulations of radiologic technologists and radiologic technologist-limited. 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 Respiratory Care

† **February 7, 2006 - 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 regulations of respiratory care. 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.

STATE MILK COMMISSION

† **February 16, 2006 - 10:45 a.m.** -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Room 2063, 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 meeting contact at least five working days prior to the meeting date so that suitable arrangements can be made.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 102 Governor St., Room 205, Richmond, VA 23219, telephone (804) 786-2013, FAX (804) 786-3779, e-mail edward.wilson@vdacs.virginia.gov.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Division of Mined Land Reclamation

† **February 10, 2006 - 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 FY2006 Abandoned Mine Land Consolidated Grant Application to be submitted to the Federal Office of Surface Mining. Special accommodations for the disabled will be made available at the public meeting on request. Anyone needing special accommodations should contact DMME-DMLR at least seven days prior to the meeting.

Contact: Roger Williams, Abandoned Mine Land Services Manager, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (276) 523-8208, FAX (276) 523-8247, (800) 828-1120/TTY ☎, e-mail roger.williams@dmme.virginia.gov.

VIRGINIA MUSEUM OF FINE ARTS

January 24, 2006 - 10 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard, CEO 2nd Floor Meeting Room, Richmond, Virginia; Wachovia Bank, 101 West Main Street, Suite 100, Norfolk, Virginia; Wachovia Bank, Austin, Texas.

A meeting for the search firm to update the Search Committee. A request will be made for the meeting to be held 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, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

February 7, 2006 - 8 a.m. -- Open Meeting
March 7, 2006 - 8 a.m. -- Open Meeting
April 4, 2006 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 200 North Boulevard, CEO 2nd Floor Meeting Room, Richmond, Virginia.

An Executive Committee work session for staff to update the 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, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY ☎, e-mail sbroyles@vmfa.state.va.us.

BOARD OF NURSING

January 23, 2006 - 9 a.m. -- Open Meeting
January 25, 2006 - 9 a.m. -- Open Meeting
January 26, 2006 - 9 a.m. -- Open Meeting
March 20, 2006 - 9 a.m. -- Open Meeting
March 22, 2006 - 9 a.m. -- Open Meeting
March 23, 2006 - 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.

January 24, 2006 - 9 a.m. -- Open Meeting
March 21, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions, 6603 West 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.

February 6, 2006 - 9 a.m. -- Open Meeting
February 8, 2006 - 9 a.m. -- Open Meeting
February 14, 2006 - 9 a.m. -- Open Meeting
February 23, 2006 - 9 a.m. -- Open Meeting
February 27, 2006 - 9 a.m. -- Open Meeting
February 28, 2006 - 9 a.m. -- Open Meeting
March 2, 2006 - 9 a.m. -- Open Meeting
April 3, 2006 - 9 a.m. -- Open Meeting
† **April 12, 2006 - 9 a.m.** -- Open Meeting
† **April 13, 2006 - 9 a.m.** -- Open Meeting
† **April 18, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A Special Conference Committee comprised of two or three members of the Virginia Board of Nursing 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 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.

JOINT BOARDS OF NURSING AND MEDICINE

February 22, 2006 - 9 a.m. -- Open Meeting
† **April 12, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A regular meeting.

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.

OLD DOMINION UNIVERSITY

NOTE: CHANGE IN MEETING TIME
February 13, 2006 - Noon -- Open Meeting
March 20, 2006 - Noon -- Open Meeting
April 7, 2006 - 1 p.m. -- Open Meeting
Webb University Center, Old Dominion University, Norfolk, Virginia.

A regular meeting of the Executive Committee of the Board of Visitors to discuss business of the board and the institution as determined by the Rector and the President. Public comment will not be received by the board.

Contact: Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Old Dominion University, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, e-mail dmeeks@odu.edu.

BOARD FOR OPTICIANS

April 7, 2006 - 9:30 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A general business meeting including consideration of regulatory issues as may be presented on the agenda. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Person desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. 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 PHARMACY

† **January 24, 2006 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A meeting of the Special Conference Committee to discuss disciplinary matters. Public comments will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9911, FAX (804) 662-9313.

† **February 8, 2006 - 9:30 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 comments 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.

BOARD OF PHYSICAL THERAPY

January 27, 2006 - 9 a.m. -- Open Meeting
Department of Health Professions 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

A general business meeting.

Contact: Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

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† **January 27, 2006 - 9 a.m.** -- Public Hearing
Department of Health Professions 6603 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.

March 24, 2006 - 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 action is to establish criteria for acceptance of organizations other than the Foreign Credentialing Commission on Physical Therapy (FCCPT) for credentialing applicants for physical therapy licensure who are graduates of schools that are not approved or accredited and to allow an applicant for licensure by endorsement to substitute evidence of active, clinical practice with an unrestricted license in another U.S. jurisdiction for the past five years in lieu of documentation of having met the educational and examination requirements of these regulations.

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

Public comments may be submitted until March 24, 2006, to Elizabeth Young, Executive Director, Board of Physical Therapy, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9924, FAX (804) 662-9523, (804) 662-7197/TTY ☎, e-mail elizabeth.young@dhp.virginia.gov.

Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9918, FAX (804) 662-9114 or e-mail elaine.yeatts@dhp.virginia.gov.

BOARD OF PSYCHOLOGY

† **February 21, 2006 - 9:30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

Formal hearing held pursuant to § 2.2-4020 of the Code of Virginia.

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 11, 2006 - 9:30 a.m.** -- Open Meeting
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia.

A business meeting to include reports from standing committees and any 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.

VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

† **January 24, 2006 - 10 a.m.** -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.

A meeting of the Planning and Development Committee.

Contact: Janet Dingle Brown, Esq., Public Guardianship Coordinator and Legal Services Developer, Virginia Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail janet.brown@vda.virginia.gov.

March 23, 2006 - 10 a.m. -- Open Meeting
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia.

A quarterly meeting.

Contact: Janet Dingle Brown, Esq., Public Guardianship Coordinator and Legal Services Developer, Virginia Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-7049, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, e-mail janet.brown@vda.virginia.gov.

REAL ESTATE APPRAISER BOARD

† **January 26, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Room 453, Richmond, Virginia

Informal fact-finding conferences.

Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reappraisers@dpor.virginia.gov.

† **February 21, 2006 - 10 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to discuss board business.

Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reappraisers@dpor.virginia.gov.

REAL ESTATE BOARD

† **February 2, 2006 - 9 a.m.** -- Open Meeting
† **March 23, 2006 - 9 a.m.** -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.

A meeting to discuss board business.

Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY ☎, e-mail reappraisers@dpor.virginia.gov.

VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

March 21, 2006 - 1 p.m. -- Open Meeting
University of Virginia Research Park, Charlottesville, Virginia.

A quarterly meeting.

Contact: Nancy Vorona, Virginia Research and Technology Advisory Commission, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3043, e-mail nvorona@cit.org.

SAFETY AND HEALTH CODES BOARD

February 13, 2006 - 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 Safety and Health Codes Board intends to amend regulations entitled **16 VAC 25-60, Administrative Regulation for the Virginia Occupational Safety and Health Program.** The purpose of the proposed action is to amend the administrative regulations for the Virginia Occupational Safety and Health Program.

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Contact: Reba O'Connor, Regulatory Coordinator, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail reba.oconnor@doli.virginia.gov.

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February 25, 2006 - 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 Safety and Health Codes Board intends to adopt regulations entitled **16 VAC 25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors.** The purpose of the proposed action is to set minimum aggregate limits for professional liability or errors of omission coverage or other methods of insuring financial responsibility for boiler and pressure vessel contract fee inspectors operating in the Commonwealth.

Statutory Authority: § 40.1-51.9:2 of the Code of Virginia.

Contact: Fred P. Barton, Director, Boiler Safety Compliance, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 371-6524 or e-mail fred.barton@doli.virginia.gov.

SEWAGE HANDLING AND DISPOSAL APPEAL REVIEW BOARD

February 22, 2006 - 10 a.m. -- Open Meeting
Henrico County Health Department, 8600 Dixon Power Drive, Richmond, Virginia

A meeting to hear appeals of health department denials of septic tank permits or indemnification fund requests.

Contact: Susan C. Sherertz, Secretary to the Board, Sewage Handling and Disposal Appeal Review Board, 109 Governor St., 5th Floor, Richmond, Virginia 23219, telephone (804) 864-7464, FAX (804) 864-7475, e-mail susan.sherertz@vdh.virginia.gov.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

February 13, 2006 - 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. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY ☎, e-mail soilscientist@dpor.virginia.gov.

DEPARTMENT OF VETERANS SERVICES

Joint Leadership Council of Veterans Service Organizations

March 15, 2006 - 11 a.m. -- Open Meeting
Richmond area (location to be determined).

A regular meeting.

Contact: Steve 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 VETERINARY MEDICINE

† **February 1, 2006 - 9 a.m.** -- Open Meeting
Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia.

A meeting to begin periodic regulatory review, discuss the AAVSB's proposal for Veterinary Technician Professional Standard, develop guidance to assist practitioners with drug recordkeeping and security issues, hear a report from Ad Hoc Committee on Lay Equine Dentistry, report on statistics and budget, report on Board of Health Professions, and address general board business.

Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Veterinary Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail elizabeth.carter@dhp.virginia.gov.

† **February 2, 2006 - 9 a.m.** -- Open Meeting
Hotel Roanoke and Conference Center, 110 Shenandoah Avenue, Roanoke, Virginia.

Informal disciplinary hearings. Public comment will not be received.

Contact: Terri Behr, Administrative Assistant, Board of Veterinary Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-9915, FAX (804) 662-7098, (804) 662-7197/TTY ☎, e-mail terri.behr@dhp.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

January 25, 2006 - 1 p.m. -- Open Meeting
February 8, 2006 - 1 p.m. -- Open Meeting
February 22, 2006 - 1 p.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

A meeting of the advisory committee assisting in the development of amendments to the regulations for the development of solid waste management plans.

Contact: Allen Brockman, Virginia Waste Management Board, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4468, FAX (804) 698-4327, e-mail arbrockman@deq.virginia.gov.

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January 27, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled **9 VAC 20-85, Regulations Governing Management of Coal Combustion By-Products.** The purpose of the purpose of the proposed action is include (i) provisions for fossil fuel combustion products; (ii) discussion of possibly eliminating the regulation and placing all provision of the regulation into the Virginia Solid Waste Management Regulations or removing the provisions addressing coal ash from the VSWMR and consolidating the provisions of this regulation; and (iii) additional issues that are identified during the

NOIRA comment period, the technical advisory committee meetings, and during the public comment period.

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

Contact: Michael Dieter, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4146, FAX (804) 698-4327 or e-mail mjdieter@deq.virginia.gov.

STATE WATER CONTROL BOARD

† **January 27, 2006 - 9:30 a.m.** -- Open Meeting
Department of Environmental Quality, 629 East Main Street, Richmond, Virginia.

A meeting of the advisory committee established to assist in the development of regulations, including three general permits concerning wastewater reclamation and reuse.

Contact: Valerie Rourke, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4158 or e-mail varourke@deq.virginia.gov.

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February 6, 2006 - 3:30 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

March 10, 2006 - Public comment 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 25-660, Virginia Water Protection General Permit for Impacts Less Than One-Half Acre.** The purpose of the proposed action is to review and renew the general permit that is scheduled to expire in October 2006.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Contact: Catherine Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347, e-mail cmharold@deq.virginia.gov.

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February 6, 2006 - 3:30 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

March 10, 2006 - Public comment 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 25-670, Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities.** The purpose of the proposed action is to review and reissue the VWP General Permit that expires in October 2006.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Contact: Catherine Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347, e-mail cmharold@deq.virginia.gov.

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February 6, 2006 - 3:30 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

March 10, 2006 - Public comment 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 25-680, Virginia Water Protection General Permit for Linear Transportation Projects.** The purpose of the proposed action is to review and reissue the VWP General Permit that expires in October 2006.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Contact: Catherine Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347, e-mail cmharold@deq.virginia.gov.

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February 6, 2006 - 3:30 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

March 10, 2006 - Public comment 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 25-690, Virginia Water Protection General Permit for Impacts from Development Activities.** The purpose of the proposed action is to review and renew the VWP General Permit that is scheduled to expire in October 2006.

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia.

Contact: Catherine Harold, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4047, FAX (804) 698-4347, e-mail cmharold@deq.virginia.gov.

† **February 13, 2006 - 10 a.m.** -- Open Meeting
Department of Environmental Quality Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

A meeting to continue developing a general VWP permit for surface water withdrawal activities that have minimal

individual and cumulative impact on instream beneficial uses and flow regimes of the receiving waterbody.

Contact: Catherine Harold, Department of Environmental Quality, Richmond, VA 23240, telephone (804) 698-4047, e-mail cmharold@deq.virginia.gov.

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† **March 21, 2006 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, Virginia.

April 5, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-260, Water Quality Standards.** The purpose of the proposed action is to designate two tributaries to the Pedlar River, three tributaries to the North Fork of the Buffalo River and the North Fork of the Buffalo River as Exceptional State Waters.

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

Contact: David C. Whitehurst, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4121, FAX (804) 698-4116 or e-mail dcwhitehurst@deq.virginia.gov.

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† **March 23, 2006 - 10 a.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

April 7, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-260, Water Quality Standards.** The purpose of the proposed action is to include new numerical and narrative criteria to protect designated uses of lakes and reservoirs from the impacts of nutrients. The rulemaking may also include new and revised use designations for certain categories of lakes and reservoirs.

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

Contact: Jean W. Gregory, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4116 or e-mail jwgregory@deq.virginia.gov.

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† **March 27, 2006 - 5:30 p.m.** -- Public Hearing
Dabney S. Lancaster Community College, Moomaw Student Center, 1000 Dabney Drive, Clifton Forge, Virginia.

April 11, 2006 - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-260, Water Quality Standards.** The purpose of the proposed action is to designate portions of the tributaries of the Simpson Creek as Exceptional State Waters.

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

Contact: Jean W. Gregory, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113, FAX (804) 698-4116 or e-mail jwgregory@deq.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

January 25, 2006 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to evaluate and provide recommendation to the board on training course applications. Two board members are expected to be present, which does not constitute a quorum. No board business will be transacted.

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 8, 2006 - 8:30 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. All meetings are subject to cancellation. Any person desiring to attend the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

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.

INDEPENDENT

VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

Disabilities Advisory Council

† **April 12, 2006 - 10 a.m.** -- Open Meeting
Location to be determined (Interpreter for the deaf provided upon request)

A regular meeting.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5,

Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail lisa.shehi@vopa.virginia.gov.

PAIMI Advisory Council

February 16, 2006 - 10 a.m. -- Open Meeting
Virginia Office for Protection and Advocacy, Byrd Building, 1910 Byrd Avenue, Suite 5, 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 Ms. Lisa Shehi no later than February 2, 2006.

Contact: Lisa Shehi, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Suite 5, Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, e-mail lisa.shehi@vopa.virginia.gov.

VIRGINIA RETIREMENT SYSTEM

February 16, 2006 - 1 p.m. -- Open Meeting
Virginia Retirement System Investment Department, 1111 East Main Street, 3rd Floor, Richmond Virginia.

The regular meeting of the Board of Trustees. No public comment will be received at this meeting.

Contact: Harriet Covey, Administrative 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 hcovey@varetire.org.

LEGISLATIVE

Legislative meetings held during the Session of the General Assembly are exempted from publication in the *Virginia Register of Regulations*. You may call Legislative Information for information on standing committee meetings. The number is (804) 698-1500.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 23
Environmental Quality, Department of
Nursing, Board of
January 24
† Air Pollution Control Board, State
- Small Business Environmental Compliance Advisory Board
Alzheimer's Disease and Related Disorders Commission
Marine Resources Commission
Museum of Fine Arts, Virginia
Nursing, Board of
† Pharmacy, Board of
† Public Guardian and Conservator Advisory Board, Virginia
January 25
† Aging, Commonwealth Council on
Agriculture and Consumer Services, Department of
- Virginia State Apple Board
Compensation Board
Funeral Directors and Embalmers, Board of
Nursing, Board of
Virginia Waste Management Board
Waterworks and Wastewater Works Operators, Board for
January 26
Assistive Technology Loan Fund Authority
† Barbers and Cosmetology, Board for
† Contractors, Board for
† Environmental Quality, Department of
† Health, Department of
Medicine, Board of
Nursing, Board of
† Real Estate Appraiser Board
January 27
† Air Pollution Control Board, State
Library Board, State
† Medicine, Board of
Physical Therapy, Board of
† Water Control Board, State
January 30
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Environmental Quality, Department of
January 31
Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Asbestos, Lead, and Home Inspectors, Virginia Board for
Contractors, Board for
† Medicine, Board of
February 1
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Asbestos, Lead, and Home Inspectors, Virginia Board for
Branch Pilots, Board for
† Innovative Technology Authority
† Veterinary Medicine, Board of
February 2
Branch Pilots, Board for
† Contractors, Board for
† Real Estate Board
† Veterinary Medicine, Board of
February 3
Dentistry, Board of
February 6
Alcoholic Beverage Control Board
Barbers and Cosmetology, Board for
Education, Board of
- Advisory Board on Teacher Education and Licensure
Environmental Quality, Department of
Nursing, Board of
February 7
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for

† Contractors, Board for
† Forensic Science, Department of
- Scientific Advisory Committee
† Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Care
Museum of Fine Arts, Virginia

February 8
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
† Forensic Science Board
† Medicine, Board of
- Advisory Board on Acupuncture
- Advisory Board on Radiologic Technology
Nursing, Board of
† Pharmacy, Board of
Waste Management Board, Virginia

February 9
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Governor's EMS Advisory Board
† Medicine, Board of
- Advisory Board on Athletic Training
- Advisory Board on Physicians Assistants

February 10
Dentistry, Board of
† Governor's EMS Advisory Board
† Medicine, Board of
- Advisory Board on Midwifery
† Mines, Minerals and Energy, Department of
- Division of Mined Land Reclamation

February 13
Environmental Quality, Department of
Old Dominion University
Soil Scientists and Wetland Professionals, Board for Professional
† Water Control Board, State

February 14
† Contractors, Board of
Nursing, Board of

February 15
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Education, Board of

February 16
Design Build/Construction Management Review Board
† Milk Commission, State
Protection and Advocacy, Virginia Office for
- PAIMI Advisory Council
Retirement System, Virginia

February 17
† Housing and Community Development, Department of
- State Building Code Technical Review Board

February 21
Alcoholic Beverage Control Board
† Psychology, Board of
† Real Estate Appraiser Board

February 22
† Compensation Board
Nursing and Medicine, Joint Boards of
Sewage Handling and Disposal Appeal Review Board
Waste Management Board, Virginia

February 23
† Agriculture and Consumer Services, Department of
- Virginia Cattle Industry Board
† Medicine, Board of
Nursing, Board of

February 24
Health, Department of
- Sewage Handling and Disposal Advisory Committee

February 27
Nursing, Board of

February 28
Marine Resources Commission
Nursing, Board of

March 2
Dentistry, Board of
Nursing, Board of

March 3
Dentistry, Board of

March 6
Alcoholic Beverage Control Board

March 7
Museum of Fine Arts, Virginia

March 8
Information Technologies Agency, Virginia
- Wireless E-911 Services Board
Waterworks and Wastewater Works Operators, Board for

March 10
Child Fatality Review Team, State

March 11
Blind and Vision Impaired, Department for the
- Rehabilitation Council for the Blind

March 13
Asbestos, Lead, and Home Inspectors, Virginia Board for
Library Board, State

March 14
Alzheimer's Disease and Related Disorders Commission
Corrections, Board of

March 15
† Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Community Colleges, State Board for
Corrections, Board of
Hearing Aid Specialists, Board for
Jamestown-Yorktown Foundation
Veterans Services, Department of
-Joint Leadership Council of Veterans Service Organizations

March 16
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for
Community Colleges, State Board for
Design Build/Construction Management Review Board

March 17
Dentistry, Board of

March 20
Alcoholic Beverage Control Board
Education, Board of

- Advisory Board on Teacher Education and Licensure
Nursing, Board of
Old Dominion University

March 21
Environmental Quality, Department of
- Ground Water Protection Steering Committee
Nursing, Board of
Research and Technology Advisory Commission, Virginia

March 22
Education, Board of
Nursing, Board of

March 23
Nursing, Board of
Public Guardian and Conservator Advisory Board, Virginia
† Real Estate Board

March 28
Marine Resources Commission

March 30
Health Professions, Department of
† Medical Assistance Services, Department of

March 31
Dentistry, Board of

April 3
Alcoholic Beverage Control Board
Nursing, Board of

April 4
Museum of Fine Arts, Virginia

April 5
Geology, Board for

April 7
Health, Department of
- Sewage Handling and Disposal Advisory Committee
† Medicine, Board of
Old Dominion University
Opticians, Board for

April 11
† Long-Term Care Administrators, Board of
† Medical Assistance Services, Board of
† Psychology, Board of

April 12
† Juvenile Justice, State Board of
† Nursing, Board of
† Nursing and Medicine, Joint Boards of
† Protection and Advocacy, Virginia Office for
- Disabilities Advisory Council

April 13
† Auctioneers Board
† Nursing, Board of

April 17
† Alcoholic Beverage Control Board

April 18
† Nursing, Board of

April 20
† Design-Build/Construction Management Review Board

April 21
† Dentistry, Board of

PUBLIC HEARINGS

January 27
† Physical Therapy, Board of

February 3
† Health Professions, Department of

February 6
Water Control Board, State

February 16
† Contractors, Board for

February 23
† Medicine, Board of

March 3
† Dentistry, Board of

March 7
Barbers and Cosmetology, Board for

March 16
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects

March 21
† Water Control Board, State

March 23
† Water Control Board, State

March 27
† Water Control Board, State

March 30
Asbestos, Lead and Home Inspectors, Virginia Board for

Calendar of Events