



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of public hearings and open meetings of state agencies.

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission of Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date

specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

Proposed regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **18:23 VA.R. 2997-3011 July 29, 2002**, refers to Volume 18, Issue 23, pages 2997 through 3011 of the *Virginia Register* issued on July 29, 2002.

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

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## December 2006 through November 2007

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>INDEX 1 Volume 23</b>		
		<b>January 2007</b>
23:8	December 6, 2006	December 25, 2006
23:9	December 19, 2006 ( <b>Tuesday</b> )	January 8, 2007
23:10	January 3, 2007	January 22, 2007
23:11	January 17, 2007	February 5, 2007
23:12	January 31, 2007	February 19, 2007
23:13	February 14, 2007	March 5, 2007
23:14	February 28, 2007	March 19, 2007
<b>INDEX 2 Volume 23</b>		
		<b>April 2007</b>
23:15	March 14, 2007	April 2, 2007
23:16	March 28, 2007	April 16, 2007
23:17	April 11, 2007	April 30, 2007
23:18	April 25, 2007	May 14, 2007
23:19	May 9, 2007	May 28, 2007
23:20	May 23, 2007	June 11, 2007
<b>INDEX 3 Volume 23</b>		
		<b>July 2007</b>
23:21	June 6, 2007	June 25, 2007
23:22	June 20, 2007	July 9, 2007
23:23	July 3, 2007 ( <b>Tuesday</b> )	July 23, 2007
23:24	July 18, 2007	August 6, 2007
23:25	August 1, 2007	August 20, 2007
23:26	August 15, 2007	September 3, 2007
<b>FINAL INDEX - Volume 23</b>		
		<b>October 2007</b>
24:1	August 29, 2007	September 17, 2007
24:2	September 12, 2007	October 1, 2007
24:3	September 26, 2007	October 15, 2007
24:4	October 10, 2007	October 29, 2007
24:5	October 24, 2007	November 12, 2007

\*Filing deadlines are Wednesdays unless otherwise specified.

# 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 2006 VAC Supplement includes final regulations published through *Virginia Register* Volume 22, Issue 22, dated July 10, 2006). Emergency regulations, if any, are listed, followed by the designation “emer,” and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 1. Administration</b>			
1 VAC 50-10-10 through 1 VAC 50-10-50	Repealed	22:26 VA.R. 4083	10/4/06
1 VAC 50-10-60 through 1 VAC 50-10-150	Added	22:26 VA.R. 4084-4085	10/4/06
1 VAC 50-20-1	Added	22:26 VA.R. 4085	10/4/06
1 VAC 50-20-5	Added	22:26 VA.R. 4085	10/4/06
1 VAC 50-20-10	Amended	22:26 VA.R. 4086	10/4/06
1 VAC 50-20-20	Repealed	22:26 VA.R. 4086	10/4/06
1 VAC 50-20-30	Repealed	22:26 VA.R. 4086	10/4/06
1 VAC 50-20-40	Amended	22:26 VA.R. 4086	10/4/06
1 VAC 50-20-50	Amended	22:26 VA.R. 4086	10/4/06
1 VAC 50-20-60 through 1 VAC 50-20-90	Repealed	22:26 VA.R. 4086-4087	10/4/06
1 VAC 50-20-100	Amended	22:26 VA.R. 4087	10/4/06
1 VAC 50-20-110	Amended	22:26 VA.R. 4087	10/4/06
1 VAC 50-20-120	Repealed	22:26 VA.R. 4087	10/4/06
1 VAC 50-20-130	Repealed	22:26 VA.R. 4087	10/4/06
1 VAC 50-20-140	Amended	22:26 VA.R. 4087	10/4/06
1 VAC 50-20-142	Added	22:26 VA.R. 4087	10/4/06
1 VAC 50-20-150 through 1 VAC 50-20-180	Amended	22:26 VA.R. 4088	10/4/06
1 VAC 50-20-190 through 1 VAC 50-20-220	Repealed	22:26 VA.R. 4088	10/4/06
1 VAC 50-20-230	Amended	22:26 VA.R. 4089	10/4/06
1 VAC 50-20-240	Repealed	22:26 VA.R. 4089	10/4/06
1 VAC 50-20-250	Repealed	22:26 VA.R. 4089	10/4/06
1 VAC 50-20-260	Repealed	22:26 VA.R. 4089	10/4/06
1 VAC 50-20-270	Amended	22:26 VA.R. 4089	10/4/06
1 VAC 50-20-280	Repealed	22:26 VA.R. 4089	10/4/06
1 VAC 50-20-290	Repealed	22:26 VA.R. 4089	10/4/06
1 VAC 50-20-300	Repealed	22:26 VA.R. 4090	10/4/06
1 VAC 50-20-310	Amended	22:26 VA.R. 4090	10/4/06
1 VAC 50-20-320	Repealed	22:26 VA.R. 4090	10/4/06
1 VAC 50-20-330	Repealed	22:26 VA.R. 4090	10/4/06
1 VAC 50-20-340	Repealed	22:26 VA.R. 4090	10/4/06
1 VAC 50-20-350	Amended	22:26 VA.R. 4090	10/4/06
1 VAC 50-20-360	Repealed	22:26 VA.R. 4090	10/4/06
1 VAC 50-20-370	Repealed	22:26 VA.R. 4091	10/4/06
1 VAC 50-20-380	Repealed	22:26 VA.R. 4091	10/4/06
1 VAC 50-20-382	Added	22:26 VA.R. 4091	10/4/06
1 VAC 50-20-384	Added	22:26 VA.R. 4091	10/4/06
1 VAC 50-20-390	Amended	22:26 VA.R. 4091	10/4/06
1 VAC 50-20-400 through 1 VAC 50-20-530	Repealed	22:26 VA.R. 4091-4093	10/4/06
1 VAC 50-20-540 through 1 VAC 50-20-600	Amended	22:26 VA.R. 4093-4098	10/4/06

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
1 VAC 50-20-601	Added	22:26 VA.R. 4098	10/4/06
1 VAC 50-20-605	Added	22:26 VA.R. 4099	10/4/06
1 VAC 50-20-610	Amended	22:26 VA.R. 4100	10/4/06
1 VAC 50-20-612	Added	22:26 VA.R. 4101	10/4/06
1 VAC 50-20-614	Added	22:26 VA.R. 4101	10/4/06
1 VAC 50-20-616	Added	22:26 VA.R. 4102	10/4/06
1 VAC 50-20-620 through 1 VAC 50-20-670	Amended	22:26 VA.R. 4102-4105	10/4/06
1 VAC 50-20-680	Repealed	22:26 VA.R. 4105	10/4/06
1 VAC 50-20-690	Repealed	22:26 VA.R. 4105	10/4/06
1 VAC 50-20-700	Repealed	22:26 VA.R. 4105	10/4/06
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:3 VA.R. 334-337	
<b>Title 2. Agriculture</b>			
2 VAC 5-195-10 through 2 VAC 5-195-180	Added	22:25 VA.R. 3872-3876	8/21/06
2 VAC 5-210-10	Amended	22:24 VA.R. 3579	7/19/06
2 VAC 5-210-20	Amended	22:24 VA.R. 3579	7/19/06
2 VAC 5-210-30	Amended	22:24 VA.R. 3579	7/19/06
2 VAC 5-210-40	Repealed	22:24 VA.R. 3580	7/19/06
2 VAC 5-210-41	Added	22:24 VA.R. 3580	7/19/06
2 VAC 5-210-50	Repealed	22:24 VA.R. 3580	7/19/06
2 VAC 5-210-60	Amended	22:24 VA.R. 3581	7/19/06
2 VAC 5-330-30	Amended	22:24 VA.R. 3587	9/7/06
2 VAC 20-40-10	Amended	22:26 VA.R. 4105	10/5/06
2 VAC 20-40-20	Amended	22:26 VA.R. 4106	10/5/06
2 VAC 20-40-40	Amended	22:26 VA.R. 4107	10/5/06
2 VAC 20-40-60	Amended	22:26 VA.R. 4107	10/5/06
2 VAC 20-40-65	Added	22:26 VA.R. 4107	10/5/06
2 VAC 20-40-70 through 2 VAC 20-40-110	Amended	22:26 VA.R. 4107-4109	10/5/06
2 VAC 20-40-120	Repealed	22:26 VA.R. 4109	10/5/06
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-36-50	Amended	23:6 VA.R. 845	1/1/07
4 VAC 5-36-60	Amended	23:6 VA.R. 848	1/1/07
4 VAC 5-36-70	Amended	23:6 VA.R. 849	1/1/07
4 VAC 5-36-90 through 4 VAC 5-36-120	Amended	23:6 VA.R. 850-856	1/1/07
4 VAC 5-36-150	Amended	23:6 VA.R. 856	1/1/07
4 VAC 5-36-170	Amended	23:6 VA.R. 857	1/1/07
4 VAC 5-36-200	Amended	23:6 VA.R. 858	1/1/07
4 VAC 5-36-210	Amended	23:6 VA.R. 862	1/1/07
4 VAC 20-20-20	Amended	23:4 VA.R. 574	10/1/06
4 VAC 20-20-50	Amended	23:4 VA.R. 574	10/1/06
4 VAC 20-150-70	Amended	22:23 VA.R. 3277	6/28/06
4 VAC 20-252-30	Amended	22:23 VA.R. 3277	7/1/06
4 VAC 20-252-50	Amended	22:23 VA.R. 3278	7/1/06
4 VAC 20-252-115	Added	22:23 VA.R. 3278	7/1/06
4 VAC 20-566-30	Amended	22:25 VA.R. 3877	8/1/06
4 VAC 20-610-30	Amended	23:4 VA.R. 575	10/1/06
4 VAC 20-610-40	Amended	23:4 VA.R. 576	10/1/06
4 VAC 20-610-60	Amended	23:4 VA.R. 576	10/1/06
4 VAC 20-720-20	Amended	23:4 VA.R. 578	10/1/06
4 VAC 20-720-40	Amended	23:4 VA.R. 579	10/1/06
4 VAC 20-720-50	Amended	23:4 VA.R. 579	10/1/06
4 VAC 20-720-60	Amended	23:4 VA.R. 580	10/1/06

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-720-70	Amended	23:4 VA.R. 580	10/1/06
4 VAC 20-720-75	Amended	23:4 VA.R. 580	10/1/06
4 VAC 20-720-80	Amended	23:4 VA.R. 580	10/1/06
4 VAC 20-720-100	Amended	23:4 VA.R. 581	10/1/06
4 VAC 20-900-10 through 4 VAC 20-900-30	Amended	22:23 VA.R. 3279-3280	7/1/06
4 VAC 20-910-45	Amended	23:6 VA.R. 865	11/1/06
4 VAC 20-1090-20	Repealed	23:4 VA.R. 581	10/1/06
4 VAC 20-1090-30	Amended	23:4 VA.R. 582	10/1/06
4 VAC 25-130-816.11	Amended	22:24 VA.R. 3587	9/6/06
4 VAC 25-130-816.64	Amended	22:24 VA.R. 3588	9/6/06
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-120-80	Amended	22:20 VA.R. 2704	7/12/06
6 VAC 20-190-10 through 6 VAC 20-190-200	Repealed	22:10 VA.R. 1556-1559	2/22/06
6 VAC 20-210-10 through 6 VAC 20-210-110	Repealed	22:10 VA.R. 1561-1562	2/22/06
6 VAC 20-220-20 through 6 VAC 20-220-80	Repealed	22:10 VA.R. 1559-1560	2/22/06
6 VAC 20-240-10 through 6 VAC 20-240-120	Added	22:11 VA.R. 1764-1768	3/8/06
6 VAC 20-260-10 through 6 VAC 20-260-360 emer	Added	22:12 VA.R. 2044-2053	2/20/06-2/19/07
6 VAC 35-10-10 through 6 VAC 35-10-50	Amended	23:1 VA.R. 25-26	10/18/06
6 VAC 35-10-60	Repealed	23:1 VA.R. 26	10/18/06
6 VAC 35-10-70 through 100	Amended	23:1 VA.R. 26-27	10/18/06
6 VAC 35-10-105	Added	23:1 VA.R. 27	10/18/06
6 VAC 35-10-110	Amended	23:1 VA.R. 28	10/18/06
6 VAC 35-10-120 through 6 VAC 35-10-150	Added	23:1 VA.R. 28	10/18/06
6 VAC 35-10-120	Amended	23:1 VA.R. 28	10/18/06
6 VAC 40-10-10 through 6 VAC 40-10-90	Added	22:24 VA.R. 3746-3747	10/25/06
6 VAC 40-50-10 through 6 VAC 40-50-80 emer	Added	22:23 VA.R. 3406-3407	7/1/06-6/30/07
<b>Title 8. Education</b>			
8 VAC 20-21-10 through 8 VAC 20-21-730	Repealed	23:3 VA.R. 337	11/28/06
8 VAC 20-22-10 through 8 VAC 20-22-760	Added	23:3 VA.R. 344-376	11/28/06
8 VAC 20-131-5	Added	22:24 VA.R. 3589	9/7/06
8 VAC 20-131-10	Amended	22:24 VA.R. 3590	9/7/06
8 VAC 20-131-20	Amended	22:24 VA.R. 3591	9/7/06
8 VAC 20-131-30	Amended	22:24 VA.R. 3591	9/7/06
8 VAC 20-131-40	Repealed	22:24 VA.R. 3592	9/7/06
8 VAC 20-131-50 through 8 VAC 20-131-110	Amended	22:24 VA.R. 3592-3598	9/7/06
8 VAC 20-131-140	Amended	22:24 VA.R. 3598	9/7/06
8 VAC 20-131-150	Amended	22:24 VA.R. 3598	9/7/06
8 VAC 20-131-160	Repealed	22:24 VA.R. 3599	9/7/06
8 VAC 20-131-170 through 8 VAC 20-131-210	Amended	22:24 VA.R. 3599-3600	9/7/06
8 VAC 20-131-240	Amended	22:24 VA.R. 3600	9/7/06
8 VAC 20-131-260 through 8 VAC 20-131-310	Amended	22:24 VA.R. 3601-3607	9/7/06
8 VAC 20-131-315	Added	22:24 VA.R. 3607	9/7/06
8 VAC 20-131-320	Repealed	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-325	Amended	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-330	Repealed	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-340	Amended	22:24 VA.R. 3608	9/7/06
8 VAC 20-131-350	Added	22:24 VA.R. 3609	9/7/06
8 VAC 20-131-360	Added	22:24 VA.R. 3609	9/7/06
8 VAC 20-131, Appendix I	Repealed	22:24 VA.R. 3609	9/7/06
8 VAC 20-521-30	Amended	22:26 VA.R. 4110	10/4/06

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-541-10 through 8 VAC 20-541-60	Repealed	23:3 VA.R. 376	11/29/06
8 VAC 20-542-10 through 8 VAC 20-542-600	Added	23:3 VA.R. 376-434	11/29/06
8 VAC 40-30	Repealed	22:23 VA.R. 3281	8/24/06
8 VAC 40-31-10 through 8 VAC 40-31-320	Added	22:23 VA.R. 3281-3298	8/24/06
8 VAC 103-20-10 through 8 VAC 103-20-50	Added	23:7 VA.R. 1045-1050	12/11/06
<b>Title 9. Environment</b>			
9 VAC 5-20-21	Amended	22:26 VA.R. 4111	10/4/06
9 VAC 5-20-21	Erratum	23:5 VA.R. 791	--
9 VAC 5-20-203	Amended	22:23 VA.R. 3299	9/1/06
9 VAC 5-20-204	Amended	22:23 VA.R. 3299	9/1/06
9 VAC 5-20-206	Amended	22:26 VA.R. 4114	10/4/06
9 VAC 5-40-250	Amended	23:5 VA.R. 737	12/15/06
9 VAC 5-40-300	Amended	22:26 VA.R. 4115	10/4/06
9 VAC 5-40-300	Repealed	23:5 VA.R. 737	12/15/06
9 VAC 5-40-310	Repealed	23:5 VA.R. 738	12/15/06
9 VAC 5-40-311	Repealed	23:5 VA.R. 739	12/15/06
9 VAC 5-40-5060	Amended	22:26 VA.R. 4115	10/4/06
9 VAC 5-40-5200	Amended	22:26 VA.R. 4116	10/4/06
9 VAC 5-40-5600	Amended	23:1 VA.R. 29	10/18/06
9 VAC 5-40-5610	Amended	23:1 VA.R. 29	10/18/06
9 VAC 5-40-5620	Amended	23:1 VA.R. 31	10/18/06
9 VAC 5-40-5630	Amended	23:1 VA.R. 31	10/18/06
9 VAC 5-40-5631	Amended	23:1 VA.R. 33	10/18/06
9 VAC 5-40-5641	Amended	23:1 VA.R. 33	10/18/06
9 VAC 5-40-5641	Erratum	23:5 VA.R. 791	--
9 VAC 5-40-5700	Amended	22:26 VA.R. 4116	10/4/06
9 VAC 5-40-5720	Amended	22:26 VA.R. 4117	10/4/06
9 VAC 5-40-5750	Amended	22:26 VA.R. 4118	10/4/06
9 VAC 5-40-6970	Amended	22:26 VA.R. 4118	10/4/06
9 VAC 5-40-7050	Amended	22:26 VA.R. 4118	10/4/06
9 VAC 5-40-7120	Amended	22:26 VA.R. 4119	10/4/06
9 VAC 5-40-7130	Amended	22:26 VA.R. 4119	10/4/06
9 VAC 5-40-7140	Amended	22:26 VA.R. 4122	10/4/06
9 VAC 5-40-7140	Erratum	23:5 VA.R. 791	--
9 VAC 5-40-7210	Amended	22:26 VA.R. 4124	10/4/06
9 VAC 5-40-7240	Amended	22:26 VA.R. 4124	10/4/06
9 VAC 5-40-7250	Amended	22:26 VA.R. 4124	10/4/06
9 VAC 5-40-7260	Amended	22:26 VA.R. 4125	10/4/06
9 VAC 5-40-7260	Erratum	23:5 VA.R. 791	--
9 VAC 5-40-7270	Amended	22:26 VA.R. 4136	10/4/06
9 VAC 5-40-7300	Amended	22:26 VA.R. 4139	10/4/06
9 VAC 5-40-7330	Amended	22:26 VA.R. 4140	10/4/06
9 VAC 5-40-7360	Amended	22:26 VA.R. 4140	10/4/06
9 VAC 5-40-7370 through 9 VAC 5-40-7540	Added	23:5 VA.R. 740-745	12/15/06
9 VAC 5-40-7800	Amended	22:26 VA.R. 4141	10/4/06
9 VAC 5-40-7880	Amended	22:26 VA.R. 4141	10/4/06
9 VAC 5-50-250	Amended	22:23 VA.R. 3301	9/1/06
9 VAC 5-50-270	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-50-280	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-80-1100	Amended	22:23 VA.R. 3302	9/1/06
9 VAC 5-80-1110	Amended	22:23 VA.R. 3303	9/1/06



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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-1310	Repealed	22:23 VA.R. 3308	9/1/06
9 VAC 5-80-1605	Added	22:23 VA.R. 3309	9/1/06
9 VAC 5-80-1615	Added	22:23 VA.R. 3310	9/1/06
9 VAC 5-80-1625	Added	22:23 VA.R. 3321	9/1/06
9 VAC 5-80-1635	Added	22:23 VA.R. 3321	9/1/06
9 VAC 5-80-1645	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1655	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1665	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1675	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1685	Added	22:23 VA.R. 3322	9/1/06
9 VAC 5-80-1695	Added	22:23 VA.R. 3323	9/1/06
9 VAC 5-80-1700	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1705	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1710	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1715	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1720	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1725	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1730	Repealed	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1735	Added	22:23 VA.R. 3324	9/1/06
9 VAC 5-80-1740	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1745	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1750	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1755	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1760	Repealed	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1765	Added	22:23 VA.R. 3325	9/1/06
9 VAC 5-80-1770	Repealed	22:23 VA.R. 3327	9/1/06
9 VAC 5-80-1775	Added	22:23 VA.R. 3327	9/1/06
9 VAC 5-80-1780	Repealed	22:23 VA.R. 3328	9/1/06
9 VAC 5-80-1785	Added	22:23 VA.R. 3328	9/1/06
9 VAC 5-80-1790	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1795	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1800	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1805	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1810	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1815	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1820	Repealed	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1825	Added	22:23 VA.R. 3329	9/1/06
9 VAC 5-80-1830	Repealed	22:23 VA.R. 3330	9/1/06
9 VAC 5-80-1835	Added	22:23 VA.R. 3330	9/1/06
9 VAC 5-80-1840	Repealed	22:23 VA.R. 3332	9/1/06
9 VAC 5-80-1845	Added	22:23 VA.R. 3332	9/1/06
9 VAC 5-80-1850	Repealed	22:23 VA.R. 3334	9/1/06
9 VAC 5-80-1855	Added	22:23 VA.R. 3334	9/1/06
9 VAC 5-80-1860	Repealed	22:23 VA.R. 3335	9/1/06
9 VAC 5-80-1865	Added	22:23 VA.R. 3335	9/1/06
9 VAC 5-80-1870 through 9 VAC 5-80-1920	Repealed	22:23 VA.R. 3340	9/1/06
9 VAC 5-80-1925	Added	22:23 VA.R. 3340	9/1/06
9 VAC 5-80-1930	Repealed	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1935	Added	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1940	Repealed	22:23 VA.R. 3341	9/1/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-80-1945	Added	22:23 VA.R. 3341	9/1/06
9 VAC 5-80-1950	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1955	Added	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1960	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1965	Added	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1970	Repealed	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1975	Added	22:23 VA.R. 3342	9/1/06
9 VAC 5-80-1985	Added	22:23 VA.R. 3343	9/1/06
9 VAC 5-80-1995	Added	22:23 VA.R. 3343	9/1/06
9 VAC 5-80-2000 through 9 VAC 5-80-2020	Amended	22:23 VA.R. 3343-3355	9/1/06
9 VAC 5-80-2040 through 9 VAC 5-80-2070	Amended	22:23 VA.R. 3355-3358	9/1/06
9 VAC 5-80-2090	Amended	22:23 VA.R. 3358	9/1/06
9 VAC 5-80-2091	Added	22:23 VA.R. 3358	9/1/06
9 VAC 5-80-2110 through 9 VAC 5-80-2140	Amended	22:23 VA.R. 3359-3362	9/1/06
9 VAC 5-80-2141 through 9 VAC 5-80-2143	Added	22:23 VA.R. 3362-3366	9/1/06
9 VAC 5-80-2144	Added	22:23 VA.R. 3367	9/1/06
9 VAC 5-80-2180	Amended	22:23 VA.R. 3372	9/1/06
9 VAC 5-80-2200 through 9 VAC 5-80-2240	Amended	22:23 VA.R. 3373-3375	9/1/06
9 VAC 20-60-18	Amended	22:23 VA.R. 3375	8/23/06
9 VAC 20-85-20	Amended	23:4 VA.R. 584	11/29/06
9 VAC 20-85-30	Amended	23:4 VA.R. 585	11/29/06
9 VAC 20-85-40	Amended	23:4 VA.R. 585	11/29/06
9 VAC 20-85-60 through 9 VAC 20-85-170	Amended	23:4 VA.R. 585-589	11/29/06
9 VAC 25-31-10	Amended	22:24 VA.R. 3610	9/6/06
9 VAC 25-31-30	Amended	22:24 VA.R. 3619	9/6/06
9 VAC 25-31-80	Amended	22:24 VA.R. 3620	9/6/06
9 VAC 25-31-100	Amended	22:24 VA.R. 3620	9/6/06
9 VAC 25-31-165	Added	22:24 VA.R. 3637	9/6/06
9 VAC 25-31-220	Amended	22:24 VA.R. 3651	9/6/06
9 VAC 25-31-290	Amended	22:24 VA.R. 3656	9/6/06
9 VAC 25-31-770	Amended	22:24 VA.R. 3657	9/6/06
9 VAC 25-31-780	Amended	22:24 VA.R. 3658	9/6/06
9 VAC 25-31-790	Amended	22:24 VA.R. 3662	9/6/06
9 VAC 25-31-800	Amended	22:24 VA.R. 3667	9/6/06
9 VAC 25-31-840	Amended	22:24 VA.R. 3670	9/6/06
9 VAC 25-31-870	Amended	22:24 VA.R. 3677	9/6/06
9 VAC 25-260-5	Amended	23:1 VA.R. 41	*
9 VAC 25-260-30	Amended	22:26 VA.R. 4142	*
9 VAC 25-260-30	Amended	23:1 VA.R. 38	*
9 VAC 25-260-50	Amended	23:1 VA.R. 42	*
9 VAC 25-260-187	Added	23:1 VA.R. 42	*
9 VAC 25-260-310	Amended	23:1 VA.R. 44	*
9 VAC 25-260-480	Amended	23:1 VA.R. 46	*
9 VAC 25-660-90	Erratum	22:23 VA.R. 3424	--
9 VAC 25-680-70	Erratum	22:23 VA.R. 3424	--
9 VAC 25-680-90	Erratum	22:23 VA.R. 3424	--
9 VAC 25-690-70	Erratum	22:23 VA.R. 3424	--
9 VAC 25-720-70	Amended	23:6 VA.R. 869	2/26/07
9 VAC 25-820-10 through 9 VAC 25-820-70	Added	23:2 VA.R. 231-251	11/1/06

\* Upon filing notice of EPA approval with the Registrar of Regulations.

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 11. Gaming</b>			
11 VAC 5-20-200	Amended	22:25 VA.R. 3907	11/6/06
11 VAC 5-20-210 through 11 VAC 5-20-520	Repealed	22:25 VA.R. 3907-3914	11/6/06
11 VAC 10-70-20	Amended	22:25 VA.R. 3916	11/4/06
11 VAC 10-70-20	Amended	22:26 VA.R. 4144	9/4/06-11/3/06
11 VAC 10-70-30	Amended	22:25 VA.R. 3917	11/4/06
11 VAC 10-70-30	Amended	22:26 VA.R. 4144	9/4/06-11/3/06
11 VAC 10-70-40	Amended	22:25 VA.R. 3917	11/4/06
11 VAC 10-70-40	Amended	22:26 VA.R. 4144	9/4/06-11/3/06
11 VAC 10-70-50	Repealed	22:25 VA.R. 3917	11/4/06
11 VAC 10-70-50	Repealed	22:26 VA.R. 4144	9/4/06-11/3/06
11 VAC 10-70-60 through 11 VAC 10-70-90	Amended	22:25 VA.R. 3917-3918	11/4/06
11 VAC 10-70-60	Amended	22:26 VA.R. 4144	9/4/06-11/3/06
11 VAC 10-70-70	Amended	22:26 VA.R. 4145	9/4/06-11/3/06
11 VAC 10-70-80	Amended	22:26 VA.R. 4146	9/4/06-11/3/06
11 VAC 10-70-90	Amended	22:26 VA.R. 4146	9/4/06-11/3/06
11 VAC 10-70-170	Amended	22:25 VA.R. 3918	11/4/06
11 VAC 10-70-170	Amended	22:26 VA.R. 4146	9/4/06-11/3/06
11 VAC 10-90-10	Amended	22:25 VA.R. 3919	11/4/06
11 VAC 10-90-10	Amended	22:26 VA.R. 4146	9/4/06-11/3/06
11 VAC 10-90-30	Amended	22:25 VA.R. 3919	11/4/06
11 VAC 10-90-30	Amended	22:26 VA.R. 4146	9/4/06-11/3/06
11 VAC 10-90-50	Amended	22:25 VA.R. 3919	11/4/06
11 VAC 10-90-50	Amended	22:26 VA.R. 4146	9/4/06-11/3/06
<b>Title 12. Health</b>			
12 VAC 5-31-10	Amended	23:6 VA.R. 870	12/13/06
12 VAC 5-31-50	Amended	23:6 VA.R. 876	12/13/06
12 VAC 5-31-60	Amended	23:6 VA.R. 876	12/13/06
12 VAC 5-31-110	Amended	23:6 VA.R. 877	12/13/06
12 VAC 5-31-140	Amended	23:6 VA.R. 877	12/13/06
12 VAC 5-31-190	Amended	23:6 VA.R. 877	12/13/06
12 VAC 5-31-220	Amended	23:6 VA.R. 878	12/13/06
12 VAC 5-31-230	Amended	23:6 VA.R. 878	12/13/06
12 VAC 5-31-1610	Amended	23:5 VA.R. 745	12/13/06
12 VAC 5-31-2000 through 12 VAC 5-31-2260	Repealed	23:6 VA.R. 879-888	12/13/06
12 VAC 5-60-10 through 12 VAC 5-60-260	Repealed	23:5 VA.R. 745	12/13/06
12 VAC 5-480-10 through 12 VAC 5-480-8920	Repealed	22:25 VA.R. 3877	9/20/06
12 VAC 5-481-10 through 12 VAC 5-481-3670	Added	22:25 VA.R. 3877	9/20/06
12 VAC 5-585-70	Amended	23:3 VA.R. 438	11/9/06
12 VAC 5-585-510	Amended	23:3 VA.R. 438	11/9/06
12 VAC 5-585-600 through 12 VAC 5-585-630	Amended	23:3 VA.R. 442-450	11/9/06
12 VAC 5-590-10	Amended	22:24 VA.R. 3677	9/6/06
12 VAC 5-590-370	Amended	22:24 VA.R. 3683	9/6/06
12 VAC 5-590-410	Amended	22:24 VA.R. 3708	9/6/06
12 VAC 5-590-440	Amended	22:24 VA.R. 3711	9/6/06
12 VAC 5-590-505	Added	23:1 VA.R. 47	10/18/06
12 VAC 5-590, Appendix N	Amended	22:24 VA.R. 3717	9/6/06
12 VAC 5-590, Appendix O	Erratum	23:7 VA.R. 1112	9/6/06
12 VAC 5-590-545	Amended	22:24 VA.R. 3712	9/6/06
12 VAC 5-590-820	Amended	22:24 VA.R. 3717	9/6/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-40-10	Amended	22:23 VA.R. 3376	8/23/06
12 VAC 30-40-290	Amended	22:23 VA.R. 3377	8/23/06
12 VAC 30-40-300	Amended	22:23 VA.R. 3379	8/23/06
12 VAC 30-40-360	Added	22:23 VA.R. 3385	8/23/06
12 VAC 30-50-190	Amended	22:23 VA.R. 3386	8/23/06
12 VAC 30-70-221 emer	Amended	22:26 VA.R. 4183	9/4/06-9/3/07
12 VAC 30-70-291	Amended	22:23 VA.R. 3388	8/23/06
12 VAC 30-70-301	Amended	22:25 VA.R. 3921	11/6/06
12 VAC 30-70-425	Amended	22:23 VA.R. 3389	8/23/06
12 VAC 30-70-426	Repealed	22:23 VA.R. 3390	8/23/06
12 VAC 30-80-20	Amended	22:23 VA.R. 3390	8/23/06
12 VAC 30-80-30	Amended	22:23 VA.R. 3393	8/23/06
12 VAC 30-80-75 emer	Added	23:7 VA.R. 1067	11/21/06-11/20/07
12 VAC 30-90-19	Amended	22:23 VA.R. 3395	8/23/06
12 VAC 30-110-90	Amended	22:26 VA.R. 4168	11/20/06
12 VAC 30-110-370	Amended	22:26 VA.R. 4168	11/20/06
12 VAC 30-110-710	Amended	22:23 VA.R. 3385	8/23/06
12 VAC 30-110-960	Amended	22:23 VA.R. 3385	8/23/06
12 VAC 30-120-215	Amended	22:24 VA.R. 3718	9/6/06
12 VAC 30-120-280	Amended	22:26 VA.R. 4170	11/20/06
12 VAC 30-120-290	Amended	22:26 VA.R. 4172	11/20/06
12 VAC 30-120-310	Amended	22:26 VA.R. 4172	11/20/06
12 VAC 30-120-320	Amended	22:26 VA.R. 4173	11/20/06
12 VAC 30-120-380	Amended	22:23 VA.R. 3386	8/23/06
12 VAC 30-120-720	Amended	22:24 VA.R. 3721	9/6/06
12 VAC 30-120-920	Amended	22:24 VA.R. 3724	9/6/06
12 VAC 30-141-10	Amended	22:26 VA.R. 4147	10/4/06
12 VAC 30-141-10	Amended	23:7 VA.R. 1083	1/10/07
12 VAC 30-141-40	Amended	22:26 VA.R. 4149	10/4/06
12 VAC 30-141-100	Amended	22:26 VA.R. 4150	10/4/06
12 VAC 30-141-100	Amended	23:7 VA.R. 1085	1/10/07
12 VAC 30-141-120	Amended	23:7 VA.R. 1086	1/10/07
12 VAC 30-141-150	Amended	23:7 VA.R. 1087	1/10/07
12 VAC 30-141-160	Amended	22:26 VA.R. 4151	10/4/06
12 VAC 30-141-170	Repealed	22:26 VA.R. 4152	10/4/06
12 VAC 30-141-175	Added	22:26 VA.R. 4153	10/4/06
12 VAC 30-141-180	Amended	23:7 VA.R. 1088	1/10/07
12 VAC 30-141-200	Amended	22:23 VA.R. 3387	8/23/06
12 VAC 30-141-200	Amended	22:26 VA.R. 4155	10/4/06
12 VAC 30-141-500	Amended	22:16 VA.R. 2385	7/3/06
12 VAC 30-141-500	Amended	22:23 VA.R. 3387	8/23/06
12 VAC 30-141-650	Amended	23:7 VA.R. 1088	1/10/07
12 VAC 30-141-670 through 12 VAC 30-141-880	Added	23:7 VA.R. 1089-1098	1/10/07
12 VAC 30-150-40	Amended	22:25 VA.R. 3924	11/6/06
12 VAC 30-150-50	Amended	22:25 VA.R. 3925	11/6/06
12 VAC 30-150-70	Amended	22:25 VA.R. 3925	11/6/06
12 VAC 30-150-80	Amended	22:25 VA.R. 3926	11/6/06
12 VAC 30-150-90	Amended	22:25 VA.R. 3926	11/6/06
12 VAC 35-115-10 through 12 VAC 35-115-150	Amended	23:1 VA.R. 50-79	10/18/06
12 VAC 35-115-145	Added	23:1 VA.R. 76	10/18/06
12 VAC 35-115-146	Added	23:1 VA.R. 77	10/18/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 35-115-160	Repealed	23:1 VA.R. 79	10/18/06
12 VAC 35-115-170 through 12 VAC 35-115-250	Amended	23:1 VA.R. 79-91	10/18/06
<b>Title 13. Housing</b>			
13 VAC 10-50-10 through 13 VAC 10-50-100	Repealed	23:5 VA.R. 746	11/1/06
13 VAC 10-120-10 through 13 VAC 10-120-80	Amended	23:5 VA.R. 746-748	11/1/06
<b>Title 14. Insurance</b>			
14 VAC 5-30-20	Erratum	22:24 VA.R. 3755	--
14 VAC 5-30-80	Erratum	22:24 VA.R. 3755	--
14 VAC 5-260 (Forms)	Erratum	22:24 VA.R. 3756	--
14 VAC 5-260-10	Amended	23:2 VA.R. 253	10/2/06
14 VAC 5-260-20	Repealed	23:2 VA.R. 253	10/2/06
14 VAC 5-260-30 through 14 VAC 5-260-60	Amended	23:2 VA.R. 253-257	10/2/06
14 VAC 5-260-80	Amended	23:2 VA.R. 257	10/2/06
14 VAC 5-260-90	Amended	23:2 VA.R. 257	10/2/06
14 VAC 5-260-110	Added	23:2 VA.R. 258	10/2/06
<b>Title 16. Labor and Employment</b>			
16 VAC 25-60-10	Amended	22:25 VA.R. 3878	9/21/06
16 VAC 25-60-30	Amended	22:25 VA.R. 3879	9/21/06
16 VAC 25-60-40	Amended	22:25 VA.R. 3879	9/21/06
16 VAC 25-60-80	Amended	22:25 VA.R. 3879	9/21/06
16 VAC 25-60-90	Amended	22:25 VA.R. 3880	9/21/06
16 VAC 25-60-100	Amended	22:25 VA.R. 3881	9/21/06
16 VAC 25-60-120 through 16 VAC 25-60-150	Amended	22:25 VA.R. 3882-3883	9/21/06
16 VAC 25-60-190	Amended	22:25 VA.R. 3883	9/21/06
16 VAC 25-60-260	Amended	22:25 VA.R. 3884	9/21/06
16 VAC 25-60-300	Amended	22:25 VA.R. 3885	9/21/06
16 VAC 25-60-320	Amended	22:25 VA.R. 3885	9/21/06
16 VAC 25-60-340	Amended	22:25 VA.R. 3886	9/21/06
16 VAC 25-90-1910.95	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.134	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.178	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.266	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.441	Repealed	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1000	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1001	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1017	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1018	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1020	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1025	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1027	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1028	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1029	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1030	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1043	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1045	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1047	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1048	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1050	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1051	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-90-1910.1052	Amended	22:23 VA.R. 3396	9/1/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.1450	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-100-1915.1001	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.60	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.62	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.754	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1092	Repealed	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1101	Amended	22:23 VA.R. 3396	9/1/06
16 VAC 25-175-1926.1127	Amended	22:23 VA.R. 3396	9/1/06
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 10-20-10	Amended	23:1 VA.R. 96	2/1/07
18 VAC 10-20-15	Amended	23:1 VA.R. 97	2/1/07
18 VAC 10-20-17	Added	23:1 VA.R. 97	2/1/07
18 VAC 10-20-20	Amended	23:1 VA.R. 97	2/1/07
18 VAC 10-20-25	Added	23:1 VA.R. 98	2/1/07
18 VAC 10-20-30	Repealed	23:1 VA.R. 98	2/1/07
18 VAC 10-20-60	Repealed	23:1 VA.R. 99	2/1/07
18 VAC 10-20-35 through 18 VAC 10-20-55	Amended	23:1 VA.R. 98-99	2/1/07
18 VAC 10-20-70	Amended	23:1 VA.R. 99	2/1/07
18 VAC 10-20-75	Amended	23:1 VA.R. 99	2/1/07
18 VAC 10-20-80	Repealed	23:1 VA.R. 99	2/1/07
18 VAC 10-20-85	Added	23:1 VA.R. 99	2/1/07
18 VAC 10-20-90 through 18 VAC 10-20-420	Amended	23:1 VA.R. 99-110	2/1/07
18 VAC 10-20-440 through 18 VAC 10-20-560	Amended	23:1 VA.R. 110-113	2/1/07
18 VAC 10-20-565	Repealed	23:1 VA.R. 114	2/1/07
18 VAC 10-20-570 through 18 VAC 10-20-620	Amended	23:1 VA.R. 113-116	2/1/07
18 VAC 10-20-625	Repealed	23:1 VA.R. 116	2/1/07
18 VAC 10-20-630 through 18 VAC 10-20-660	Amended	23:1 VA.R. 116-117	2/1/07
18 VAC 10-20-665	Repealed	23:1 VA.R. 117	2/1/07
18 VAC 10-20-670 through 18 VAC 10-20-795	Amended	23:1 VA.R. 117-122	2/1/07
18 VAC 15-20-20	Amended	23:3 VA.R. 451	12/1/06
18 VAC 15-20-30	Repealed	23:3 VA.R. 453	12/1/06
18 VAC 15-20-31	Added	23:3 VA.R. 454	12/1/06
18 VAC 15-20-32	Added	23:3 VA.R. 454	12/1/06
18 VAC 15-20-33	Added	23:3 VA.R. 457	12/1/06
18 VAC 15-20-33	Erratum	23:5 VA.R. 791	--
18 VAC 15-20-34	Added	23:3 VA.R. 458	12/1/06
18 VAC 15-20-40	Repealed	23:3 VA.R. 459	12/1/06
18 VAC 15-20-50	Repealed	23:3 VA.R. 459	12/1/06
18 VAC 15-20-51	Added	23:3 VA.R. 459	12/1/06
18 VAC 15-20-52	Added	23:3 VA.R. 459	12/1/06
18 VAC 15-20-53	Added	23:3 VA.R. 459	12/1/06
18 VAC 15-20-60	Amended	23:3 VA.R. 460	12/1/06
18 VAC 15-20-70	Amended	23:3 VA.R. 460	12/1/06
18 VAC 15-20-80 through 18 VAC 15-20-150	Repealed	23:3 VA.R. 461	12/1/06
18 VAC 15-20-250 through 18 VAC 15-20-361	Repealed	23:3 VA.R. 461-463	12/1/06
18 VAC 15-20-400 through 18 VAC 15-20-451	Amended	23:3 VA.R. 464-466	12/1/06
18 VAC 15-20-453	Amended	23:3 VA.R. 466	12/1/06
18 VAC 15-20-456	Amended	23:3 VA.R. 466	12/1/06
18 VAC 15-20-459.6 through 18 VAC 15-20-460	Repealed	23:3 VA.R. 466-468	12/1/06
18 VAC 15-20-461	Added	23:3 VA.R. 468	12/1/06
18 VAC 15-20-462	Added	23:3 VA.R. 468	12/1/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 15-20-463	Added	23:3 VA.R. 469	12/1/06
18 VAC 15-20-464	Added	23:3 VA.R. 469	12/1/06
18 VAC 15-20-470	Amended	23:3 VA.R. 469	12/1/06
18 VAC 15-30-30	Repealed	23:3 VA.R. 471	12/1/06
18 VAC 15-30-40	Repealed	23:3 VA.R. 471	12/1/06
18 VAC 15-30-50	Repealed	23:3 VA.R. 471	12/1/06
18 VAC 15-30-51 through 18 VAC 15-30-54	Added	23:3 VA.R. 472-475	12/1/06
18 VAC 15-30-100 through 18 VAC 15-30-330	Repealed	23:3 VA.R. 475-481	12/1/06
18 VAC 15-30-161 through 18 VAC 15-30-167	Added	23:3 VA.R. 477-479	12/1/06
18 VAC 15-30-332	Added	23:3 VA.R. 481	12/1/06
18 VAC 15-30-334	Added	23:3 VA.R. 481	12/1/06
18 VAC 15-30-420	Amended	23:3 VA.R. 481	12/1/06
18 VAC 15-30-510	Amended	23:3 VA.R. 482	12/1/06
18 VAC 15-30-810	Amended	23:3 VA.R. 483	12/1/06
18 VAC 15-30-820	Amended	23:3 VA.R. 484	12/1/06
18 VAC 25-21-70	Amended	22:26 VA.R. 4155	11/1/06
18 VAC 25-21 (Forms)	Amended	22:26 VA.R. 4155	--
18 VAC 30-20-80 emer	Amended	22:26 VA.R. 4186	9/1/06-8/31/07
18 VAC 30-20-170 emer	Amended	22:26 VA.R. 4186	9/1/06-8/31/07
18 VAC 30-20-171 emer	Added	22:26 VA.R. 4186	9/1/06-8/31/07
18 VAC 41-30-10 through 18 VAC 41-30-250	Added	23:1 VA.R. 124-131	11/1/06
18 VAC 41-50-10 through 18 VAC 41-50-420	Added	22:25 VA.R. 3887-3900	10/1/06
18 VAC 50-22-40 emer	Amended	23:1 VA.R. 131	8/21/06-8/20/07
18 VAC 50-22-50 emer	Amended	23:1 VA.R. 132	8/21/06-8/20/07
18 VAC 50-22-60 emer	Amended	23:1 VA.R. 133	8/21/06-8/20/07
18 VAC 50-22-300 through 18 VAC 50-22-350 emer	Added	23:1 VA.R. 134	8/21/06-8/20/07
18 VAC 60-20-10	Amended	22:23 VA.R. 3397	8/23/06
18 VAC 60-20-20	Amended	22:23 VA.R. 3398	8/23/06
18 VAC 60-20-20	Amended	23:7 VA.R. 1098	1/10/07
18 VAC 60-20-30	Amended	23:7 VA.R. 1099	1/10/07
18 VAC 60-20-71	Added	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-100	Amended	22:24 VA.R. 3749	10/23/06
18 VAC 60-20-105	Amended	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-106	Amended	22:23 VA.R. 3399	8/23/06
18 VAC 60-20-108	Amended	22:26 VA.R. 4175	11/18/06
18 VAC 60-20-210	Amended	22:23 VA.R. 3400	8/23/06
18 VAC 60-20-230	Amended	22:23 VA.R. 3400	8/23/06
18 VAC 60-20-250	Amended	23:7 VA.R. 1099	1/10/07
18 VAC 60-20 (Forms)	Amended	23:7 VA.R. 1100	1/10/07
18 VAC 65-20-70	Amended	23:7 VA.R. 1102	1/10/07
18 VAC 65-20-130	Amended	23:7 VA.R. 1103	1/10/07
18 VAC 65-20-140	Amended	23:7 VA.R. 1103	1/10/07
18 VAC 65-20-154	Amended	23:7 VA.R. 1103	1/10/07
18 VAC 65-20 (Forms)	Amended	23:7 VA.R. 1103	1/10/07
18 VAC 70-20-30	Amended	22:26 VA.R. 4156	11/1/06
18 VAC 70-20-50	Amended	22:26 VA.R. 4156	11/1/06
18 VAC 70-20 (Forms)	Amended	22:26 VA.R. 4156	--
18 VAC 76-20-10	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-20	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-30	Amended	22:23 VA.R. 3402	8/23/06

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18 VAC 76-20-50	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-60	Amended	22:23 VA.R. 3402	8/23/06
18 VAC 76-20-70	Added	22:23 VA.R. 3403	8/23/06
18 VAC 85-20-22 emer	Amended	22:26 VA.R. 4187	9/1/06-8/31/07
18 VAC 85-20-122	Amended	22:26 VA.R. 4157	10/4/06
18 VAC 85-20-226 emer	Added	22:26 VA.R. 4188	9/1/06-8/31/07
18 VAC 85-20-330	Amended	22:25 VA.R. 3901	9/20/06
18 VAC 85-40-35 emer	Amended	22:26 VA.R. 4189	9/1/06-8/31/07
18 VAC 85-40-67 emer	Added	22:26 VA.R. 4190	9/1/06-8/31/07
18 VAC 85-50-35 emer	Amended	22:26 VA.R. 4190	9/1/06-8/31/07
18 VAC 85-50-61 emer	Added	22:26 VA.R. 4191	9/1/06-8/31/07
18 VAC 85-80-26 emer	Amended	22:26 VA.R. 4191	9/1/06-8/31/07
18 VAC 85-80-73 emer	Added	22:26 VA.R. 4191	9/1/06-8/31/07
18 VAC 85-101-25 emer	Amended	22:26 VA.R. 4192	9/1/06-8/31/07
18 VAC 85-101-153 emer	Added	22:26 VA.R. 4192	9/1/06-8/31/07
18 VAC 85-110-35 emer	Amended	22:26 VA.R. 4193	9/1/06-8/31/07
18 VAC 85-110-161 emer	Added	22:26 VA.R. 4193	9/1/06-8/31/07
18 VAC 90-25-15 through 18 VAC 90-25-80	Amended	23:3 VA.R. 487-492	11/14/06
18 VAC 90-25-71	Added	23:3 VA.R. 491	11/14/06
18 VAC 90-25-72	Added	23:3 VA.R. 491	11/14/06
18 VAC 90-25-81	Added	23:3 VA.R. 492	11/14/06
18 VAC 90-25-100 through 18 VAC 90-25-130	Amended	23:3 VA.R. 492-494	11/14/06
18 VAC 90-30-10 emer	Amended	22:26 VA.R. 4194	9/1/06-8/31/07
18 VAC 90-30-80	Amended	22:26 VA.R. 4177	11/18/06
18 VAC 90-30-120 emer	Amended	22:26 VA.R. 4195	9/1/06-8/31/07
18 VAC 90-30-121 emer	Added	22:26 VA.R. 4195	9/1/06-8/31/07
18 VAC 95-20-220	Amended	22:26 VA.R. 4157	10/4/06
18 VAC 95-20-221	Added	22:26 VA.R. 4158	10/4/06
18 VAC 95-20-310	Amended	22:26 VA.R. 4158	10/4/06
18 VAC 95-20-330	Amended	22:26 VA.R. 4158	10/4/06
18 VAC 95-20-340	Amended	22:26 VA.R. 4159	10/4/06
18 VAC 95-20-380	Amended	22:26 VA.R. 4159	10/4/06
18 VAC 95-20-390	Amended	22:26 VA.R. 4159	10/4/06
18 VAC 105-20-20	Amended	22:26 VA.R. 4159	10/4/06
18 VAC 110-20-20	Amended	22:15 VA.R. 2321	5/3/06
18 VAC 110-20-20	Erratum	22:16 VA.R. 2399	--
18 VAC 110-20-20	Amended	22:24 VA.R. 3726	9/6/06
18 VAC 110-20-20	Erratum	22:25 VA.R. 3935	--
18 VAC 110-20-20	Amended	23:4 VA.R. 635	11/29/06
18 VAC 110-20-70	Amended	22:24 VA.R. 3751	10/23/06
18 VAC 110-20-630	Amended	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-640	Repealed	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-660	Repealed	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-670	Repealed	22:24 VA.R. 3728	9/6/06
18 VAC 110-20-720	Amended	23:4 VA.R. 634	11/29/06
18 VAC 110-30-15	Amended	23:4 VA.R. 637	11/29/06
18 VAC 110-50-10 through 18 VAC 110-50-150	Added	22:24 VA.R. 3729-3735	9/6/06
18 VAC 110-50-20	Amended	23:4 VA.R. 637	11/29/06
18 VAC 112-20-50	Amended	22:23 VA.R. 3404	8/23/06
18 VAC 112-20-65	Amended	22:23 VA.R. 3404	8/23/06
18 VAC 120-30-100	Amended	23:3 VA.R. 497	12/11/06



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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 155-20-10	Amended	22:26 VA.R. 4160	11/1/06
18 VAC 155-20-110	Amended	22:26 VA.R. 4161	11/1/06
18 VAC 155-20-120	Amended	22:26 VA.R. 4161	11/1/06
18 VAC 155-20-160	Amended	22:26 VA.R. 4162	11/1/06
18 VAC 155-20-220	Amended	22:26 VA.R. 4163	11/1/06
18 VAC 155-20-280	Amended	22:26 VA.R. 4166	11/1/06
18 VAC 155-20 (Forms)	Amended	22:26 VA.R. 4166	--
18 VAC 160-20-10	Amended	23:1 VA.R. 136	12/1/06
18 VAC 160-20-74	Amended	23:1 VA.R. 137	12/1/06
18 VAC 160-20-76	Amended	22:26 VA.R. 4179	12/1/06
18 VAC 160-20-90	Amended	22:26 VA.R. 4180	12/1/06
18 VAC 160-20-95	Added	23:1 VA.R. 137	12/1/06
18 VAC 160-20-104	Amended	23:1 VA.R. 137	12/1/06
18 VAC 160-20-106	Amended	23:1 VA.R. 137	12/1/06
18 VAC 160-20-109	Amended	23:1 VA.R. 138	12/1/06
18 VAC 160-20-140	Amended	23:1 VA.R. 139	12/1/06
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-315 (Form)	Amended	23:4 VA.R. 639	--
20 VAC 5-315-10	Amended	23:3 VA.R. 500	9/26/06
20 VAC 5-315-20	Amended	23:3 VA.R. 500	9/26/06
20 VAC 5-315-30	Amended	23:3 VA.R. 500	9/26/06
20 VAC 5-315-40	Amended	23:3 VA.R. 501	9/26/06
20 VAC 5-413-5	Added	23:3 VA.R. 504	12/1/06
20 VAC 5-413-10	Amended	23:3 VA.R. 504	12/1/06
20 VAC 5-413-20	Amended	23:3 VA.R. 505	12/1/06
20 VAC 5-413-25	Added	23:3 VA.R. 505	12/1/06
20 VAC 5-413-30	Amended	23:3 VA.R. 505	12/1/06
20 VAC 5-413-35	Added	23:3 VA.R. 506	12/1/06
20 VAC 5-413-40	Amended	23:3 VA.R. 506	12/1/06
20 VAC 5-413-50	Added	23:3 VA.R. 506	12/1/06
<b>Title 22. Social Services</b>			
22 VAC 40-35-10 emer	Amended	22:26 VA.R. 4196	9/1/06-8/31/07
22 VAC 40-35-80 emer	Amended	22:26 VA.R. 4198	9/1/06-8/31/07
22 VAC 40-35-90 emer	Amended	22:26 VA.R. 4198	9/1/06-8/31/07
22 VAC 40-35-100 emer	Amended	22:26 VA.R. 4199	9/1/06-8/31/07
22 VAC 40-71	Repealed	23:6 VA.R. 892	12/28/06
22 VAC 40-72-10 through 22 VAC 40-72-1160	Added	23:6 VA.R. 893-952	12/28/06
22 VAC 40-72-789	Erratum	22:26 VA.R. 4207	--
22 VAC 40-72-1060	Erratum	22:26 VA.R. 4207	--
22 VAC 40-80-60	Amended	23:6 VA.R. 952	12/28/06
22 VAC 40-80-120	Amended	23:6 VA.R. 952	12/28/06
22 VAC 40-80-340	Amended	23:6 VA.R. 953	12/28/06
22 VAC 40-80-345	Added	23:6 VA.R. 954	12/28/06
22 VAC 40-80-370	Amended	23:6 VA.R. 955	12/28/06
22 VAC 40-80-430	Amended	23:6 VA.R. 955	12/28/06
22 VAC 40-325-10	Amended	22:25 VA.R. 3901	10/1/06
22 VAC 40-325-20	Amended	22:25 VA.R. 3902	10/1/06
22 VAC 40-745-10 through 22 VAC 40-745-70	Amended	23:1 VA.R. 140-145	11/1/06
22 VAC 40-745-90	Amended	23:1 VA.R. 145	11/1/06
22 VAC 40-745-100	Amended	23:1 VA.R. 145	11/1/06

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-745-110	Amended	23:1 VA.R. 145	11/1/06
22 VAC 40-901-10	Amended	22:25 VA.R. 3903	10/1/06
22 VAC 40-901-40 through 22 VAC 40-901-90	Added	22:25 VA.R. 3903-3905	10/1/06
<b>Title 23. Taxation</b>			
23 VAC 10-70	Repealed	23:6 VA.R. 956	2/10/07
23 VAC 10-75-30 through 23 VAC 10-75-60	Repealed	23:6 VA.R. 958-959	2/10/07
23 VAC 10-112-50 through 23 VAC 10-112-90	Repealed	23:6 VA.R. 960-961	2/10/07
23 VAC 10-115-30	Repealed	23:6 VA.R. 962	2/10/07
23 VAC 10-115-120	Repealed	23:6 VA.R. 962	2/10/07
23 VAC 10-115-130	Repealed	23:6 VA.R. 962	2/10/07
23 VAC 10-140-20	Repealed	23:6 VA.R. 963	2/10/07
23 VAC 10-140-30	Repealed	23:6 VA.R. 964	2/10/07
23 VAC 10-140-80	Repealed	23:6 VA.R. 964	2/10/07
23 VAC 10-140-90	Repealed	23:6 VA.R. 964	2/10/07
23 VAC 10-140-120	Repealed	23:6 VA.R. 964	2/10/07
23 VAC 10-140-140 through 23 VAC 10-140-180	Repealed	23:6 VA.R. 964-965	2/10/07
23 VAC 10-140-210	Repealed	23:6 VA.R. 965	2/10/07
23 VAC 10-140-220	Repealed	23:6 VA.R. 965	2/10/07
23 VAC 10-140-240 through 23 VAC 10-140-270	Repealed	23:6 VA.R. 965	2/10/07
23 VAC 10-220-80 and 23 VAC 10-220-90	Repealed	23:6 VA.R. 967	2/10/07
23 VAC 10-230-50	Repealed	23:6 VA.R. 968	2/10/07
23 VAC 10-310-10	Repealed	23:6 VA.R. 970	2/10/07
23 VAC 10-310-40	Repealed	23:6 VA.R. 970	2/10/07
23 VAC 10-350-50	Repealed	23:6 VA.R. 971	2/10/07
23 VAC 10-350-60	Repealed	23:6 VA.R. 973	2/10/07
23 VAC 10-350-90	Repealed	23:6 VA.R. 974	2/10/07
23 VAC 10-350-100	Repealed	23:6 VA.R. 974	2/10/07
23 VAC 10-360	Repealed	23:6 VA.R. 975	2/10/07
23 VAC 10-370-50	Repealed	23:6 VA.R. 977	2/10/07
23 VAC 10-370-60	Repealed	23:6 VA.R. 977	2/10/07
23 VAC 10-370-150	Repealed	23:6 VA.R. 977	2/10/07
23 VAC 10-390-10	Repealed	23:6 VA.R. 979	2/10/07
23 VAC 10-390-30	Repealed	23:6 VA.R. 979	2/10/07
23 VAC 10-390-50	Repealed	23:6 VA.R. 979	2/10/07
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-271-10	Amended	23:2 VA.R. 259	11/1/06
24 VAC 30-271-20	Amended	23:2 VA.R. 259	11/1/06
24 VAC 30-550	Repealed	22:24 VA.R. 3736	9/6/06
24 VAC 30-551-10 through 24 VAC 30-551-100	Added	22:24 VA.R. 3736-3744	9/6/06
24 VAC 30-600	Repealed	22:24 VA.R. 3736	9/6/06

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# PETITIONS FOR RULEMAKING

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Agency Decision

Title of Regulation: **9 VAC 25-720. Water Quality Management Planning Regulation.**

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

Name of Petitioner: Mayor Richard L. Fox, Town of Craigsville, Virginia.

Nature of Petitioner's Request: The Town of Craigsville has requested an amendment of the Water Quality Management Planning Regulation (9 VAC 25-720) to assign nutrient waste load allocations for a new wastewater treatment plant. The town currently operates a 0.25 MGD wastewater plant that provides final treatment using spray irrigation under a Virginia pollution abatement permit (no surface water discharge). The existing plant is not a "significant discharger" for the purpose of assigning nutrient waste load allocations, and for that reason was not included in the Water Quality Management Planning Regulation amendments (9 VAC 25-720) adopted by the State Water Control Board in 2005. Further, since there is no surface water discharge, the plant has no design capacity as a nonsignificant discharger would. As a result, the plant has zero nutrient waste load allocations and would be identified as a new discharge required to completely offset the additional nutrient load if it discharged to state waters.

The town recently applied for a VPDES discharge permit for a new 0.435 MGD plant, and has petitioned for nutrient waste load allocations as follows:

- Total Nitrogen = 10,600 lbs/yr (based on 0.435 MGD and 8.0 mg/l annual average TN concentration)
- Total Phosphorus = 1,325 lbs/yr (based on 0.435 MGD and 1.0 mg/l annual average TP concentration)

Agency Decision: Request denied.

Statement of Reasons for Decision: The denial of Craigsville's petition for nutrient waste load allocations was based on these factors:

1. Craigsville's wastewater treatment plant was a no-discharge facility during the rulemaking for nutrient discharge control regulations. Therefore, it was neither a significant discharger to be assigned nutrient waste load allocations, nor was it eligible to receive a "permitted design capacity" as a nonsignificant discharger to surface waters would.

2. Craigsville applied for a VPDES permit on November 4, 2005. As a result, the facility is considered a new discharge under the Nutrient Credit Exchange Program

law. As a new facility authorized to discharge by a VPDES permit first issued after July 1, 2005, per Virginia Code § 62.1-44.19:15 A 4, Craigsville must:

- acquire waste load allocations sufficient to offset the delivered nutrient loads (i.e., nitrogen and phosphorus waste load allocations for the new plant are equal to zero);

- at a minimum, install biological nutrient removal technology.

Agency Contact: John M. Kennedy, Chesapeake Bay Program Manager, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23219, telephone (804) 698-4312, FAX (804) 698-4116, toll free 1-800-592-5482, or email [jmkennedy@deq.virginia.gov](mailto:jmkennedy@deq.virginia.gov).

VA.R. Doc. No. R06-270; Filed November 28, 2006, 12:14 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Initial Agency Notice

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

Statutory Authority: § 54.1-2400 and Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Name of Petitioner: Donald Blevins, RPh.

Nature of Petitioner's Request: Amend regulations to eliminate or suspend the continuing education (CE) requirements for pharmacy technicians as there are no CE programs for technicians.

Agency's Plan for Disposition of Request: The board will receive public comment on the petition for rulemaking until January 24, 2007, and will review the petition and any comment at its meeting on March 29, 2007, to make a decision on whether to initiate rulemaking.

Comments may be submitted until January 24, 2007.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 West Broad Street, Richmond, VA 23230-1712, telephone (804) 662-9911, FAX (804) 662-9313, or email [scotti.russell@dhp.virginia.gov](mailto:scotti.russell@dhp.virginia.gov).

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# Petitions for Rulemaking

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## BOARD OF COUNSELING

### Agency Decision

Title of Regulation: **18 VAC 115-50. Regulations Governing the Practice of Marriage and Family Therapy.**

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

Name of Petitioner: Arnold Woodruff, M.S., for the Virginia Association for Marriage and Family Therapy.

Nature of Petitioner's Request: To amend regulations to (i) require that at least 1/2 of the required 100 hours of supervision be provided by a licensed marriage and family therapist (MFT) qualified as a supervisor and (ii) eliminate the provision that allows a licensed professional counselor to become a MFT without taking the national examination.

Agency Decision: Request granted.

Statement of Reasons for Decision: The board has concurred that (i) at least 100 of the 200 required hours of supervision should be by a licensed MFT bringing the standard into symmetry with that of LPCs and (ii) all applicants for MFT licensure should be required to take the national MFT exam. The board has agreed to proceed with a Notice of Intended Regulatory Action to amend regulations accordingly.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 6603 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-7250, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

VA.R. Doc. No. R06-319; Filed December 6, 2006, 9:24 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

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

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9 VAC 25-193, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities**. The purpose of the proposed action is to amend, as necessary, and reissue the general VPDES permit covering point source discharges for concrete products facilities.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act (33 USC 1251 et seq.); 40 CFR Parts 122, 123, and 124.

Public comments may be submitted until 5 p.m. on December 28, 2006.

**Contact:** Michael B. Gregory, Department of Environmental Quality, P.O. Box 1105, 629 E. Main St., Richmond, VA 23218, telephone (804) 698-4065, FAX (804) 698-4032, or email [mbgregory@deq.virginia.gov](mailto:mbgregory@deq.virginia.gov).

VA.R. Doc. No. R07-33; Filed November 7, 2006, 9:45 a.m.

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## 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 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care**. The purpose of the proposed action is to implement new methodology for school division reimbursement.

The agency does not intend to hold a public hearing on the proposed action 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 11, 2007.

**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 email [william.lessard@dmas.virginia.gov](mailto:william.lessard@dmas.virginia.gov).

VA.R. Doc. No. R07-50; Filed November 21, 2006, 11:39 a.m.

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## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to clarify the sales tax application to health care purchases, including prescription and nonprescription drugs, proprietary medicines, controlled drugs, and medical supplies and devices.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on January 10, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email [mark.haskins@tax.virginia.gov](mailto:mark.haskins@tax.virginia.gov).

VA.R. Doc. No. R07-49; Filed November 14, 2006, 11:48 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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to include as exempt tangible personal property that is purchased by churches for use in recording and reproducing religious worship services.

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

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# Notices of Intended Regulatory Action

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Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on January 10, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-48; Filed November 14, 2006, 11:48 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 Taxation intends to consider amending regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to expand the current sales tax exemption to include medicines and drugs purchased by for-profit nursing homes, clinics, etc.

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

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on January 24, 2007.

**Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-52; Filed November 29, 2007, 4:04 p.m.



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# REGULATIONS

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For information concerning the different types of regulations, see the Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

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## 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.

#### Final Regulation

**Title of Regulation:** 4 VAC 20-20. Pertaining to the Licensing of Fixed Fishing Devices (amending 4 VAC 20-20 and 4 VAC 20-20-50).

**Statutory Authority:** § 28.2-201 of the Code of Virginia.

**Effective Date:** November 29, 2006.

**Agency Contact:** Brandy L. Battle, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or email brandy.battle@mrc.virginia.gov.

#### Summary:

*The definition section is amended. The amendments also exempt licensed pound net fishermen from having to fish their pound nets or establish a complete system of nets and poles in 2006 in order to renew their licenses or maintain their priority rights to such locations for 2007.*

#### 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 Modified Pound Net Leader Area" means the area where the National Marine Fisheries Service requires 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 37°19.0' N. lat. and west of 76°13.0' W. long., and all waters south of 37°13.0' 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, be affixed to or resting on the sea floor and made of a lower portion of mesh and upper portion of only vertical lines such that (i) the mesh size is equal to or less than eight inches stretched mesh; (ii) at any particular point along the leader the height of the mesh from the sea floor to the top of the mesh must be no more than one third the depth of the water at mean lower low water directly above that particular point; (iii) the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (iv) the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at a minimum of every two feet; and (v) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch diameter line composed of polyester wrapped around a blend of polypropylene and containing approximately 42 visible twists of strands per foot of line.~~

"Officer" means the marine patrol police 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 that 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 that 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.

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# Regulations

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B. Except as provided in 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. Current pound net licensees ~~with a licensed pound net located in the National Marine Fisheries Service Modified Pound Net Leader Area~~ shall not be required to fish their pound nets or establish a complete system of nets and poles in 2006 in order to renew their licenses or maintain their priority rights to such locations for 2007.

VA.R. Doc. No. R07-75; Filed November 29, 2006, 1:27 p.m.

## Final Regulation

Title of Regulation: **4 VAC 20-252. Pertaining to the Taking of Striped Bass (amending 4 VAC 20-252-10, 4 VAC 20-252-20, 4 VAC 20-252-130, 4 VAC 20-252-135, 4 VAC 20-252-150 and 4 VAC 20-252-160; adding 4 VAC 20-252-155).**

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: January 1, 2007.

Agency Contact: Brandy L. Battle, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or email [brandy.battle@mrc.virginia.gov](mailto:brandy.battle@mrc.virginia.gov).

### Summary:

*The amendments (i) expand the permitting provisions of 4 VAC 20-252-150 and 4 VAC 20-252-160 to the coastal area, specify who is required to purchase a striped bass buyer's license, require restaurants to certify and maintain a record of any striped bass purchased from any harvester for a minimum of one year, modify reporting requirements, and describe the type of records and receipts a self-marketer of striped bass must maintain; (ii) require restaurants to certify and maintain a record of any striped bass purchased from any harvester for a period of not less than one year; (iii) change the color of the flag to optic yellow by those who harvest striped bass from the coastal area; (iv) establish the individual commercial harvest quota of striped bass in pounds and describe how this quota will be converted to tags; (v) establish guidelines and penalties for addressing overages of the individual harvest quotas of striped bass; (vi) change from quota of tags (fish) to a weight (pounds) quota; (vii) provide guidelines for the transfer and distributing of striped bass individual harvest quotas; and (viii) establish requirements for tag returns and allocations and costs associated with nonreturns.*

### **4 VAC 20-252-10. Purpose.**

The purpose of this chapter is to provide for the continued sustained yield from the recovered striped bass stocks in Virginia and to limit the growth of the number of commercial participants in this fishery. The provisions pertaining to aquaculture serve to prevent the escape of cultured hybrid striped bass into the natural environment and to minimize the impact of cultured fish in the market place on the enforcement of other provisions of this chapter.

This regulation is not intended to create any property right in anyone, and the commission reserves the right to change this regulation at any time it deems it necessary because of biological conditions and to change the regulation in all other respects at any time it deems it necessary to carry out its



statutory mission, ~~except that, in order to promote the most effective allocation of tags, the initial allocation system will not be changed this calendar year.~~

**4 VAC 20-252-20. Definitions.**

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commission" means the Marine Resources Commission.

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Share" means a percentage of the striped bass commercial harvest quota ~~of tags.~~

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.
2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.

3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.

4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Striped bass" means any fish of the species *Morone saxatilis*, including any hybrid of the species *Morone saxatilis*.

**4 VAC 20-252-130. Entry limits, permits, and reports.**

A. There is established a special permit for engaging in either the Chesapeake area commercial fishery for striped bass or the coastal area commercial fishery for striped bass, and it shall be unlawful for any person to engage in either commercial fishery for striped bass without first having obtained the permit from the commission and meeting the following conditions:

1. The person shall be a licensed registered commercial fisherman.
2. The person shall have reported all prior fishing activity in accordance with 4 VAC 20-610 and shall not be under any sanction by the Marine Resources Commission for noncompliance with the regulation.

B. Permits for the commercial harvest of striped bass in the Chesapeake area or coastal area shall be issued to any registered commercial fishermen holding striped bass quota shares issued under the provisions of 4 VAC 20-252-150 and 4 VAC 20-252-160, except as provided by subsection C of this section.

C. ~~Initially, permits for the 2003 commercial harvest of striped bass in the coastal area shall be issued as described in subdivisions 1 and 2 of this subsection. Permits shall be in the possession of the permittee while catching, harvesting, selling or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter.~~

1. ~~Permits for the coastal area striped bass commercial fishery shall be limited to any registered commercial fishermen who landed a total of at least 1,000 pounds of striped bass from the coastal area in one year or more from 1993 through 1997 and harvested striped bass from the coastal area in either 2001 or 2002 as documented by the commission's mandatory reporting database, and who choose to surrender 236 tags of his Chesapeake area striped bass harvest quota. Should the coastal area harvest quota described in 4 VAC 20-252-150 B be insufficient to provide permits for all those who qualify according to the requirements in this subdivision, permits shall be granted first on the basis of the total number of years a fisherman landed striped bass from 1993 through 1997, and secondarily on the total number of pounds landed by a fisherman from 1993 through 1997.~~

2. ~~If shares of coastal area quota remain, following the initial permitting process in 2003, as described in~~

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# Regulations

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~~subdivision 1 of this subsection, subsequent permits issued for the 2003 coastal area commercial striped bass fishery shall first be limited, sequentially, to those fishermen who landed the most striped bass beyond a minimum total landings amount of 1,000 pounds from the coastal area during the most number of years from 1993 through 1997 and landed striped bass from the coastal area in either 2001 or 2002 as documented by the commission's mandatory reporting database, and who choose to surrender 236 tags of their Chesapeake area striped bass harvest quota. Secondly, permits issued for the 2003 coastal area commercial striped bass fishery shall be limited, sequentially, to those fishermen who landed the most striped bass, beyond a minimum total landings amount of 1,000 pounds, from the coastal area during the most number of years from 1993 through 1997 as documented by the commission's mandatory reporting database, and who choose to surrender 236 tags of their Chesapeake area striped bass harvest quota.~~

~~3. Permittees for the 2003 commercial harvest of striped bass in the coastal area shall receive an equal share of the coastal area quota of tags.~~

D. It shall be unlawful for any person, business, or corporation, except for licensed restaurants, to purchase from the harvester any quantity of striped bass greater than 10 pounds in total weight taken from Virginia's tidal waters for the purpose of resale without first obtaining a striped bass buyer's permit from the commission, except as described in subsection E of this section. Such permit shall be completed in full by the permittee and kept in possession of the permittee while selling or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter.

E. ~~Permits must be in the possession of the permittee while harvesting, selling or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter. Restaurants shall not be required to obtain a striped bass buyer's permit from the commission but shall be required to certify and maintain a record of any striped bass purchased from any harvester for a period of not less than one year.~~

F. All permitted commercial harvesters of striped bass shall report to the commission in accordance with 4 VAC 20-610. In addition to the reporting requirements of 4 VAC 20-610, all permitted commercial harvesters of striped bass shall record and report daily striped bass ~~tag use and specify harvest by specifying~~ the number of tags used on striped bass harvested for each day in either the Chesapeake area or coastal area and reporting the daily total whole weight of striped bass harvested in either the Chesapeake area or coastal area. Daily striped bass tag use on harvested striped bass ~~harvested and daily total whole weight of harvested striped bass~~ from either the Chesapeake area or coastal area, within

any month, shall be recorded on forms provided by the commission and shall accompany the monthly catch report submitted no later than the fifth day of the following month.

G. Any permitted commercial harvester of striped bass who self markets his striped bass to a restaurant, individual, or out-of-state market shall be required to prepare a receipt describing each sale greater than 10 pounds in total weight. Each receipt shall be a record and report of the date of transaction, name and signature of buyer, address and phone number of buyer, number and total weight of striped bass sold, and name and signature of harvester. Copies of each receipt shall be forwarded to the commission in accordance with 4 VAC 20-610.

~~G. H.~~ Any buyer permitted to purchase striped bass harvested from Virginia tidal waters shall provide written reports to the commission of daily purchases and harvest information on forms provided by the Marine Resources Commission. Such information shall include the date of the purchase, buyer's and harvester's striped bass permit numbers, and harvester's Commercial Fisherman Registration License number. In addition, for each different purchase of striped bass harvested from Virginia waters, the buyer shall record the gear type, water area fished, city or county of landing, weight of whole fish, and number and type of tags (Chesapeake area or coastal area) that applies to that harvest. These reports shall be completed in full and submitted monthly to the Marine Resources Commission no later than the fifth day of the following month. In addition, during the month of December, each permitted buyer shall call the Marine Resources Commission interactive voice recording system on a daily basis to report his name and permit number, date, pounds of Chesapeake area striped bass purchased and pounds of coastal area striped bass purchased.

~~H. I.~~ Failure of any person permitted to harvest, buy, or sell striped bass, to submit the required written report for any fishing day shall constitute a violation of this chapter.

## **4 VAC 20-252-135. Gill net mesh size and tending restrictions: exemptions.**

A. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4 VAC 20-252-130 C and sets or fishes any gill net in the coastal area shall be exempt from the maximum gill net mesh size requirements during November and December as described in 4 VAC 20-430-65 A and B.

B. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area in accordance with 4 VAC 20-252-130 C and sets or fishes any gill net seven inches or greater in stretched mesh in the coastal area shall be exempt from the tending requirements described in 4 VAC 20-430-65 E and F during the months of November and December.

C. Any registered commercial fisherman who is permitted to harvest striped bass from the coastal area, in accordance with 4 VAC 20-252-130 C, shall display ~~a fluorescent orange an optic yellow flag, of dimensions not less than 30 inches in length and 18 inches in width,~~ issued by the commission while fishing for striped bass in the coastal area and while transiting the coastal area before and after a striped bass fishing trip. This flag shall be prominently displayed on the starboard side of the vessel.

D. It shall be unlawful for any registered commercial fisherman who is permitted to harvest striped bass from Virginia waters and possesses striped bass tags on board a vessel to place, set, fish or possess aboard a vessel any gill net with a stretched mesh size greater than nine inches, from February 1, 2006, through March 31, 2006, and November 1, 2006, through December 31, 2006.

**4 VAC 20-252-150. Commercial Individual commercial harvest quota; conversion to striped bass tags.**

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be 1,554,302 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach 1,554,302 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be 184,853 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach 184,853 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning ~~individual shares~~ an individual's tags for commercial harvests in the Chesapeake area, as described in 4 VAC 20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to ~~a quota~~ an estimate in numbers of fish per individual harvest quota based on ~~the estimate~~ of the average weight of striped bass harvested by the permitted individual during the previous fishing year. ~~One striped bass tag shall be provided for each striped bass in the total quota to arrive at the commercial harvest quota of tags.~~ The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

D. For the purposes of assigning ~~individual shares,~~ an individual's tags for commercial harvests in the coastal area of Virginia as described in 4 VAC 20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish per individual commercial harvest quota, based on the estimate of the average weight of striped bass harvested by the permitted individual during the previous fishing year. ~~One striped bass tag shall be provided for each striped bass in the total quota, to arrive at the commercial harvest quota of tags.~~ The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

**4 VAC 20-252-155. Individual transferable shares monitoring and penalties.**

A. Any initial overage by any person of an individual commercial harvest quota during any calendar year shall be considered a first offense, with penalties prescribed according to the severity of the overage as described in subdivisions 1 through 5 of this subsection.

1. Any overage in pounds that ranges from zero to 3.0% or less than 200 pounds, whichever is lower, shall result in a warning being issued.

2. Any overage in pounds that ranges from 4.0% to 10% shall result in a one year deduction of that overage from that individual commercial harvest quota during the following calendar year.

3. Any overage in pounds that ranges from 11% to 20% shall result in a one year deduction of two times that overage from that individual commercial harvest quota during the following calendar year.

4. Any overage in pounds that ranges from 21% to 30% shall result in that overage being permanently deducted from that individual commercial harvest quota and a one year suspension of that individual from the commercial fishery for striped bass.

5. Any overage in pounds that is greater than 30% shall result in the revocation of that individual striped bass permit, and that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

B. Any second overage by any person of an individual commercial harvest quota within five years of a previous offense shall result in penalties prescribed according to the severity of the overage as described in subdivisions 1 through 4 of this subsection.

1. Any overage in pounds that ranges from zero to 3.0% or less than 200 pounds, whichever is lower, shall result in a one year deduction of the overage from that individual

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# Regulations

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commercial harvest quota during the following calendar year.

2. Any overage in pounds that ranges from 4.0% to 10% shall result in a one year deduction of two times the overage from that individual commercial harvest quota during the following calendar year.

3. Any overage in pounds that ranges from 11% to 20% shall result in the overage being permanently deducted from the individual commercial harvest quota and a one year suspension of that individual from the commercial fishery for striped bass.

4. Any overage in pounds that is greater than 20% shall result in the revocation of that individual striped bass permit, and that individual shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

C. Any third overage by any person of an individual commercial harvest quota within five years of two previous offenses shall result in penalties prescribed according to the severity of the overage as described in subdivisions 1 through 3 of this subsection.

1. Any overage in pounds that ranges from zero to 3.0% or less than 200 pounds, whichever is lower, shall result in a one year deduction of two times the overage from that individual commercial harvest quota during the following calendar year.

2. Any overage in pounds that ranges from 4.0% to 10% shall result in the overage being permanently deducted from that individual commercial harvest quota and a one year suspension of the individual from the commercial fishery for striped bass.

3. Any overage in pounds that is greater than 10% shall result in the revocation of that individual striped bass permit, and that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

D. Any fourth overage by any person of an individual commercial harvest quota within five years of three previous offenses shall result in penalties prescribed according to the severity of the overage as described in subdivisions 1 and 2 of this subsection.

1. Any overage in pounds that ranges from zero to 3.0% or less than 200 pounds, whichever is lower, shall result in the overage being permanently deducted from that individual commercial harvest quota and a one year suspension of the individual from the commercial fishery for striped bass.

2. Any overage in pounds that is greater than 3.0% shall result in the revocation of that individual striped bass permit, and that individual shall not be eligible to apply for

a like permit for a period of two years from the date of revocation.

## **4 VAC 20-252-160. Individual transferable shares; tagging.**

A. For each person permitted under the provisions of 4 VAC 20-252-130 to harvest striped bass commercially, ~~tags~~ a weight quota shall be ~~distributed~~ issued to permitted fishermen in amounts equal to the percentage share of the Chesapeake area and coastal area striped bass harvest quota they hold. Tags issued for Chesapeake area harvest quota shall only be used for striped bass harvests in the Chesapeake area, and tags issued for the coastal area harvest quota shall only be used for striped bass harvests in the coastal area.

~~B. After January 31, 2006, it~~ It shall be unlawful for any person to possess Chesapeake area tags in the coastal area.

C. Shares of the commercial striped bass quota ~~of tags~~ held by any permitted fisherman may be transferred to any other person who is a licensed registered commercial fisherman; such transfer shall allow the transferee to harvest striped bass in a quantity equal to the share transferred. Any transfer of striped bass commercial shares shall be limited by the following conditions.

1. Commercial striped bass shares shall not be transferred in any quantity less than ~~20 tags~~ 200 pounds, and transfers shall be prohibited during the period of December 1 through February 1.

2. No licensed registered commercial fisherman shall hold ~~shares totaling~~ more than 2.0% of the total annual Chesapeake area commercial striped bass harvest quota ~~of tags~~ or more than 11% of the total annual coastal area commercial striped bass harvest quota ~~of tags~~.

3. No transfer of striped bass commercial harvest quota shall be authorized by the commission unless transferor and transferee provide up-to-date records of all commercial landings of striped bass and striped bass tag use to the commission prior to such transfer.

~~3.~~ 4. No transfer of striped bass commercial harvest quota shares shall be authorized unless such transfer is documented on a form provided by the Marine Resources Commission, notarized by a lawful Notary Public, and approved by the commissioner.

D. Transfers of Chesapeake area or coastal area striped bass commercial quota ~~shares~~ from one person to another may be permanent or temporary. Transferred ~~tags~~ quota from the Chesapeake area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the Chesapeake area, and transferred ~~tags~~ quota from the coastal area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the coastal area. Permanent transfers of commercial quota ~~shares~~ shall grant to

the transferee that transferred ~~share percentage~~ of the quota ~~of tags~~ for future years, and the transferor loses that same transferred ~~share percentage~~ of the quota ~~of tags~~ in future years. Temporary transfers of individual striped bass commercial harvest quota ~~shares~~ shall allow the transferee to harvest only that transferred ~~share percentage~~ of the quota ~~of tags~~ during the year in which the transfer is approved. Transferors are solely responsible for any overage of the transferred percentage of the quota by the transferee. Thereafter, any ~~share percentage~~ of the transferred striped bass commercial quota ~~of tags~~, less any overage incurred by the transferee, reverts back to the transferor.

E. The commission will issue striped bass tags to permitted striped bass commercial fishermen as follows: those fishermen permitted only for Chesapeake area or coastal area harvests of striped bass will receive their allotment of tags prior to the start of the fishing season. Any permitted fisherman, eligible for both Chesapeake area and coastal area tags, shall receive only one type of area-specific tag allotment, of his choosing, prior to the start of the fishing season, and his other type of area-specific tags will be distributed when it has been determined from the commission's mandatory harvest reporting program that the fisherman has used all of his first allotment of tags and has not exceeded his individual harvest quota. The commissioner may authorize the distribution of the second allotment of area-specific tags to a fisherman eligible for both Chesapeake area and Coastal area tags prior to that fisherman's complete use of his first allotment of tags, provided that fisherman surrenders any remaining tags of his first allotment of tags.

F. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. The permittee shall be on board the boat or vessel when striped bass are harvested and tags are applied. Nothing in this subsection shall prevent a permitted commercial hook-and-line fisherman from using three crew members who are not registered commercial fishermen to assist in the harvest of his allotment of striped bass.

G. At the place of capture, and as soon as possible after capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

H. It shall be unlawful to bring to shore any commercially caught striped bass that has not been marked by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession.

I. Altering or attempting to alter any tag for the purpose of reuse shall constitute a violation of this chapter.

J. Prior to receiving any commercial season's allotment of striped bass tags, a permitted commercial harvester shall be

required to have returned all unused tags from the previous commercial season to the commission within 30 days of harvesting their individual harvest quota. Any unused tags that cannot be turned in to the commission shall be accounted for by the harvester submitting an affidavit to the commission that explains the disposition of the unused tags that are not able to be turned into the commission. Each individual shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for any unused tags that are not turned in to the commission.

K. Any individual with remaining unused striped bass commercial quota in the current year requesting additional commercial season striped bass tags shall provide up-to-date records of landings and account for all previously issued tags prior to receiving an additional allotment of tags. The harvester shall submit an affidavit to the commission that explains the disposition of the tags that are not accounted for and shall be required to pay a processing fee of \$25, plus \$0.13 per tag, for such tags to the commission.

~~K. L.~~ For the ~~2006 and 2007~~ commercial fishing seasons season, two types one type of tags tag shall be distributed to Chesapeake area permittees; and ~~two types one type~~ of tags tag shall be distributed to coastal area permittees, ~~in equal amounts.~~ For the Chesapeake area, ~~one type of the~~ tag shall only be used on striped bass 18 inches ~~to 28 inches, and the other type of tag may be used on any striped bass 18 inches or greater.~~ For the coastal area, ~~one type of the~~ tag shall only be used on striped bass 28 inches ~~to 34 inches, and the other type of tag may be used on any striped bass 28 inches or greater. It shall be unlawful for any person to use a tag that is specified for an 18 inch to 28 inch striped bass on a striped bass greater than 28 inches in total length. It shall be unlawful for any person to use a tag that is specified for a 28 inch to 34 inch striped bass on a striped bass greater than 34 inches in total length.~~ The possession of any improperly tagged striped bass, by any permitted striped bass fisherman, shall be a violation of this chapter.

VA.R. Doc. No. R07-76; Filed November 29, 2006, 4:13 p.m.

### Emergency Regulation

**Title of Regulation: 4 VAC 20-490. Pertaining to Sharks (amending 4 VAC 20-490-42).**

**Statutory Authority:** §§ 28.2-201 and 28.2-210 of the Code of Virginia.

**Effective Dates:** November 29, 2006, through December 28, 2006.

**Agency Contact:** Brandy L. Battle, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002 or email [brandy.battle@mrc.virginia.gov](mailto:brandy.battle@mrc.virginia.gov).

# Regulations

## Summary:

*The emergency amendment changes the daily catch limit of spiny dogfish from 300 to 4,000 pounds of spiny dogfish per day from November 1 through April 30 for commercial purposes.*

### 4 VAC 20-490-42. Spiny dogfish catch limitations.

A. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia any spiny dogfish harvested from federal waters (Exclusive Economic Zone (3-200 miles)), for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

B. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia more than 600 pounds of spiny dogfish per day from May 1 through October 30, or ~~300~~ 4,000 pounds of spiny dogfish per day from November 1, ~~2006~~, through April 30, 2007, for commercial purposes.

C. It shall be unlawful for any person to harvest any spiny dogfish for commercial purposes from state waters after it has been announced that the interstate quota for spiny dogfish has been taken.

D. All spiny dogfish harvested from state waters or federal waters, for commercial purposes, must be sold to a federally permitted dealer.

E. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

VA.R. Doc. No. R07-74; Filed November 29, 2006, 9:03 a.m.

## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

### Proposed Regulation

**Title of Regulation:** 10 VAC 5-160. Rules Governing Mortgage Lenders and Brokers (amending 10 VAC 5-160-40).

**Statutory Authority:** §§ 6.1-420 and 12.1-13 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until January 19, 2007.

(See Calendar of Events section for additional information)

**Agency Contact:** Gerald E. Fallen, Assistant Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9699, FAX (804) 371-9416, toll free 1-800-552-7945, or email gerald.fallen@scc.virginia.gov.

## Summary:

*The proposed regulation makes certain technical changes to 10 VAC 5-160-40, including rounding each annual fee down to the nearest whole dollar, updating the annual report due date to conform to § 6.1-418 of the Mortgage Lender and Broker Act, and adjusting the cutoff date for assessing mortgage lenders and mortgage brokers that were granted a license or additional authority after January 1.*

AT RICHMOND, DECEMBER 4, 2006

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2006-00131

Ex Parte: In re: annual fees for mortgage lenders and mortgage brokers

### ORDER TO TAKE NOTICE

WHEREAS, § 6.1-420 of the Mortgage Lender and Broker Act (the "Act") requires licensed mortgage lenders and mortgage brokers to pay an annual fee calculated in accordance with a schedule set by the State Corporation Commission ("Commission");

WHEREAS, the Commission previously promulgated a regulation that set forth a schedule of annual fees to be paid by mortgage lenders and mortgage brokers; and

WHEREAS the Bureau of Financial Institutions has proposed to make certain technical changes to 10 VAC 5-160-40 that would round each annual fee down to the nearest whole dollar, update the annual report due date in order to conform to § 6.1-418 of the Act, and adjust the cutoff date for assessing mortgage lenders and mortgage brokers that are granted a license or additional authority on or after January 1 of the year of assessment;

IT IS THEREFORE ORDERED THAT:

(1) The proposed regulation is appended hereto and made a part of the record herein.

(2) Comments on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before

January 19, 2007. All correspondence shall contain a reference to Case No. BFI-2006-00131. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(3) The proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

AN ATTESTED COPY hereof, together with a copy of the proposed regulation, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be sent to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order, together with the proposed regulation, to all licensed mortgage lenders and mortgage brokers and such other interested parties as he may designate.

**10 VAC 5-160-40. Schedule prescribing of annual fees paid for the examination, supervision, and regulation of mortgage lenders and mortgage brokers.**

Pursuant to § 6.1-420 of the Code of Virginia, the Commission sets the following schedule of annual fees to be paid by mortgage lenders and mortgage brokers required to be licensed under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia. Such fees are to defray the costs of examination, supervision and regulation of such lenders and brokers by the Bureau of Financial Institutions. The fees are related to the actual costs of the Bureau, to the ~~assets (i.e., loans) of the lenders, to the~~ volume of business of the lenders and brokers, and to other factors relating to supervision and regulation.

**SCHEDULE**

LENDER LICENSEE: Minimum fee - \$800, plus \$6.60 per loan

BROKER LICENSEE: Minimum fee - \$400, plus \$6.60 per loan

DUAL AUTHORITY (LENDER/BROKER): Minimum fee - \$1,200, plus \$6.60 per loan

The annual fee for each mortgage lender ~~will shall~~ be computed on the basis of the number of mortgage loans, as defined in § 6.1-409 of the Code of Virginia, made or originated during the calendar year preceding the year of assessment. The annual fee ~~of for~~ each mortgage broker will shall be based on the number of such loans brokered. The annual fee ~~of for~~ each mortgage lender/broker will shall be based on the total number of mortgage loans made or originated and mortgage loans brokered. The annual fee computed using the above schedule shall be rounded down to the nearest whole dollar.

Fees ~~will shall~~ be assessed on or before April 25 for the current calendar year. By law the fee must be paid on or before May 25.

The annual report, ~~due March 25, 1991,~~ of each licensee provides shall be due March 1 of each year and shall provide the basis for ~~its licensee~~ assessment, i.e., the number of loans made or brokered. If the annual report of a licensee has not been filed by the assessment date, a provisional fee, subject to ~~the~~ adjustment when the report is filed, will shall be assessed. In cases where a license or additional authority has been granted between January 1 and ~~April 25~~ March 31, one of the following fees or additional fee will shall be assessed: lender - \$400; broker - \$200; lender/broker - \$600.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection B of § 6.1-420 of the Code of Virginia.

VA.R. Doc. No. R07-79; Filed December 5, 2006, 4:37 p.m.



**TITLE 14. INSURANCE**

**STATE CORPORATION COMMISSION**

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Proposed Regulation**

Title of Regulation: **14 VAC 5-200. Rules Governing Long-Term Care Insurance (amending 14 VAC 5-200-30 through 14 VAC 5-200-60, 14 VAC 5-200-70 through 14 VAC 5-200-90, 14 VAC 5-200-110, 14 VAC 5-200-120, 14 VAC 5-200-153, 14 VAC 5-200-170, 14 VAC 5-200-175, 14 VAC 5-200-185, 14 VAC 5-200-187, and 14 VAC 5-200-200; adding 14 VAC 5-200-181, 14 VAC 5-200-183, 14 VAC 5-200-201, and 14 VAC 5-200-205; repealing 14 VAC 5-200-20).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until February 1, 2007.

(See Calendar of Events section for additional information)

Agency Contact: Jacqueline K. Cunningham, Deputy Director, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9074, FAX (804) 371-9944, or email [marie.cox@scc.virginia.gov](mailto:marie.cox@scc.virginia.gov).

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# Regulations

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## Summary:

*The proposed amendments provide for the establishment of a public-private long-term care partnership program between the Commonwealth of Virginia and private insurance companies and conform the regulations to the provisions of the National Association of Insurance Commissioners model act and model regulation relating to long-term care partnerships.*

AT RICHMOND, DECEMBER 1, 2006

## COMMONWEALTH OF VIRGINIA

At the relation of the

## STATE CORPORATION COMMISSION

Ex Parte: In the matter of           CASE NO. INS-2006-00303  
Adopting Revisions to the  
Rules Governing Long-Term  
Care Insurance

### ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to Chapter 200 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Long-Term Care Insurance," which amend the Rules at 14 VAC 5-200-30 through 14 VAC 5-200-60, 14 VAC 5-200-70 through 14 VAC 5-200-90, 14 VAC 5-200-110, 14 VAC 5-200-120, 14 VAC 5-200-153, 14 VAC 5-200-170, 14 VAC 5-200-175, 14 VAC 5-200-185, 14 VAC 5-200-187, and 14 VAC 5-200-200. In addition, 14 VAC 5-200-20 is recommended to be repealed, and new proposed Rules are recommended at 14 VAC 5-200-181, 14 VAC 5-200-183, 14 VAC 5-200-201 and 14 VAC 5-200-205. Forms C and F have also been amended, and new proposed forms E and G have been recommended.

The proposed revisions to the Rules are necessary as a result of the passage of the Deficit Reduction Act of 2005 (Pub.L. 109-171), which allows states to implement "Long-term Care Partnerships" in order to make the purchase of long-term care insurance more attractive to consumers, and the requirements of Code of Virginia § 32.1-325, as amended in 2006, providing for the establishment of a public-private long-term care partnership program between the Commonwealth of

Virginia and private insurance companies. In accordance with these federal and State requirements, these Rules must also be in conformity to the National Association of Insurance Commissioners model act and model regulation on the same subject. These Rules are amended to achieve those goals.

The Commission is of the opinion that the proposed revisions to Ch. 200 of Title 14 of the Virginia Administrative Code should be considered for adoption.

## THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Long-Term Care Insurance," which amend the Rules at 14 VAC 5-200-30 through 14 VAC 5-200-60, 14 VAC 5-200-70 through 14 VAC 5-200-90, 14 VAC 5-200-110, 14 VAC 5-200-120, 14 VAC 5-200-153, 14 VAC 5-200-170, 14 VAC 5-200-175, 14 VAC 5-200-185, 14 VAC 5-200-187, and 14 VAC 5-200-200; repeal 14 VAC 5-200-20; add new proposed Rules at 14 VAC 5-200-181, 14 VAC 5-200-183, 14 VAC 5-200-201 and 14 VAC 5-200-205; amend Forms C and F; and add new proposed forms E and G, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed revisions shall file such comments or hearing request on or before February 1, 2007, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2006-00303.

(3) The Bureau shall hold at least one meeting during the comment period, in order for interested parties to address questions about the Rules to the Bureau. The first meeting shall be held on January 10, 2007 at 9:00 a.m. in the 5th Floor Conference Room of the State Corporation Commission, 1300 East Main Street, Richmond, Virginia, with subsequent meetings to be scheduled if necessary.

(4) If no written request for a hearing on the proposed revisions is filed on or before February 1, 2007, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the proposed adoption of the revisions by mailing a copy of this Order, together with the proposed revisions, to all insurers licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, including all fraternal benefit societies, health maintenance organizations, and health



services plans licensed in Virginia, as well as all interested parties.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(7) The Commission's Division of Information Resources shall make available this Order and the attached proposed rules on the Commission's website, <http://www.state.va.us/scc/caseinfo.htm>.

(8) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

**14 VAC 5-200-20. ~~Contracts effective prior to April 1, 2003. (Repealed.)~~**

~~Except as otherwise specifically provided, each long-term care insurance policy delivered or issued for delivery in this Commonwealth prior to April 1, 2003, shall be subject to this chapter as it existed at the time the policy was delivered or issued for delivery.~~

**14 VAC 5-200-30. Applicability and scope.**

Except as otherwise specifically provided, this chapter applies to all long-term care Insurance policies delivered or issued for delivery in this Commonwealth, on or after ~~April 1, 2003~~ May 1, 2007, by insurers, fraternal benefit societies, health services plans, health maintenance organizations, cooperative nonprofit life benefit companies or mutual assessment life, accident and sickness insurers.

**14 VAC 5-200-40. Definitions.**

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

"Applicant" means in the case of an individual long-term care insurance policy, the person who seeks to contract for such benefits, or in the case of a group long-term care insurance policy, the proposed certificateholder.

"Certificate" means any certificate or evidence of coverage issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this Commonwealth.

"Commission" means the Virginia State Corporation Commission.

"Exceptional increase" means only those increases filed by an insurer and identified as exceptional for which the commission determines the need for the premium rate increase is justified (i) due to changes in laws or regulations applicable to long-term care coverage in this Commonwealth,

or (ii) due to increased and unexpected utilization that affects the majority of insurers of similar products. Except as provided in 14 VAC 5-200-153, exceptional increases are subject to the same requirements as other premium rate schedule increases. The commission, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

"Expected loss ratio" means the ratio of the present value of future benefits to the present value of future premiums over the entire period of the contract.

"Group long-term care insurance" means a long-term care insurance policy which complies with § 38.2-3521.1 or § 38.2-3522.1 of the Code of Virginia delivered or issued for delivery in this Commonwealth.

"Incidental," as used in 14 VAC 5-200-153 J, means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

"Insurer" means any insurance company, health services plan, fraternal benefit society, health maintenance organization, cooperative nonprofit life benefit company, or mutual assessment life, accident and sickness insurer.

"Long-term care insurance" means any insurance policy or rider primarily advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, personal care, mental health or substance abuse services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance issued by insurers. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision

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contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this chapter. Health maintenance organizations, cooperative nonprofit life benefit companies and mutual assessment life, accident and sickness insurers shall apply to the commission for approval to provide long-term care insurance prior to issuing this type of coverage.

"Policy" means any individual or group policy of insurance, contract, subscriber agreement, certificate, rider or endorsement delivered or issued for delivery in this Commonwealth by an insurer.

"Qualified actuary" means a member in good standing of the American Academy of Actuaries.

"Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means:

1. An individual or group insurance contract that meets the requirements of § 7702B(b) of the Internal Revenue Code of 1986 (26 USC § 7702B(b)), as follows:

a. The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this subdivision by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

b. The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act (42 USC § 1395 et seq.), or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this subdivision do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor. A contract shall not fail to satisfy the requirements of the subdivision by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

c. The contract is guaranteed renewable within the meaning of § 7702B (b)(1)(C) of the Internal Revenue Code of 1986;

d. The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in subdivision 1 e of this definition.

e. All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of death of the insured or a complete surrender or cancellation of

the contract cannot exceed the aggregate premiums paid under the contract; and

f. The contract meets the consumer protection provisions set forth in § 7702B(g) of the Internal Revenue Code of 1986 and this chapter; or

2. The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract that satisfies the requirements of § 7702B(b) and (e) of the Internal Revenue Code of 1986.

"Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups as set forth in subsections A and C of § 38.2-3521.1 of the Code of Virginia are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows: institutional long-term care benefits only, noninstitutional long-term care benefits only, or comprehensive long-term care benefits.

## **14 VAC 5-200-50. Policy definitions.**

No long-term care insurance policy delivered or issued for delivery in this Commonwealth shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

"Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

"Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

"Adult day care" means a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

"Bathing" means washing oneself by sponge bath, or in either a tub or shower, including the task of getting into or out of the tub or shower.

"Cognitive impairment" means a deficiency in a person's short- or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

"Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated

personal hygiene (including caring for catheter or colostomy bag).

"Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

"Eating" means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.

"Hands-on assistance" means physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

"Home health care services" means medical and nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

"Medicaid" means the program administered in accordance with Title 32.1 of the Code of Virginia.

"Medicare" means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965" (42 USC §1395 et seq.), or "Title 1, Part I of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act" (Public Law 89-97 79 Stat. 286 July 30, 1965), or words of similar import.

"Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

"Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

"Skilled nursing care," ~~"intermediate care,"~~ "personal care," "home health care," ~~"specialized care,"~~ "assisted living care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

"Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

"Transferring" means moving into or out of a bed, chair or wheelchair.

All providers of services, including but not limited to "skilled nursing facility," "extended care facility," ~~"intermediate care facility,"~~ "convalescent nursing home," "personal care facility," ~~"home for adults,"~~ "specialized care providers," "assisted living facility," and "home health care agency," shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. ~~The definition may require that the provider be appropriately licensed or certified.~~

When the definition requires that the provider be appropriately licensed, certified or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or when the state licenses, certifies or registers the provider of services under another name.

**14 VAC 5-200-60. Policy practices and provisions.**

A. Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of 14 VAC 5-200-70.

1. ~~No such~~ A policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

2. The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

3. The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no unilateral right to make any change in any provision of the insurance or in the premium rate.

4. The term "level premium" may only be used when the insurer does not have the right to change the premium.

5. In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable within the meaning of § 7702B (b)(1)(C) of the Internal Revenue Code of 1986.

B. Limitations and exclusions. ~~No~~ A policy may not be delivered or issued for delivery in this Commonwealth as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

1. Preexisting conditions or diseases, subject to subsection B of § 38.2-5204 of the Code of Virginia.

2. Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease, senile dementia, organic brain disorder or other similar diagnoses.

3. Alcoholism and drug addiction.

4. Illness, treatment or medical condition arising out of:

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- a. War or act of war (whether declared or undeclared);
- b. Participation in a felony, riot or insurrection;
- c. Service in the armed forces or units auxiliary thereto;
- d. Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or
- e. Aviation (this exclusion applies only to nonfare-paying passengers).

5. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

6. Expenses for services or items available or paid under another long-term care insurance or health insurance policy.

7. In the case of a qualified long-term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount.

8. a. This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations. However, no long-term care issuer may deny a claim because services are provided in a state other than the state of policy issued under the following conditions:

(1) When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or

(2) When the state other than the state of policy issue licenses, certifies or registers the provider under another name.

b. For purposes of this section, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

9. This subsection is not intended to prohibit territorial limitations.

C. Extension of benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of

benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or conversion.

1. Group long-term care insurance issued in this Commonwealth ~~on or after December 1, 2000~~, shall provide covered individuals with a basis for continuation of coverage or a basis for conversion of coverage.

2. For the purposes of this chapter, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use, certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The substantial equivalency of benefits is subject to review by the commission, and in doing so, the commission shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

3. For the purposes of this chapter, "a basis for conversion of coverage" means a policy provision stating that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced) for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

4. For the purposes of this chapter, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commission to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use, certain providers and/or facilities, the insurer, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

The determination of substantial equivalency is subject to review by the commission.

5. Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy and shall be renewable annually.

6. Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the initial group policy replaced.

7. Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

a. Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

b. The terminating coverage is replaced, as to an individual insured, not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(1) Providing benefits identical to or benefits substantially equivalent to or in excess of those provided by the terminating coverage; and

(2) The premium for which is calculated in a manner consistent with the requirements of subdivision 6 of this subsection. The determination of substantial equivalency is subject to review by the commission.

8. Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

9. The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have

been payable had the individual's coverage under the group policy remained in force and effect.

10. Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

11. For the purposes of this chapter, a "Managed Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

E. Discontinuance and replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

1. Shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

2. Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

F. Premium increases.

1. The premium charged to an insured shall not increase due to either:

a. The increasing age of the insured at ages beyond age 65; or

b. The duration the insured has been covered under the policy.

2. The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under 14 VAC 5-200-185, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

3. A reduction in benefits shall not be considered a premium change, but for purposes of the calculation under 14 VAC 5-200-185, the initial annual premium shall be based on the reduced benefits.

G. Prior hospitalization. In addition to the provisions of § 38.2-5205 of the Code of Virginia, no long-term care insurance policy may be delivered or issued for delivery in the Commonwealth if the policy conditions eligibility for any benefits other than waiver of premium, post-confinement,

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post-acute care or recuperative benefits on a prior institutionalization requirement.

## **14 VAC 5-200-70. Required disclosure provisions.**

A. Renewability. ~~Except as provided in subdivision 3 of this subsection, individual~~ Individual long-term care insurance policies shall ~~disclose the terms of renewability in~~ contain a renewability provision.

1. ~~Such~~ The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This subsection shall not apply to policies that do not contain a renewability provision and under which the right to renew is reserved solely to the policyholder.

2. A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that the premium rates may change.

~~3. This subsection shall not apply to policies that do not contain a renewability provision and under which the right to renew is reserved solely to the policyholder.~~

B. Riders and endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

C. Payment of benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

D. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

E. Other limitations or conditions on eligibility for benefits. A long-term care insurance policy or certificate containing post-

confinement, post-acute care or recuperative benefits, or any limitations or conditions for eligibility other than those prohibited in § 38.2-5205 A of the Code of Virginia shall set forth a description of such limitations or conditions, including any required number of days of confinement prior to receipt of benefits, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

F. Disclosure of tax consequences. With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

G. Benefit triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

H. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 14 VAC 5-200-200 that the policy is a qualified long-term care insurance contract under § 7702B (b) of the Internal Revenue Code of 1986.

I. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in 14 VAC 5-200-200 that the policy is not intended to be a qualified long-term care insurance contract.

## **14 VAC 5-200-75. Required disclosure of rating practices to consumer.**

A. ~~This section shall apply as follows:~~

~~1. Except as provided in subdivision 2 of this subsection, this section applies to any long term care policy or certificate issued in this Commonwealth on or after August 1, 2002.~~

~~2. For certificates issued on or after February 1, 2002, under a group long term care insurance policy as defined in 14 VAC 5-200-40, which policy was in force on February 1, 2002, the provisions of this section shall apply on the policy anniversary on or after February 1, 2003.~~

~~B~~. A. Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

1. A statement that the policy may be subject to rate increases in the future;
2. An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;
3. The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;
4. A general explanation for applying premium rate or rate schedule adjustments that shall include:
  - a. A description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and
  - b. The right to a revised premium rate or rate schedule as provided in subdivision 2 of this subsection if the premium rate or rate schedule is changed;
5. a. Information regarding each premium rate increase on this policy form or similar policy forms over the past 10 years for this Commonwealth or any other state that, at a minimum, identifies:
  - (1) The policy forms for which premium rates have been increased;
  - (2) The calendar years when the form was available for purchase; and
  - (3) The amount or percentage of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.
- b. The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.
- c. An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.
- d. If an acquiring insurer files for a rate increase on a long-term care policy form or a block of policy forms acquired from nonaffiliated insurers ~~or a block of policy~~

~~forms acquired from nonaffiliated insurers on or before the later of (i) August 1, 2002, or February 1, 2003, as is applicable pursuant to subsection A of this section, or (ii) the end of a 24-month period~~ 24 months or more following the acquisition of the policy form or the block ~~or of~~ policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with subdivision 5 a of this subsection.

e. If the acquiring insurer in subdivision 5 d of this subsection files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in subdivision 5 d of this subsection, the acquiring insurer shall make all disclosures required by subdivision 5 of this subsection, including disclosure of the earlier rate increase referenced in subdivision 5 d of this subsection.

~~C~~. B. An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under subdivisions ~~B~~ A 1 and 5 of this section. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

~~D~~. C. An insurer shall use Forms B and ~~E~~ F dated ~~February 1, 2002, or as later modified by the Bureau of Insurance,~~ F to comply with the requirements of subsections A and B ~~and C~~ of this section.

~~E~~. D. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 60 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by subsection ~~B~~ A of this section when the rate increase is implemented.

**14 VAC 5-200-77. Initial filing requirements.**

~~A. This section applies to any long-term care policy approved in this Commonwealth on or after October 1, 2003.~~

~~B~~. An insurer shall provide the information listed in this ~~subsection~~ section to the commission and receive approval of the form prior to making a long-term care insurance form available for sale.

1. A copy of the disclosure documents required in 14 VAC 5-200-75; and
2. An actuarial certification consisting of at least the following:

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a. A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

b. An explanation for supporting subdivision 2 a of this subsection, including (i) a description of the margin for moderately adverse experience that is included in the premium rates and (ii) a description of the testing of pricing assumptions that was done to support the conclusion that the filed premium rates are sustainable over the life of the form;

c. A statement that the policy design and coverage provided have been reviewed and taken into consideration;

d. A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

e. A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(1) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(2) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(3) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating); and

(4) A statement that the difference, in aggregate, between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur. When the difference between the gross premium and the renewal net valuation premiums is not sufficient to cover expected renewal expenses, the description provided should demonstrate the type and level of change in the reserve assumptions that would be necessary for the difference to be sufficient.

(a) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(b) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the commission may request a demonstration based on a standard age distribution; and

f. (1) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar

policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(2) A comparison of the premium rate schedules for similar policy forms that are currently available from the insurer with an explanation of the differences. It is not expected that the insurer will need to provide a comparison of every age and set of benefits, period of payment or elimination period. A broad range of expected combinations is to be provided in a manner designed to provide a fair presentation for review by the commission.

3. An actuarial memorandum that includes:

a. A description of the basis on which the long-term care insurance premium rates were determined;

b. A description of the basis for the reserves;

c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

d. A description and a table of each actuarial assumption used. For expenses, an insurer must include percentage of premium dollars per policy and dollars per unit of benefits, if any;

e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

f. The estimated average annual premium per policy and the average issue age; and

g. A statement that includes a description of the types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs.

## **14 VAC 5-200-80. Prohibition of post-claims underwriting.**

A. All applications and enrollment forms for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B. Requirements for applications or enrollment forms:

1. If an application or enrollment form for long-term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list each medication that has been prescribed.

2. If the medications listed in such application or enrollment form were known by the insurer, or should have



been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition, even if such condition is not otherwise disclosed in the application or enrollment form.

C. Except for policies or certificates which are guaranteed issue:

1. The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application or enrollment form for a long-term care insurance policy or certificate:

Caution: If your answers on this application or enrollment form are incorrect or untrue, [company] has the right to deny benefits or rescind your [policy] [certificate].

The agent and the applicant must sign this section.

2. The following language, or language substantially similar to the following, shall be set out conspicuously, in bold face type, on the long-term care insurance policy or certificate at the time of delivery:

Caution: This policy may not apply when you have a claim! Please read! The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your [application] [enrollment form]. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your [policy] [certificate]. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

3. Prior to issuance of a long-term care policy or certificate to an applicant age ~~eighty (80)~~ 80 or older, the insurer shall obtain one of the following:

- a. A report of a physical examination;
- b. An assessment of functional capacity;
- c. An attending physician's statement; or
- d. Copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated, and shall annually by March 1 furnish this information to the commission in the

format prescribed by the National Association of Insurance Commissioners (Form A).

**14 VAC 5-200-90. Minimum standards for home health and community care benefits in long-term care insurance policies.**

A. A long-term care insurance policy or certificate may not, if it provides benefits for home health and community care services, limit or exclude benefits:

1. By requiring that the insured/claimant would need skilled care in a skilled nursing facility if home health care services were not provided;
2. By requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home or community setting before home health care services are covered;
3. By limiting eligible services to services provided by registered nurses or licensed practical nurses;
4. By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;
5. By excluding coverage for personal care services provided by a home health aide;
6. By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;
7. By requiring that the insured/claimant have an acute condition before home health care services are covered;
8. By limiting benefits to services provided by Medicare-certified agencies or providers; or
9. By excluding coverage for adult day care services.

B. If a long-term care insurance policy or certificate provides for home health or community care services, it shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

~~B.~~ C. Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

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## **14 VAC 5-200-110. Requirements for application forms and replacement coverage.**

A. Application or enrollment forms shall include the following questions designed to elicit information as to whether, as of the date of the application the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing such questions may be used. With regard to a replacement policy issued to a group the following questions may be modified only to the extent necessary to elicit information about accident and sickness or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.

1. Do you have another long-term care insurance policy or certificate in force (including a health services plan contract, or a health maintenance organization contract)?
2. Did you have another long-term care insurance policy or certificate in force during the last 12 months?
  - a. If so, with which company?
  - b. If that policy lapsed, when did it lapse?
3. Are you covered by Medicaid?
4. Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

B. Agents shall list any other health insurance policies they have sold to the applicant.

1. List policies sold which are still in force.
2. List policies sold in the past five years which are no longer in force.

C. Solicitations other than direct response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be phrased as follows:

## **NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE**

[INSURANCE COMPANY'S NAME AND ADDRESS]

**SAVE THIS NOTICE**

**IT MAY BE IMPORTANT TO YOU IN THE FUTURE**

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (Company Name). Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

### **STATEMENT TO APPLICANT BY AGENT [OR OTHER REPRESENTATIVE]:**

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage; I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention.

1. [In the event that the replacing policy does not have exclusions or limitations for preexisting conditions this language may be deleted.] Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
3. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
(Signature of Agent or Other Representative)

\_\_\_\_\_  
(Typed Name and Address of Agent)

The above "Notice to Applicant" was delivered to me on:  
(Date) \_\_\_\_\_  
(Applicant's Signature) \_\_\_\_\_

D. Direct Response Solicitations: Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be phrased as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF  
ACCIDENT AND SICKNESS OR LONG-TERM CARE  
INSURANCE

Insurance Company's Name and Address

SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (Company Name). Your new policy provides 30 days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy. You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. [In the event that the replacing policy does not have exclusions or limitations for preexisting conditions, this language may be deleted.] Health conditions which you

may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. (To be included only if the application is attached to the policy or certificate.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application or enrollment form attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application or enrollment form could cause an otherwise valid claim to be denied. Carefully check the application or enrollment form and write to (Company Name and Address) within thirty (30) days if any information is not correct or complete, or if any past medical history has been left out of the application or enrollment form.

\_\_\_\_\_  
(Company Name)

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Such notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

~~F. An individual long term care policy that replaces a previous long term care policy must be at least substantially equivalent in benefits. The substantial equivalency of benefits is subject to review by the commission. An insured may purchase and an insurer may issue an individual replacement policy that is less than substantially equivalent in benefits only under the following conditions:~~

~~1. The insured provides to the insurer to which application for the replacement policy is made written acknowledgement and documentation satisfactory to the~~

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~~insurer that the insured has had a change in financial or personal circumstances sufficient to justify the replacement; and~~

~~2. The insured signs a waiver form separate from, and in addition to the replacement notice by subsections C and D of this section. The waiver form shall be printed in boldface type of a size not less than 12 point, one point leaded; shall be executed at the time of application for the replacement policy; and shall be signed and dated both by the applicant and by the agent, if an agent is involved in the transaction. The waiver form shall state that the insured understands that the replacement policy applied for will provide benefits that are less than those provided by the policy being replaced; and~~

~~3. One copy of the waiver form shall be retained by the applicant, and an additional copy signed by the applicant shall be submitted to the insurer, who shall retain such copy with the applicant's file, along with the acknowledgement and documentation required in subdivision 1 of this subsection. The insurer shall also retain copies of all such acknowledgements, documentation, and waivers in a separate file of long term care policy replacements that may be examined and verified by the commission or its authorized representatives.~~

F. Life insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of 14 VAC 5-30. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

## **14 VAC 5-200-120. Reporting requirements.**

A. Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

B. Every insurer shall report annually by June 30 the 10% of its agents with the greatest percentages of lapses and replacements as measured by subsection A of this section (Form G).

C. Reported replacement and lapse rates do not alone constitute a violation of the insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

D. Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a

percent of its total number of policies in force as of the end of the preceding calendar year (Form G).

E. Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year (Form G).

F. Every insurer shall report annually by June 30, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied (Form E).

F. G. For purposes of this section:

1. Subject to subdivision 2 of this subsection, "claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

2. "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition;

"policy" shall mean 3. "Policy" means only long-term care insurance; and

"report" 4. "Report" means on a statewide basis.

H. Reports required under this section shall be filed with the commission.

## **14 VAC 5-200-153. Premium rate schedule increases.**

~~A. This section shall apply as follows: 1. Except as provided in subdivision 2 of this subsection, this section applies to any long-term care policy or certificate issued in this Commonwealth on or after October 1, 2003.~~

~~2. For certificates issued on or after April 1, 2003, under a group long term care insurance policy as set forth in subsections A and C of § 38.2-3521.1 of the Code of Virginia, which policy was in force on April 1, 2003, the provisions of this section shall apply on the policy anniversary following April 1, 2004.~~

B. An insurer shall request the commission's approval of a pending premium rate schedule increase, including an exceptional increase, prior to the notice to the policyholders and shall include:

1. Information required by 14 VAC 5-200-75;

2. Certification by a qualified actuary that:

a. If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

b. The premium rate filing is in compliance with the provisions of this section;

3. An actuarial memorandum justifying the rate schedule change request that includes:

a. Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(1) Annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(2) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(3) The projections shall demonstrate compliance with subsection C of this section; and

(4) For exceptional increases,

(a) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(b) In the event the commission determines as provided in the definition of exceptional increase in 14 VAC 5-200-40 that offsets may exist, the insurer shall use appropriate net projected experience;

b. Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

c. Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

d. A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

e. In the event that it is necessary to maintain consistent premium rates for new policies and policies receiving a rate increase, the insurer will need to file composite rates reflecting projections of new policies;

4. A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commission; and

5. Sufficient information for review and approval of the premium rate schedule increase by the commission.

C. All premium rate schedule increases shall be determined in accordance with the following requirements:

1. Exceptional increases shall provide that 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

2. Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

a. The accumulated value of the initial earned premium times 58%;

b. Eighty-five percent of the accumulated value of prior premium rate schedule increases on an earned basis;

c. The present value of future projected initial earned premiums times 58%; and

d. Eighty-five percent of the present value of future projected premiums not in subdivision 2 c of this subsection on an earned basis;

3. In the event that a policy form has both exceptional and other increases, the values in subdivisions 2 b and d of this subsection will also include 70% for exceptional rate increase amounts; and

4. All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in § 38.2-3132 of the Code of Virginia. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for approval by the commission updated projections, as defined in subdivision B 3 a of this section, annually for the next three years and include a comparison of actual results to projected values. The commission may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in subsection K of this section, the projections required by subdivision B 3 a of this section shall be provided to the policyholder in lieu of filing with the commission.

E. If any increased premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, the premiums exceeding 200% shall be clearly identified and lifetime projections, as defined in subdivision B 3 a of this section, shall be filed for approval by the commission every five years following the end of the required period in subsection D of this section. For group insurance policies that meet the conditions in subsection K of this section, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commission.

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F. 1. If the commission has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in subsection C of this section, the commission may require the insurer to implement any of the following:

- a. Premium rate schedule adjustments; or
- b. Other measures to reduce the difference between the projected and actual experience.

It is to be expected that the actual experience will not exactly match the insurer's projections. During the period that projections are monitored as described in subsections D and E of this section, the commission should determine that there is not an adequate match if the differences in earned premiums and incurred claims are not in the same direction (both actual values higher or lower than projections) or the difference as a percentage of the projected is not of the same order.

2. In determining whether the actual experience adequately matches the projected experience, consideration should be given to subdivision B 3 e of this section, if applicable.

G. If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

1. A plan, subject to commission approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commission may impose the condition in subsection H of this section; and

2. The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to subsection C of this section had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in subdivisions C 2 a and c of this section.

H. 1. For a rate increase filing that meets the following criteria, the commission shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

- a. The rate increase is not the first rate increase requested for the specific policy form or forms;
- b. The rate increase is not an exceptional increase; and
- c. The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

2. In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commission may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commission may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with any other long-term care insurance product being offered by the insurer or its affiliates.

a. The offer shall:

- (1) Be subject to the approval of the commission;
- (2) Be based on actuarially sound principles, but not be based on attained age; and
- (3) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

b. The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

- (1) The maximum rate increase determined based on the combined experience; or
- (2) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

I. If the commission determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commission may, in addition to the provisions of subsection H of this section, prohibit the insurer from either of the following:

1. Filing and marketing comparable coverage for a period of up to five years; or
2. Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Subsections A through I of this section shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in 14 VAC 5-200-40, if the policy complies with all of the following provisions:

1. The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

2. The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

- a. Sections 38.2-3200 through 38.2-3218 of the Code of Virginia, and
- b. Sections 38.2-3219 through 38.2-3229 of the Code of Virginia;

3. The policy meets the disclosure requirements of §§ 38.2-5207.1 and 38.2-5207.2 of the Code of Virginia;

4. The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

- a. Policy illustrations as required by 14 VAC 5-40; and
- b. Disclosure requirements in 14 VAC 5-40;

5. An actuarial memorandum is filed with the commission that includes:

- a. A description of the basis on which the long-term care rates were determined;
- b. A description of the basis for the reserves;
- c. A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;
- d. A description and a table of each actuarial assumption used. For expenses, an insurer shall include percent of premium dollars per policy and dollars per unit of benefits, if any;
- e. A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;
- f. The estimated average annual premium per policy and the average issue age;
- g. A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and
- h. A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

K. Subsections F and H of this section shall not apply to group insurance policies as defined in subsections A and C of § 38.2-3521.1 of the Code of Virginia where:

1. The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

2. The policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

**14 VAC 5-200-170. Standards for marketing.**

A. Every insurer, marketing long-term care insurance coverage in this Commonwealth directly or through its agents, shall:

- 1. Establish marketing procedures to assure that any comparison of policies by its agents will be fair and accurate.
- 2. Establish marketing procedures to assure excessive insurance is not sold or issued.
- 3. Display prominently by type, stamp or other appropriate means on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

4. Provide copies of the disclosure forms (Forms B and F) to the applicant.

~~4.~~ 5. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

~~5.~~ 6. Every insurer, marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subsection.

~~6.~~ 7. At solicitation, provide written notice to the prospective policyholder and certificateholder that the Virginia Insurance Counseling and Assistance Program is available at: Virginia Department for the Aging, ~~4600~~ 1610 Forest Avenue, Suite ~~402~~ 100, Richmond, Virginia 23229, Aging Services Hotline 1-800-552-3402.

~~7.~~ 8. For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms with 14 VAC 5-200-60.

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9. Provide an explanation of contingent benefit upon lapse provided for in 14 VAC 5-200-185 D 3 and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in 14 VAC 5-200-185 D 4.

B. In addition to the practices prohibited in Chapter 5 (§ 38.2-500 et seq.) of Title 38.2 of the Code of Virginia, the following acts and practices are prohibited:

1. Twisting. Making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

2. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied or undue pressure to purchase or recommend the purchase of insurance.

3. Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. 1. Associations that provide long-term care insurance policies or certificates endorsed or sold by the association shall disclose in any long-term care insurance solicitation:

a. The specific nature and amount of the compensation arrangements (including fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

b. A brief description of the process under which the policies and the insurer issuing the policies were selected.

2. If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

3. The board of directors of associations selling or endorsing long-term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

4. A group long-term care insurance policy or certificate may not be issued to an association unless the insurer obtains the information contained in this subsection. The insurer may be required to provide such information to the commission upon request or certify that the association has complied with the requirements set forth in this subsection.

## **14 VAC 5-200-175. Suitability.**

A. This section shall not apply to life insurance policies that accelerate benefits for long-term care.

B. Every insurer marketing long-term care insurance (the "issuer") shall:

1. Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

2. Train its agents in the use of its suitability standards; and

3. Maintain a copy of its suitability standards and make them available for inspection upon request by the commission.

C. 1. To determine whether the applicant meets the standards developed by the issuer, the agent and issuer shall develop procedures that take the following into consideration:

a. The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

b. The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

c. The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

2. The issuer and, where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in subdivision 1 of this subsection. The efforts shall include presentation to the applicant, at or prior to application, of the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Form B ~~dated February 1, 2002, or as later amended by the Bureau of Insurance,~~ in not less than 12-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commission for approval as required for a policy pursuant to § 38.2-316 of the Code of Virginia.

3. A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

4. The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Form B is prohibited.



D. The issuer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

E. Agents shall use the suitability standards developed by the issuer in marketing long-term care insurance.

F. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Form C ~~dated February 1, 2002, or as later amended by the Bureau of Insurance,~~ in not less than 12-point type.

G. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to Form D ~~dated February 1, 2002, or as later amended by the Bureau of Insurance.~~ If a letter similar to Form D is sent, it may be in lieu of a notice of adverse underwriting decision as set forth in § 38.2-610 of the Code of Virginia. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

H. The issuer shall report annually by June 30 to the commission the total number of applications received from residents of this Commonwealth, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

**14 VAC 5-200-181. Availability of new services or providers.**

A. An insurer shall notify policyholders of the availability of a new long-term care policy series that provides coverage for new long-term care services or providers material in nature and not previously available through the insurer to the general public. The notice shall be provided within 12 months of the date the new policy series is made available for sale in this state.

B. Notwithstanding subsection A of this section, notification is not required for any policy issued prior to the effective date of this section or to any policyholder or certificateholder who is currently eligible for benefits, within an elimination period or on a claim, or who previously has been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

C. The insurer shall make the new coverage available in one of the following ways:

1. By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

2. By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

3. By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

4. By an alternative program developed by the insurer that meets the intent of this section if the program is filed with and approved by the commission.

D. An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders that purchased such a proprietary policy shall be notified when a new long-term care policy series that provides coverage for new long-term care services or providers material in nature is made available to that limited distribution channel.

E. Policies issued pursuant to this section shall be considered exchanges and not replacements. These exchanges shall not be subject to 14 VAC 5-200-110 and 14 VAC 5-200-175, and the reporting requirements of 14 VAC 5-200-120 A though E.

F. Where the policy is offered through an employer, a labor union or organization, or an association or other group identified in § 38.2-3521.1 of the Code of Virginia, the required notification in subsection A of this section shall be made to the offering entity. However, if the policy is issued to a group defined in § 38.2-3522.1 of the Code of Virginia, the notification shall be made to each certificateholder.

G. Nothing in this section shall prohibit an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificateholder. However, upon request any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements,

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including underwriting and payment of the required premium to add such new services or providers.

H. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

**14 VAC 5-200-183. Right to reduce coverage and lower premiums.**

A. 1. Every long-term care insurance policy and certificate shall include a provision that allows the policyholder or certificateholder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:

- a. Reducing the maximum benefit; or
- b. Reducing the daily, weekly or monthly benefit amount.

2. The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier's administrative processes.

B. The provision shall include a description of the ways in which coverage may be reduced and the process for requesting and implementing a reduction in coverage.

C. The age to determine the premium for the reduced coverage shall be based on the age used to determine the premiums for the coverage currently in force.

D. The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

E. If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificateholder of his right to reduce coverage and premiums in the notice required by 14 VAC 5-200-65 A 3.

F. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

**14 VAC 5-200-185. Nonforfeiture of benefit requirement.**

A. This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of § 38.2-5210 of the Code of Virginia:

1. A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in subsection E of this section; and

2. The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

When a group long-term care insurance policy is issued, the offer required in § 38.2-5210 of the Code of Virginia shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in § 38.2-3522.1 of the Code of Virginia other than to a continuing care retirement community or other similar entity, the offer shall be made to each proposed certificateholder.

C. If the offer required to be made under § 38.2-5210 of the Code of Virginia is rejected, the insurer shall provide the contingent benefit upon lapse described in this section. Even if this offer is accepted for a policy with a fixed or limited premium paying period, the contingent benefit upon lapse in subdivision D 4 of this section shall still apply.

D. 1. After rejection of the offer required under § 38.2-5210 of the Code of Virginia, for individual and group policies without nonforfeiture benefits issued after December 1, 2001, the insurer shall provide a contingent benefit upon lapse.

2. In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

3. ~~The~~ A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least ~~30~~ 60 days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%
69	42%
70	40%

71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

4. A contingent benefit on lapse shall also be triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, the policy or certificate lapses within 120 days of the due date of the premium so increased, and the ratio in subdivision 6 b of this subsection is 40% or more. Unless otherwise required, policyholders shall be notified at least 60 days prior to the due date of the premium reflecting the rate increase.

<u>Triggers for a Substantial Premium Increase</u>	
<u>Issue Age</u>	<u>Percent Increase Over Initial Premium</u>
<u>Under 65</u>	<u>50%</u>
<u>65-80</u>	<u>30%</u>
<u>Over 80</u>	<u>10%</u>

This provision shall be in addition to the contingent benefit provided by subdivision 3 of this subsection, and where both are triggered, the benefit provided shall be at the option of the insured.

4. 5. On or before the effective date of a substantial premium increase as defined in subdivision 3 of this subsection, the insurer shall:

a. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

b. Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of subsection E of this section. This option may be elected

at any time during the 120-day period referenced in subdivision 3 of this subsection; and

c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision 3 of this subsection shall be deemed to be the election of the offer to convert in subdivision ~~4~~ 5 b of this subsection unless the automatic option in subdivision 6 c of this subsection applies.

6. On or before the effective date of a substantial premium increase as defined in subdivision 4 of this subsection, the insurer shall:

a. Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

b. Offer to convert the coverage to a paid-up status where the amount payable for each benefit is 90% of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the 120-day period referenced in subdivision 4 of this subsection; and

c. Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in subdivision 4 of this subsection shall be deemed to be the election of the offer to convert in subdivision 6 b of this subsection if the ratio is 40% or more.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with subdivision D 4 but not subdivision D 5 of this section, are described in this subsection:

1. For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least 1.0% per year prior to age 50, and at least 3.0% per year beyond age 50.

2. For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in subdivision 3 of this subsection.

3. The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options as long as the benefits for each duration equal or exceed the standard

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nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of subsection F of this section.

4. a. The nonforfeiture benefit ~~and the contingent benefit upon lapse~~ shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

b. Notwithstanding subdivision 4 a of this subsection, except that for a policy or certificate with a contingent benefit upon lapse or a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of: (i) the end of the tenth year following the policy or certificate issue date; or (ii) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

5. Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

G. There shall be no difference in the minimum nonforfeiture benefits as required under this section for group and individual policies.

~~H. The requirements set forth in this section shall become effective December 1, 2001, and shall apply as follows:~~

~~1. Except as provided in subdivision 2 of this subsection, the provisions of this section apply to any long term care policy issued in this Commonwealth on or after December 1, 2001.~~

~~2. For certificates issued on or after December 1, 2001, under a group long term care insurance policy as defined in § 38.2-5200 of the Code of Virginia, which policy was in force December 1, 2001, the provisions of this section shall not apply.~~

~~H. I.~~ Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of 14VAC5-200-150 or 14 VAC 5-200-153, whichever is applicable, treating the policy as a whole.

~~I. I.~~ To determine whether contingent nonforfeiture upon lapse provisions are triggered under subdivision D 3 or D 4 of this section, a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance

policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

~~K. J.~~ A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

1. The nonforfeiture provision shall be appropriately captioned;
2. The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commission for the same contract form; and
3. The nonforfeiture provision shall provide at least one of the following:
  - a. Reduced paid-up insurance;
  - b. Extended term insurance;
  - c. Shortened benefit period; or
  - d. Other similar offerings approved by the commission.

## 14 VAC 5-200-187. Standards for benefit triggers.

A. A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three of the activities of daily living or the presence of cognitive impairment.

B. 1. Activities of daily living shall include at least the following as defined in 14 VAC 5-200-50 and in the policy:

- a. Bathing;
- b. Continence;
- c. Dressing;
- d. Eating;
- e. Toileting; and
- f. Transferring.

2. Insurers may use activities of daily living to trigger covered benefits in addition to those contained in subdivision 1 of this subsection as long as they are defined in the policy.

C. An insurer may use additional provisions for the determination of when benefits are payable under a policy or

certificate; however, the provisions shall not restrict and are not in lieu of the requirements contained in subsections A and B of this section.

D. For purposes of this section, the determination of a deficiency shall not be more restrictive than:

- 1. Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
- 2. If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

E. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

F. Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

~~G. The requirements set forth in this section shall be effective December 1, 2001, and shall apply as follows:~~

- ~~1. Except as provided in subdivision 2 of this subsection, the provisions of this section apply to a long term care policy issued in this Commonwealth on or after December 1, 2001.~~
- ~~2. For certificates issued on or after December 1, 2001, under a group long term care insurance policy that was in force on or after December 1, 2000, the provisions of this section shall not apply.~~

**14 VAC 5-200-200. Standard format outline of coverage.**

This section of the chapter implements, interprets and makes specific, the provisions of § 38.2-5207 of the Code of Virginia in prescribing a standard format and the content of an outline of coverage.

- 1. The outline of coverage shall be a freestanding document in at least 10-point type.
- 2. The outline of coverage shall contain no material of an advertising nature.
- 3. Text which is capitalized or underscored in the standard format for outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.
- 4. The text and sequence of text of the standard format for outline of coverage is mandatory, unless otherwise specifically indicated.
- 5. Format for outline of coverage:

[COMPANY NAME]  
 [ADDRESS-CITY & AND STATE]  
 [TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied.] If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which the group policy was issued]).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. FEDERAL TAX CONSEQUENCES.

This [POLICY] [CERTIFICATE] is a federally tax-qualified long-term care insurance contract under § 7702B(b) of the Internal Revenue Code of 1986.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under § 7702B(b) of the Internal Revenue Code of 1986. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

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## 4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

a. [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:]

1. [Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS [POLICY] [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your [policy] [certificate], to continue this policy as long as you pay your premiums on time. [Company name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

2. [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS [POLICY] [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company name] may increase your premium at that time for those additional benefits.

b. [For group coverage, specifically describe continuation or conversion provisions applicable to the certificate and group policy:]

c. [Describe waiver of premium provisions or state that there are not such provisions.]

## 5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if the right exists, describe clearly and concisely each circumstance under which the premium may change.]

## ~~3-~~ 6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

a. [Provide a brief description of the right to return--"free look" provision of the policy.] If your application is denied, [Company name] will refund any paid premium within 30 days of the denial.

b. [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

## ~~4-~~ 7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

a. [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

b. [For direct response] [insert company name] is not representing Medicare, the federal government, or any state government.

## ~~5-~~ 8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

## ~~6-~~ 9. BENEFITS PROVIDED BY THIS POLICY.

a. [Covered services, related deductible or deductibles, waiting periods, elimination periods and benefit maximums.]

b. [Institutional benefits, by skill level.]

c. [Non-institutional benefits, by skill level.]

d. Eligibility for payment of benefits. [Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.]

[Any additional benefit screens triggers must also be explained in this section. If these screens triggers differ for different benefits, explanation of the screen triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long term care, then these qualifying criteria or screens must be explained.]

## ~~7-~~ 10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- a. Preexisting conditions;
- b. Noneligible facilities/provider;
- c. Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- d. Exclusions/exceptions;
- e. Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in ~~(6)~~ paragraph 9 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

~~8.~~ 11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- a. That the benefit level will not increase over time;
- b. Any automatic benefit adjustment provisions;
- c. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- d. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- e. And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

~~9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.~~

~~[(i) Describe the policy renewability provisions; (ii) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy; (iii) Describe waiver of premium provisions or state that there are no such provisions (iv) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]~~

~~10.~~ 12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured. ~~In the event that the policy does not cover such preexisting conditions, that information should be included here also.]~~

~~11.~~ 13. PREMIUM.

- ~~1.~~ a. State the total annual premium for the policy;
- ~~2.~~ b. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

~~12.~~ 14. ADDITIONAL FEATURES.

- ~~1.~~ a. Indicate if medical underwriting is used;
- ~~2.~~ b. Describe other important features.]

15. CONTACT THE VIRGINIA INSURANCE COUNSELING AND ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

**14 VAC 5-200-201. Requirement to deliver shopper's guide.**

A. A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commission, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

- 1. In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.
- 2. In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

B. Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under § 38.2-5207.1 of the Code of Virginia.

**14 VAC 5-200-205. State Long-Term Care Insurance Partnership Program.**

A. In accordance with § 6021 of the Deficit Reduction Act of 2005 (Pub.L. 109-171) and § 32.1-325 of the Code of Virginia, in addition to the applicable provisions of this chapter, the provisions of this section shall be effective March 15, 2007, and shall apply to any qualified state long-term care insurance partnership policy.

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B. "Qualified state long-term care insurance partnership policy" or "partnership policy" means an insurance policy that meets all the requirements specified in the Qualified State Long-Term Care State Plan Amendment filed by the Department of Medical Assistance Services and approved by the federal government that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy if the following requirements are met:

1. The policy covers an insured who was a resident of the Commonwealth of Virginia (a Partnership State) when coverage first became effective under the policy.

2. The policy is a qualified long-term care insurance policy as defined in § 7702B(b) of the Internal Revenue Code of 1986 and was issued no earlier than March 15, 2007, the effective date of the state plan amendment.

3. The policy meets all the applicable requirements of this chapter and the requirements of the National Association of Insurance Commissioners long-term care insurance model act and model regulation as those requirements are set forth in § 1917(b)(5)(A) of the Social Security Act (42 USC § 1396p(b)(5)(A)).

4. The policy provides the following inflation protections:

a. If the policy is sold to an individual who has not attained age 61 as of the date of purchase, the policy shall provide compound annual inflation protection at a rate of not less than 5.0%;

b. If the policy is sold to an individual who has attained age 61 but has not attained age 76 as of the date of purchase, the policy shall provide an inflation protection feature at least equivalent to any of the features required to be offered in 14 VAC 5-200-100;

c. If the policy is sold to an individual who has attained age 76 as of the date of purchase, the policy may provide inflation protection, but shall at least comply with the provisions of 14 VAC 5-200-100.

C. A partnership policy and an outline of coverage for a partnership policy shall include on its face a title clearly indicating that the policy is a qualified state long-term care insurance partnership policy. A partnership policy shall also include a disclosure indicating that by purchasing this partnership policy, the insured does not automatically qualify for Medicaid once benefits under the policy are exhausted.

D. Agent training requirements. An individual may not sell, solicit or negotiate a partnership policy unless the individual is a licensed and appointed insurance agent in accordance with provisions of Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2 of the Code of Virginia and has completed a one-time training course and ongoing training every 24 months

thereafter. The training shall meet the following requirements:

1. All training shall be approved as continuing education by the Insurance Continuing Education Board in accordance with § 38.2-1867 of the Code of Virginia.

2. The one-time training required by this subsection shall be no less than eight hours and the on-going training required by this subsection shall be no less than four hours.

3. The training required under subdivision 2 of this subsection shall consist of topics related to long-term care insurance, long-term care services, and qualified state long-term care insurance partnership programs, including, but not limited to:

a. State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid;

b. Available long-term care services and providers;

c. Changes or improvements in long-term care services or providers;

d. Alternatives to the purchase of private long-term care insurance;

e. The effect of inflation on benefits and the importance of inflation protection; and

f. Consumer suitability standards and guidelines.

E. Insurers offering a partnership policy shall obtain verification that an agent has received the training required by subsection D of this section before the agent is permitted to sell, solicit or negotiate the insurer's partnership policy.

F. Each insurer shall maintain records with respect to the training of its agents qualified to sell, solicit or negotiate partnership policies, to include training received and that the agent has demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including Medicaid, in this Commonwealth. These records shall be maintained for a period of not less than five years and shall be made available to the commission upon request.

G. The application for a partnership policy shall include a prominent statement, signed by the agent, indicating that the agent has received the required training and is qualified to sell, solicit or negotiate this partnership policy.

H. Each insurer issuing a partnership policy shall provide regular reports to the United States Secretary of Health and Human Services in accordance with regulations of the Secretary that include notification of the date benefits were paid, the amount paid, the date the policy terminates, and



such other information as the Secretary determines may be appropriate to the administration of partnerships.

**NOTICE:** The forms used in administering 14 VAC 5-200, Rules Governing Long-Term Care Insurance, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the State Corporation Commission, 1300 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS

- Rescission Reporting Form, Form A (eff. 2/02).
- Long-Term Care Insurance Personal Worksheet, Form B (rev. 2/02).
- Things You Should Know Before You Buy Long-Term Care Insurance, Form C (rev. ~~2/02~~ 5/07).
- Long-Term Care Insurance Suitability Letter, Form D (rev. 2/02).
- Claims Denial Reporting, Form E (eff. 5/07).
- Potential Rate Increase Disclosure Form, Form ~~E (eff. 2/02)~~ F (rev. 5/07).
- Replacement and Lapse Reporting, Form G (eff. 5/07).

VA.R. Doc. No. R07-78; Filed December 4, 2006, 2:16 p.m.



**TITLE 23. TAXATION**

**DEPARTMENT OF TAXATION**

**Fast-Track Regulation**

**Title of Regulation: 23 VAC 10-20. General Provisions Applicable to All Taxes Administered by the Department of Taxation (repealing 23 VAC 10-20-40, 23 VAC 10-20-50, 23 VAC 10-20-70, 23 VAC 10-20-100, 23 VAC 10-20-120 and 23 VAC 10-20-150).**

**Statutory Authority: § 58.1-203 of the Code of Virginia.**

**Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.**

(See Calendar of Events section for additional information)

**Effective Date: March 10, 2007.**

**Agency Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.**

**Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue**

regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose: As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.**

**Rationale for Using Fast-Track Process: As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.**

**Substance: This regulatory action will repeal several sections of 23 VAC 10-20, General Provisions Applicable to All Taxes Administered by the Department of Taxation, that are unnecessary.**

**Issues: This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.**

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (TAX) proposes to repeal 23 VAC 10-20-40, 23 VAC 10-20-50, 23 VAC 10-20-70, 23 VAC 10-20-100, 23 VAC 10-20-120 and 23 VAC 10-20-150 in the General Provisions Applicable to All Taxes Administered by the Department of Taxation regulation (23 VAC 10-20). These sections provide no additional guidance to clear and unambiguous statutes.

Result of Analysis. The proposed repeal is not likely to have any significant impact.

Estimated Economic Impact. 23 VAC 10-20-40 (Collection of taxes accrued prior to repeal), 23 VAC 10-20-50 (Payment of tax by bad check), 23 VAC 10-20-70 (Overcollection of tax), 23 VAC 10-20-100 (Period of limitations), 23 VAC 10-20-120 (Collection out of estate in hands of or debts due by third party) and 23 VAC 10-20-150 (Assessment of omitted taxes by the Department of Taxation) are essentially identical in meaning to Code §§ 58.1-10, 58.1-12, 58.1-16, 58.1-104, 58.1-1804 and 58.1-1812 respectively. Repealing these sections will therefore have no impact.

Businesses and Entities Affected. The proposed repeal of these regulations will not significantly affect businesses and entities.

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Localities Particularly Affected. No localities are particularly affected.

Projected Impact on Employment. The proposed repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not significantly affect small businesses.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**~~23 VAC 10-20-40. Collection of taxes accrued prior to repeal. (Repealed.)~~**

~~When statutory provisions which impose a tax are repealed all taxes which were due and payable prior to the effective date of the repeal remain due and payable. The Department may audit returns and assess additional taxes for the appropriate period specified in Va. Code § 58.1-104.~~

**~~23 VAC 10-20-50. Payment of tax by bad check. (Repealed.)~~**

~~A. In general. If any check tendered for any tax administered by the Department is not paid by the bank on which it is drawn, the taxpayer for whom the check was tendered shall remain liable for the payment of the tax the same as if such check had not been tendered. Penalties for failure to pay the tax may be imposed.~~

~~B. Penalty. A penalty of twenty five dollars will be assessed against the taxpayer if the taxpayer fails to pay the amount shown on the face of the check within five days after notice of nonpayment by the bank has been mailed by certified or registered mail to the taxpayer. Such penalty will be in addition to any and all other penalties provided by law.~~

~~C. Bank. For the purpose of this section and any other section of Title 58.1 of the Virginia Code referring to bad checks, "bank" means any financial institution which permits its customers to write negotiable instruments drawn upon it including, but not limited to, commercial banks, savings banks, savings and loan associations, credit unions, and money market funds.~~

**~~23 VAC 10-20-70. Overcollection of tax. (Repealed.)~~**

~~A. In general.~~

~~1. Any person responsible for collecting Retail Sales Tax, Watercraft Sales Tax, Aircraft Sales Tax, Motor Vehicle Fuel Sales Tax (in certain transportation districts), who overcollects any such tax and fails to account for and pay such overcollection to the department shall be liable for the overcollection and a penalty of 25% of such overcollection.~~

~~2. In the case of the sales taxes, any overcollection must be accounted for and paid to the department when the regular monthly or quarterly return is due for the period in which the overcollection occurred.~~

~~3. Any person who has been assessed a penalty under this section and who believes he has good cause for failing to account for and pay the overcollection to the department may petition the Tax Commissioner to waive the penalty by following the procedures for submitting an offer in compromise under 23 VAC 10-20-90.~~

~~B. Sales taxes.~~

~~1. The term "overcollection" means, in respect to the sales taxes, an amount collected at a rate in excess of the proper~~

rate and which has not been refunded or credited to the consumer.

2. Dealers who use the bracket method to calculate the sales tax may find that their accounting records show slightly more sales tax has been collected than is due when the tax is calculated on gross sales. Such excess is not an overcollection for purposes of this section. See Sales and Use Tax Regulations for an explanation of the bracket method.

**23 VAC 10-20-100. Period of limitations. (Repealed.)**

Except as provided by Va. Code §§ 58.1-312 (relating to income tax) and 58.1-634 (relating to retail sales and use tax), any tax administered by the department shall be assessed within three years of the date on which such taxes became due and payable. A tax may be assessed within six years of the date the tax became due and payable in the case of a false or fraudulent return with the intent to evade any tax administered by the department or a failure to file a return. For further information see 23 VAC 10-20-150.

**23 VAC 10-20-120. Collection out of estate in hands of or debts due by third party. (Repealed.)**

1. If an assessment of any tax, penalty and interest remains unpaid thirty days after the assessment, or if there has been an immediate assessment of income or sales tax where collection would be jeopardized by delay pursuant to Va. Code §§ 58.1-313 (relating to income tax) or 58.1-631 (relating to retail sales and use tax), the Tax Commissioner may apply in writing to any person who is indebted to the taxpayer or who has in his possession or control property or estate belonging to the taxpayer and require payment of the assessment out of the debt or estate of the taxpayer.

2. The assessment of taxes, penalties and interest shall constitute a lien on the debt or estate due the taxpayer from the time the application is received by the person applied to:

3. For each application served, the person applied to shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the taxpayer.

4. As soon as practicable after service of the application, but in no event later than 10 days after service, the Tax Commissioner shall mail a copy of the application to the taxpayer with a notice informing him of the remedies provided in Chapter 18 of Title 58.1 of the Code of Virginia.

**23 VAC 10-20-150. Assessment of omitted taxes by the Department of Taxation. (Repealed.)**

A. In general:

1. If any person fails to make a proper return or fails to pay in full any proper tax administered by the Department such person shall be assessed the proper tax, penalties and interest.

2. In addition to the proper tax a penalty for failure to file a return will be added if such a penalty is prescribed by law.

3. In addition to the proper tax a penalty for failure to pay the tax shall be added:

a. The penalty for failure to pay the tax shall be the amount prescribed by law for the tax. If no penalty is prescribed for failure to pay the particular tax the penalty shall be five percent of the unpaid tax.

b. If the failure to pay the tax was due to fraud a penalty of 100 percent of the unpaid tax shall be added to the proper tax in lieu of the 5 percent or other penalty prescribed for failure to pay the tax.

4. In addition to the proper tax, interest on the outstanding tax and penalty shall be added at the rate established under Va. Code § 58.1-15 for the period between the due date and the date of assessment.

5. Upon assessment the Department will send a written notice of assessment to the taxpayer. If the full amount of the assessment of taxes, penalties and interest is not paid to the Department within thirty days interest shall accrue on the assessment at the rate established under Va. Code § 58.1-15 from the date of the assessment until payment.

B. Period for assessing taxes. The taxes imposed by Title 58.1 which are administered by the Department shall be assessed in accordance with this section and Va. Code § 58.1-104 (relating to the general period of limitations) as follows:

1. If a return is filed on or before the last day prescribed by law for filing a return, including any extensions that may have been granted, the tax shall be assessed within three years of the date the tax was due and payable.

2. If the taxpayer fails to file a return on or before the last day prescribed by law, including any extensions that may have been granted, the tax may be assessed at any time within six years of the date the tax was due and payable.

3. If a false or fraudulent return is filed with intent to evade the payment of tax, the tax may be assessed at any time but in no event more than six years after the tax was due and payable.

4. If the tax owed is an income tax imposed under Chapter 3 of Title 58.1 there are additional exceptions to the general three or six year periods set forth above. See Va. Code § 58.1-312 and the regulations thereunder.

5. See Va. Code § 58.1-634 for the period of limitations applicable to the Retail Sales and Use Tax.

VA.R. Doc. No. R07-65; Filed November 29, 2006, 4:11 p.m.

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# Regulations

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## Fast-Track Regulation

**Title of Regulation:** 23 VAC 10-55. Virginia Corn Excise Tax (repealing 23 VAC 10-55-10, 23 VAC 10-55-20, 23 VAC 10-55-30, and 23 VAC 10-55-60 through 23 VAC 10-55-90).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the department has identified numerous regulations that address statutes that are clear and unambiguous, inconsistent with current statute, or are rendered obsolete as a result of a law change. As they provide no additional guidance beyond the plain meaning of the statute, these regulations are being repealed. As these regulations are unnecessary, inconsistent, or obsolete, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, inconsistent, or obsolete their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal seven Corn Excise Tax regulations that address statutes that are clear and unambiguous.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (TAX) proposes to repeal 23 VAC 10-55-10, 23 VAC 10-55-20, 23 VAC 10-55-30, 23 VAC 10-55-60, 23 VAC 10-55-70, 23 VAC 10-55-80 and 23 VAC 10-

55-90 in the existing Virginia Corn Excise Tax Regulations (23 VAC 10-55). These sections provide no additional guidance to clear and unambiguous statutes (23 VAC 10-55-10, 23 VAC 10-55-60, 23 VAC 10-55-70, 23 VAC 10-55-80 and 23 VAC 10-55-90), are inconsistent with current statutes (23 VAC 10-55-20), or were made obsolete by changes in the statutes (23 VAC 10-55-30).

**Result of Analysis.** The proposed repeal is not likely to have any significant impact.

**Estimated Economic Impact.** Section 3.1-1032 of the Code of Virginia states that it is in the public interest that farmers producing corn be permitted to express in a separate referendum whether assessments should be levied upon corn with revenues therefrom to be used in encouraging an expanded program of market development, education, publicity, research and promotion of the sale and use of corn. 23 VAC 10-55-20 (Declaration of public interest; definitions) of Virginia Corn Excise states that "revenues from the corn excise tax are to be used in encouraging an expanded program of market development, education, publicity, research, the promotion of the sales and use of corn." 23 VAC 10-55-20 is being repealed to be consistent with language in § 3.1-1032 of the Code which is more flexible with respect to whether the assessments should be levied and how much. Repeal of 23 VAC 10-55-20 will have no impact because it is not contradictory to language in the current Code Section.

23 VAC 10-55-30 was made obsolete by the change in the statutes. Chapter 401 of the 1989 Acts of Assembly authorized an increase in the tax to one cent per bushel, which was ratified by referendum on September 7, 1989. 23 VAC 10-55-30 does not reflect this change and thus was made obsolete. Repeal of this obsolete section will have no impact.

23 VAC 10-55-60 (Interest on assessment; collection of delinquent assessment) and 23 VAC 10-55-90 (Violation of a misdemeanor; penalty) are essentially identical in meaning to Code § 3.1-1046 and § 3.1-1049 respectively. Repealing 23 VAC 10-55-60 and 23 VAC 10-55-90 will therefore have no impact. 23 VAC 10-55-10, 23 VAC 10-55-70 and 23 VAC 10-55-80 are "reserved" and have no content. Thus repealing these sections will have no impact.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not significantly affect small businesses.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous, that are inconsistent with current statutes, or that have been rendered obsolete as a result of current statutes. As these regulations provide no guidance beyond the plain meaning of the statute, they are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-55-10. [Reserved] (Repealed.)**

**23 VAC 10-55-20. Declaration of public interest; definitions. (Repealed.)**

~~A. Generally. Revenues from the corn excise tax are to be used in encouraging an expanded program of market~~

~~development, education, publicity, research, the promotion of the sales and use of corn.~~

~~B. Definitions. For purposes of administering the corn excise tax, the terms shall be defined as follows:~~

~~1. "Farmer" means all producers of corn in this Commonwealth. A farmer may be a natural person, partnership, or corporation.~~

~~2. "County" means all counties, cities and towns in which corn is a source of income.~~

~~3. "Corn" means all corn sold except sugar corn, popcorn, and ornamental corn.~~

**23 VAC 10-55-30. Petition for referendum on question of assessment for market development, education, promotion; action of board and commissioner thereon; amount of assessment; expenses of referendum. (Repealed.)**

~~As a result of a referendum conducted in 1980, the Virginia Corn Commission was established within the Department of Agriculture and Consumer Services. A corn tax of one-quarter cent per bushel was imposed on corn produced in Virginia and sold.~~

**23 VAC 10-55-60. Interest on assessment; collection of delinquent assessment. (Repealed.)**

~~A. Generally. If the handler fails to timely pay the corn excise tax due, interest shall accrue on the unpaid tax.~~

~~B. Interest on tax. Interest at a rate of one percent per month will accrue on the unpaid amount of the tax from the due date until the time of payment.~~

~~C. Collection of delinquent tax. If any person defaults in paying the tax or interest, the amount shall be collected by civil action in the name of the Commonwealth.~~

~~1. The person adjudged in default shall pay the cost of the civil action.~~

~~2. The Tax Commissioner shall request the Attorney General to institute the civil action for collection in the proper court and such action shall be in the amount of the past due tax and interest.~~

**23 VAC 10-55-70. [Reserved] (Repealed.)**

**23 VAC 10-55-80. [Reserved] (Repealed.)**

**23 VAC 10-55-90. Violation of a misdemeanor; penalty. (Repealed.)**

~~It shall be a Class 1 misdemeanor if any handler knowingly files a false report to the Virginia Department of Taxation on the quantity of corn handled by him or falsifies the records of the corn handled by him, or fails to preserve the records for a period of not less than two years from the time corn is handled.~~

VA.R. Doc. No. R07-56; Filed November 29, 2006, 4:23 p.m.

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# Regulations

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## Fast-Track Regulation

**Title of Regulation:** 23 VAC 10-60. Virginia Egg Excise Tax (repealing 23 VAC 10-60-10, 23 VAC 10-60-20, 23 VAC 10-60-30, and 23 VAC 10-60-60 through 23 VAC 10-60-100).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal eight sections of the Virginia Egg Excise Tax regulations that address statutes that are clear and unambiguous.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (TAX) proposes to repeal 23 VAC 10-60-10, 23 VAC 10-60-20, 23 VAC 10-60-30, 23 VAC 10-60-60, 23 VAC 10-60-70, 23 VAC 10-60-80, 23 VAC 10-60-90 and 23 VAC 10-60-100 in the existing Virginia Egg Excise Tax regulations (23 VAC 10-60). These sections

provide no additional guidance to clear and unambiguous statutes.

**Result of Analysis.** The proposed repeal is not likely to have any significant impact.

**Estimated Economic Impact.** 23 VAC 10-65-30 (Levy of tax; rules and regulations), 23 VAC 10-60-60 (Records to be kept by handlers), 23 VAC 10-60-70 (Interest on tax; collection of delinquent tax), and 23 VAC 10-60-100 (Misdemeanors; penalty) are essentially identical in meaning to Code §§ 3.1-796.11:3, 3.1-796.11:6, 3.1-796.11:7, and 3.1-796.11:10, respectively. Repealing 23 VAC 10-60-30, 23 VAC 10-60-60, 23 VAC 10-60-70 and 23 VAC 10-60-100 will therefore have no impact. 23 VAC 10-60-10, 23 VAC 10-60-20, 23 VAC 10-60-80 and 23 VAC 10-60-90 are "reserved" and have no content. Thus repealing these sections will have no impact.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs

required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-60-10. ~~[Reserved] (Repealed.)~~**

**23 VAC 10-60-20. ~~[Reserved] (Repealed.)~~**

**23 VAC 10-60-30. ~~Levy of tax; rules and regulations. (Repealed.)~~**

~~A. The Virginia egg excise tax is imposed at the rate of five cents per thirty dozen case of eggs. The tax is imposed upon eggs produced, purchased, processed, sold, graded or otherwise handled in Virginia. The excise tax is levied upon the egg only once.~~

**23 VAC 10-60-60. ~~Records to be kept by handlers. (Repealed.)~~**

~~A. Every handler of eggs subject to the egg promotion tax must keep complete records on the eggs packed, processed, or handled by him. The handler must keep and preserve the records for at least three years following the date the tax is reported on such eggs.~~

~~Note: While § 3.1-796.11:6 of the Code of Virginia specifies records must be preserved for a period not less than two years from the time the eggs were packed, processed or handled, the statute of limitations under § 58.1-1812 of the Code of Virginia provides for a three year period of assessment. In order to prevent any undue burden upon the taxpayer, in the event of audit, the record retention period has been extended to the same limitation as the statute of limitations.~~

~~B. The Tax Commissioner, or his duly authorized agents, may examine during the usual business hours of the day records, books, papers, or other documents of the handler to verify the truth and accuracy of any return, statement, or other relevant information.~~

**23 VAC 10-60-70. ~~Interest on tax; collection of delinquent tax. (Repealed.)~~**

~~A. If the handler fails to timely pay the egg promotion tax due, interest shall accrue on the unpaid tax.~~

~~B. Interest at a rate determined in accordance with § 58.1-15 of the Code of Virginia will accrue on the unpaid amount of the tax from the due date until the time of payment.~~

~~C. If any person defaults in paying tax or interest, the amount shall be collected by civil action in the name of the Commonwealth.~~

~~1. The person adjudged in default shall pay the cost of the civil action.~~

~~2. The Tax Commissioner shall request the Attorney General to institute the civil action for collection in the proper court and such action shall be in the amount of the past due tax and interest.~~

**23 VAC 10-60-80. ~~[Reserved] (Repealed.)~~**

**23 VAC 10-60-90. ~~[Reserved] (Repealed.)~~**

**23 VAC 10-60-100. ~~Misdemeanors; penalty. (Repealed.)~~**

~~It shall be a Class 1 misdemeanor if any handler knowingly files a false report to the Virginia Department of Taxation on the quantity of eggs handled by him or fails to keep a complete record of the eggs processed or handled by him, or to preserve the records as required in Regulation 630-18-796.11:6 on eggs processed or handled.~~

VA.R. Doc. No. R07-71; Filed November 29, 2006, 4:15 p.m.

**Fast-Track Regulation**

Title of Regulation: **23 VAC 10-65. Virginia Peanut Excise Tax (repealing 23 VAC 10-65-20).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

Effective Date: March 10, 2007.

Agency Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

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# Regulations

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**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law. As these regulations are obsolete, they are being repealed. As these regulations are obsolete, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are obsolete, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal a section of the Virginia Peanut Excise Tax regulations that is obsolete due to a statutory change.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating obsolete regulations that do not reflect the current law. As these regulations are obsolete, their repeal will result in no disadvantage to the public or the Commonwealth.

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

**Summary of the Proposed Regulation.** The Department of Taxation proposes to repeal regulatory language (23 VAC 10-65-20) on the Virginia peanut excise tax program because changes to § 3.1-657 of the Code of Virginia have rendered this language obsolete.

**Result of Analysis.** The benefits likely exceed the costs for this proposed regulatory change.

**Estimated Economic Impact.** Current regulation states that, as of July 1, 1984, the peanut excise tax rate is 10 cents per hundred pounds of peanuts. The regulation further states that this tax is due on all peanuts grown in Virginia and would be collected from the Virginia farmer by the processor of that farmer's peanuts even if the processor was located in another state. The law that this regulatory language interpreted, however, only required this excise tax to be collected on all peanuts grown and sold in the Commonwealth. In addition, during the 1995 Session of the General Assembly, the peanut excise tax was raised to 15 cents per 100 pounds of peanuts.

The Department of Taxation proposes to repeal 23 VAC 10-65-20 because the tax rate listed therein has been superseded by the subsequent tax rate increase. This regulatory action will likely provide a small benefit for the citizens of Virginia as it will eliminate the possibility of individuals incorrectly believing that the tax rate listed in the Virginia Administrative Code is the tax that they owe. Additionally, repealing 23 VAC 10-65-20 will eliminate the possibility of confusion over whether the peanut excise tax must be collected from farmers who grow their peanuts in Virginia but sell them out of state.

**Businesses and Entities Affected.** This proposed regulatory action will affect all of the approximately 200 peanut growers and 40 processors in the Commonwealth.<sup>1</sup>

**Localities Particularly Affected.** The proposed regulatory action will particularly affect localities in the Commonwealth where peanuts are grown.

**Projected Impact on Employment.** The proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** The proposed regulatory action is unlikely to have any effect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Small businesses are unlikely to incur any costs on account of the proposed regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses are unlikely to incur any costs on account of the proposed regulatory action.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The agency agrees with the Department of Planning and Budget's economic impact analysis.

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<sup>1</sup> Information provided by the Virginia Peanut Board



Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law. As these regulations are obsolete, they are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

*Effective July 1, 1995, the peanut excise tax rate was increased from \$0.10 per 100 pounds to \$0.15 per 100 pounds (Chapter 160 of the 1995 Acts of Assembly). This regulatory action will repeal this regulation that is obsolete due to the statutory change.*

**23 VAC 10-65-20. Levy of excise tax. (Repealed.)**

~~A. The Virginia peanut excise tax is imposed upon all peanuts grown and sold in this state for processing. The excise tax is levied upon the peanuts only once.~~

~~Example 1: Farmer A grows peanuts in Virginia and sells the harvested crop for processing to Processor B located in North Carolina. Processor B is responsible for collecting from the farmer and remitting to the Virginia Department of Taxation the Virginia Peanut Excise Tax.~~

~~Example 2: Farmer C grows peanuts in North Carolina and sells the harvested crop to Processor D located in Virginia. The Virginia Peanut Excise Tax is not levied on the peanuts grown in North Carolina.~~

~~Example 3: Farmer E grows peanuts in Virginia and sells the harvested crop for processing to Processor F located in Virginia. Processor F is responsible for collecting from the farmer and remitting to the Virginia Department of Taxation the Virginia Peanut Excise Tax.~~

~~B. Beginning July 1, 1983, the peanut excise tax is imposed at the rate of 7 5/10 cents per hundred pounds and beginning July 1, 1984, the rate is 10 cents per hundred pounds.~~

VA.R. Doc. No. R07-55; Filed November 29, 2006, 4:22 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-65. Virginia Peanut Excise Tax (repealing 23 VAC 10-65-10, 23 VAC 10-65-30 and 23 VAC 10-65-50 through 23 VAC 10-65-100).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street,

Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal eight sections of the Virginia Peanut Excise Tax regulations that address statutes that are clear and unambiguous.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (TAX) proposes to repeal 23 VAC 10-65-10, 23 VAC 10-65-30, 23 VAC 10-65-50, 23 VAC 10-65-60, 23 VAC 10-65-70, 23 VAC 10-65-80, 23 VAC 10-65-90 and 23 VAC 10-65-100 in the existing Virginia Peanut Excise Tax regulations (23 VAC 10-65). These sections provide no additional guidance to clear and unambiguous statutes.

**Result of Analysis.** The proposed repeal is not likely to have any significant impact.

**Estimated Economic Impact.** 23 VAC 10-65-10 (Definitions), 23 VAC 10-65-30 (Processor liable for collection and payment of tax), 23 VAC 10-65-50 (penalty and interest on delinquent tax), 23 VAC 10-65-60 (Action to recover delinquent tax and interest), 23 VAC 10-65-90 (making false report or falsifying records a misdemeanor) and 23 VAC 10-65-100 (Failure to make returns a misdemeanor) are essentially identical in meaning to Code §§ 3.1-647, 3.1-658, 3.1-660, 3.1-661, 3.1-664 and 3.1-665, respectively. Repealing 23 VAC 10-65-10, 23 VAC 10-65-30, 23 VAC 10-65-50, 23 VAC 10-65-60, 23 VAC 10-65-90 and 23 VAC 10-

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# Regulations

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65-100 will therefore have no impact. 23 VAC 10-65-70 and 23 VAC 10-65-80 are “reserved” and have no content. Thus repealing 23 VAC 10-65-70 and 23 VAC 10-65-80 will have no impact.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget’s economic impact analysis.

## Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

## **23 VAC 10-65-10. Definitions. (Repealed.)**

The following words, terms and phrases are defined here for the tax imposed by Chapter 24 of Title 3.1 of the Code of Virginia only:

~~"Board" means the Virginia Peanut Board.~~

~~"Processor" means persons, individuals, corporations, partnerships, trusts, associations, cooperatives, and any other business entities which clean, shell or crush peanuts.~~

## **23 VAC 10-65-30. Processor liable for collection and payment of tax. (Repealed.)**

~~A. Generally. The processor of peanuts is liable for collecting and remitting the peanut excise tax to the Virginia Department of Taxation as regulated herein. The processor must collect the tax on all peanuts purchased. All processors of peanuts must register with the Tax Commissioner for receiving the semi annual return and reporting the peanut excise tax. Application for registration should be submitted to the Department of Taxation, Registration Unit, P.O. Box 1880, Richmond, VA 23282-1880.~~

~~B. Processor returns. The peanut excise tax returns must be filed by the processor semiannually. The return for the period January 1 through June 30 must be filed no later than July 10. The return for the period July 1 through December 31 must be filed no later than February 15 of the succeeding year.~~

~~C. Payment of tax by processor. Each processor must pay the peanut excise tax. The return, with applicable tax payment, is due by July 10 and February 15 of each year. The tax receipts shall be credited to the Peanut Fund. The return shall be filed with the Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880.~~

## **23 VAC 10-65-50. Penalty and interest on delinquent tax. (Repealed.)**

~~A. Generally. If the processor fails to timely pay the peanut excise tax when due, the Department of Taxation shall assess the taxpayer for the tax deficiency and add penalty. If the taxpayer fails to pay the assessment for tax and penalty within thirty days, interest shall be added from original tax due date.~~

~~B. Penalty on tax. The Department shall assess a penalty of five percent of the amount of unpaid tax. The penalty shall be collected as a part of the tax. The Department may waive all~~

~~or part of the penalties if, in its discretion, good cause is shown by the taxpayer.~~

~~C. Interest on tax. If the taxpayer fails to pay the assessment of tax and penalty within thirty days from the date of assessment, the total assessment of tax and penalty shall bear interest at the rate determined in accordance with § 58.1-15. The penalty and interest shall be assessed and collected as if a part of the tax.~~

**~~23 VAC 10-65-60. Action to recover delinquent tax and interest. (Repealed.)~~**

~~If any person is delinquent in paying tax or interest, the amount shall be collected by civil action in the name of the Commonwealth. The person adjudged in default shall pay the cost of the civil action. The Tax Commissioner shall request the Attorney General to institute the civil action for collection in the proper court and such action shall be in the amount of the past due tax and interest.~~

**~~23 VAC 10-65-70. [Reserved] (Repealed.)~~**

**~~23 VAC 10-65-80. [Reserved] (Repealed.)~~**

**~~23 VAC 10-65-90. Making false report or falsifying records a misdemeanor. (Repealed.)~~**

~~It shall be a misdemeanor if any processor knowingly files a false report to the Virginia Department of Taxation or falsifies his records on the quantity of peanuts subject to tax bought by him during any period.~~

**~~23 VAC 10-65-100. Failure to make returns a misdemeanor. (Repealed.)~~**

~~Any person, subject to the peanut excise tax, who fails to file the excise tax return or fails to keep the required records shall be guilty of a misdemeanor. Each month's failure to comply shall constitute a separate offense.~~

VA.R. Doc. No. R07-70; Filed November 29, 2006, 4:13 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-75. Virginia Soybean Excise Tax Regulations (repealing 23 VAC 10-75-10).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue

regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the department has identified numerous regulations that have been made obsolete by changes in state or federal law. As this regulation is obsolete, it is being repealed. As this regulation is obsolete, its repeal will have no effect on the health, safety and welfare of citizens. Repeal of this regulation does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulation being repealed is obsolete, its repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal this Soybean Excise Tax Regulation that is obsolete due to a statutory change.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating an obsolete regulation that does not reflect the current law. As this regulation is obsolete its repeal will result in no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal 23 VAC 10-75-10 (Handler defined; handler to deduct assessment from payment to farmer; report and payment by handler) of these regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. 23 VAC 10-75-10 specifies that "The Virginia soybean excise tax is imposed upon all soybeans produced in this state at the rate of one cent per bushel." This is currently inaccurate. Pursuant to the 1992 Acts of the Assembly, § 3.1-684.14 of the Code specifies that the tax rate is two cents per bushel. When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. Thus, eliminating this regulation section will not change applicable tax rates. The repeal will be beneficial nonetheless since the current contradictory information is misleading.

Additionally, 23 VAC 10-75-10 repeats other aspects of Code § 3.1-684.14, such as specifying that handlers are required to deduct the tax from purchase payments made to farmers and to remit such tax collections to the department. Since this information is specified in the Code, repealing it from the regulations will have no impact.

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# Regulations

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**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by*

*changes in state or federal law. As this regulation is obsolete, it is being repealed. Repeal of this regulation does not reflect a change in existing departmental policy.*

*Effective July 1, 1992, the Soybean Excise Tax rate was increased from \$0.01 per bushel to \$0.02 per bushel (Chapter 124 of the 1992 Acts of Assembly). This regulatory action will repeal this regulation that is obsolete due to the statutory change.*

**23 VAC 10-75-10. ~~Handler defined; handler to deduct assessment from payment to farmer; report and payment by handler.~~ (Repealed.)**

~~A. The Virginia soybean excise tax is imposed upon all soybeans produced in this state at the rate of one cent per bushel. The "handler" as herein defined is required to deduct the tax from purchase payments made to farmers and to remit such tax periodically to the Department of Taxation. All soybean handlers must register with the Tax Commissioner for receiving the quarterly returns and reporting the soybean excise tax. Application for registration should be submitted to the Department of Taxation, Registration Unit, P.O. Box 4880, Richmond, VA 23282-1880.~~

~~B. For the purposes of this tax, "handler" means any person, firm, corporation or other business entity who purchases soybeans from farmers in this state or any farmer who sells his soybeans out of state or to anyone other than a "handler." The term "handler" includes, but is not limited to, a processor, dealer, shipper, seedsman, or exporter of soybeans. The term also includes a farmer who sells seed soybeans to other farmers either within or without this state.~~

~~Example 1: Farmer A grows soybeans in Virginia and sells the harvested crop for processing to Processor B located in North Carolina. Farmer A is the "handler" and is responsible for remitting to the Virginia Department of Taxation the Virginia Soybean Excise Tax.~~

~~Example 2: Farmer E grows soybeans in Virginia and sells the harvested crop for processing to Processor F located in Virginia. Processor F is the "handler" and is responsible for collecting from the farmer and remitting to the Virginia Department of Taxation the Virginia Soybean Excise Tax.~~

~~Example 3: Farmer G grows soybeans in Virginia and sells the harvested crop for seed to Farmer H. Farmer G is the "handler" and is responsible for remitting to the Virginia Department of Taxation the Virginia Soybean Excise Tax.~~

~~C. The soybean excise tax returns shall be filed by the handler quarterly. The quarters are January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. The returns shall be filed by the handler on or before the last day of the month following the end of the period. Each return shall report the gross volume of Virginia soybeans which has been handled by the handler during the tax period. Each handler must file the return with~~

~~the Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880.~~

~~D. Each handler shall pay the soybean excise tax. The return, with applicable tax payment, is due by April 30, July 31, October 31, and January 31 of each year. The tax receipts shall be deposited by the Tax Commissioner into the state treasury and credited to the Virginia Soybean Fund.~~

VA.R. Doc. No. R07-54; Filed November 29, 2006, 4:20 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-110. **Individual Income Tax (repealing 23 VAC 10-110-10, 23 VAC 10-110-50, 23 VAC 10-110-100, 23 VAC 10-110-120, 23 VAC 10-110-140, 23 VAC 10-110-210, 23 VAC 10-110-260, 23 VAC 10-110-290 and 23 VAC 10-110-300).**

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the department has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the sections of the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal selected sections of the Individual Income Tax regulations that provide no additional guidance to clear and unambiguous statutes.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and department's administration of the state tax laws by eliminating unnecessary regulations. As these

regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation proposes to repeal 23 VAC 10-110-10, 23 VAC 10-110-50, 23 VAC 10-110-100, 23 VAC 10-110-120, 23 VAC 10-110-140, 23 VAC 10-110-210, 23 VAC 10-110-260, 23 VAC 10-110-290 and 23 VAC 10-110-300 in the existing Individual Income Tax Regulations. 23 VAC 10-110-10 and 23 VAC 10-110-120 are in conflict with the corresponding Code of Virginia sections because they did not address previous changes in the statutes. 23 VAC 10-110-50, 23 VAC 10-110-100, 23 VAC 10-110-140, 23 VAC 10-110-210, 23 VAC 10-110-260, 23 VAC 10-110-290 and 23 VAC 10-110-300 provide no additional guidance to clear and unambiguous statutes.

**Result of Analysis.** The proposed repeal is not likely to have any significant impact.

**Estimated Economic Impact.** 23 VAC 10-110-10 (Income not subject to local taxation) states that "no city, county, town, or other political subdivision of the state may impose any tax or levy upon income. The right to impose an income tax rests exclusively with the state." Chapter 245 of the 1989 Acts of Assembly amended the Code of Virginia § 58.1-300 and authorized localities to impose a local income tax.<sup>1</sup> This change is not addressed in 23 VAC 10-110-10. When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. Thus, eliminating 23 VAC 10-110-10 will have no impact.

23 VAC 10-110-120 (Imposition of the tax) addresses the tax on the Virginia taxable income of every individual for each taxable year. The tax rates in the regulation are the same as those listed in the Code of Virginia § 58.1-320, except for taxable income in excess of \$12,000 but not in excess of \$17,000. Chapter 9 of the 1987 Acts of Assembly raised the taxable income level for the top tax rate from \$12,000 to \$17,000, phased in over four years, which essentially lowered the tax rates for taxable income in excess of \$12,000 but not in excess of \$17,000. 23 VAC 10-110-120 does not reflect this change and thus has been in conflict with the Code. Eliminating 23 VAC 10-110-120 will have no impact, because the Code applies when conflict occurs between the Code and the regulations.

23 VAC 10-110-50 (Assessment and payment of deficiency; fraud; penalties), 23 VAC 10-110-100 (Jeopardy assessments), 23 VAC 10-110-140 (Virginia taxable income; generally), 23 VAC 10-110-210 (Energy income tax credit), 23 VAC 10-110-260 (Place of filing), 23 VAC 10-110-290

<sup>1</sup> According to the Department of Taxation, no locality has utilized this authority.

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# Regulations

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(Voluntary contribution to political party) and 23 VAC 10-110-300 (Penalty for failure to file timely return) are essentially identical in meaning to Code § 58.1-308, § 58.1-313, § 58.1-322, § 58.1-331, § 58.1-343, § 58.1-346 and § 58.1-347, respectively. Repealing these sections therefore will have no impact.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with

the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-110-10. Incomes not subject to local taxation. (Repealed.)**

~~No city, county, town, or other political subdivision of the state may impose any tax or levy upon income. The right to impose an income tax rests exclusively with the state.~~

**23 VAC 10-110-50. Assessment and payment of deficiency; fraud; penalties. (Repealed.)**

~~A. Underpayment. If the amount of tax computed by the department exceeds the tax computed by the taxpayer on his return, the department shall issue an assessment for the amount of such underpayment. The department will mail a Notice of Assessment to the taxpayer who must pay the additional tax and interest within thirty days of the date of assessment. (Date of assessment is defined by §§ 58.1-1820(2) of the Code of Virginia as the date on which a Notice of Assessment is mailed to the taxpayer at his last known address. See 23 VAC 10-110-50 and 23 VAC 10-20-160.)~~

~~If the underpayment of tax was not due to fraud or willful intent to avoid payment, no penalty shall be assessed on such underpayment provided the return is timely filed and payment of the tax as computed by the taxpayer is made on or before the due date of the return. However, interest will accrue on the amount of underpayment from the due date of the return until payment is made.~~

~~B. False or fraudulent return. If the amount of tax computed by the department exceeds the tax computed by the taxpayer on his return and the understatement of tax is false or fraudulent with willful intent to evade the tax, the department shall assess penalty of 100% of the actual amount of tax due. In addition, interest on the amount of the underpayment will accrue from the due date of the return until paid.~~

~~The penalty for the filing of a false or fraudulent return with intent to evade the tax will be assessed against a taxpayer whenever the complementary federal fraud penalty is assessed against such taxpayer for the same taxable year. Otherwise, determination of whether a return is false or fraudulent with willful intent to evade the tax shall be made on the basis of the facts in each particular case. (See also 23 VAC 10-20-150.)~~

**23 VAC 10-110-100. Jeopardy assessments. (Repealed.)**

A. Generally. The Tax Commissioner shall have the authority to assess any taxpayer with an actual or estimated amount of tax due, together with penalties and interest, at any time the Commissioner is of the opinion that the collection of income tax, penalty, and interest will be jeopardized by delay and may further demand immediate payment of such assessment. The assessment and any demand for immediate payment thereof shall be sent via certified mail, return receipt requested, to the taxpayer's last known address or delivered personally.

B. Jeopardized by delay, defined. For purposes of this regulation, the term "jeopardized by delay," means that it has been determined that a taxpayer designs to do any of the following:

- (i) depart quickly from the Commonwealth;
- (ii) remove his property from the Commonwealth;
- (iii) conceal himself or his property;
- (iv) commit any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the income tax for the period in question.

C. Termination of taxable period. If an assessment is issued pursuant to this section for the current period, the taxable period shall be immediately terminated and notice of such termination shall be sent via certified mail or personally delivered to the taxpayer together with a demand for immediate payment based upon the period declared terminated. Such tax shall be immediately due and payable regardless of whether the time otherwise allowed by law for the filing of a return and paying the tax has expired.

D. Payment on demand. All assessments issued pursuant to this section shall become immediately due and payable and any tax, penalty, or interest not paid upon demand of the Tax Commissioner, shall become collectible as otherwise provided by law. A memorandum of lien as provided under § 58.1-1805 of the Code of Virginia may be issued immediately upon assessment and notice thereof or the Tax Commissioner may require the taxpayer to file a bond which, in the judgment of the Tax Commissioner, is sufficient to protect the Commonwealth's interest.

**23 VAC 10-110-120. Imposition of the tax. (Repealed.)**

A tax is imposed upon the Virginia taxable income of every individual for each taxable year as follows:

Va. Taxable Income	Tax Rate
\$0 - 3,000	2%
3,001 - 5,000	\$60 + 3% of excess over \$3,000
5,001 - 12,000	\$120 + 5% of excess over \$5,000
over 12,000	\$470 + 5.75% of excess over \$12,000

**23 VAC 10-110-140. Virginia taxable income; generally. (Repealed.)**

An individual's Virginia taxable income for a taxable year is his FAGI for the taxable year with the additions, subtractions and deductions set forth in 23 VAC 10-110-141, 23 VAC 10-110-142, and 23 VAC 10-110-143.

**23 VAC 10-110-210. Energy income tax credit. (Repealed.)**

A. Generally. Effective for taxable years beginning on and after January 1, 1983, a credit is allowable against the income tax liability of an individual for a portion of "renewable energy source expenditures" as defined by Section 44C of the Internal Revenue Code (IRC) of 1954 (as amended, 1982) and the accompanying regulations.

If the federal renewable energy source income tax credit is terminated prior to January 1, 1983, all references herein to IRC Section 44C and its accompanying regulations shall mean the statute and regulations as they exist at the date of termination.

B. Qualified expenditures. This credit is applicable only to qualifying renewable energy source property installed in, or in connection with a dwelling unit located in Virginia which is used by an individual as his principal residence. No credit is allowable for energy conservation expenditures regardless of the fact that such expenditures also qualify for a federal credit under IRC Section 44C.

The definitions of renewable energy source expenditures under IRC Section 44C (c) and (d) and the accompanying regulations including, but not limited to, rules relating to allocation, property financed by subsidized energy financing, joint occupancy or ownership of property and a condominium, shall be applicable to this credit, except that references therein to taxable years and expenditure periods prior to January 1, 1983, shall not apply. For purposes of this tax credit, taxpayer labor may not be included in expenditure amounts.

C. Amount and taxable year in which credit allowed.

1. Credit amount. A credit in the amounts set forth below is allowable for expenditures made within the specified time period.

% of Expenditures Allowed as Credit	Period in Which Expenditure is Made
25%	January 1, 1983 through December 31, 1984
20%	January 1, 1985 through December 31, 1985
15%	January 1, 1986 through December 31, 1986
10%	January 1, 1987 through December 31, 1987

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~~2. When expenditure deemed made. In accordance with Treasury Regulation 1.44C-3, an expenditure will be deemed made when original installation of the renewable energy source property is completed or, in the case of expenditures in connection with the construction or reconstruction of a dwelling which becomes the taxpayer's principal residence, when the original use of the dwelling by the taxpayer begins.~~

~~Renewable energy source expenditures made prior to January 1, 1983, or after December 31, 1987, do not qualify for this credit.~~

~~3. Taxable year in which credit allowable. Pursuant to Treasury Regulation 1.44C-3, the credit will be allowable in the year in which the expenditure qualifies for the complementary federal income tax credit under the provisions of IRC Section 44C or the taxable year in which such expenditure would qualify for the credit absent the prior expenditure limitation of IRC Section 44C(b)(3). (This section places a cumulative limitation of \$10,000 on total renewable energy source expenditures.) No credit may be claimed for any taxable year beginning on or after January 1, 1988, except as set forth in Subsection D of this regulation.~~

The following examples illustrate the operation of the credit.

~~Example 1: Taxpayer A installs a solar energy system and the installation is substantially complete on November 1, 1982. Payment is made to the contractor on January 20, 1983. Since the expenditure is deemed made when installation is substantially complete, i.e., November 1, 1982, no credit is available.~~

~~Example 2: Taxpayer B installs a renewable energy source system on December 15, 1984 and makes payment for the system on January 25, 1985. The credit must be claimed in taxable year 1985 since payment was made in 1985, even though the expenditure occurs in taxable year 1984. However, a 25% credit is allowed since the expenditure was made prior to December 31, 1984.~~

~~D. Limitations and carryover. Only one credit, not to exceed \$1,000 per expenditure, is allowable. Such credit is nonrefundable and may not exceed the lesser of \$1,000 or the actual tax liability computed without respect to the credit. If any portion of an otherwise allowable energy income tax credit is not used solely because it exceeds the individual's income tax liability, the unused portion of the credit may be carried to the succeeding taxable year and added to any credit allowable for that taxable year until used. No excess credit may be carried forward to a taxable year beginning on or after January 1, 1989.~~

~~E. Records. The taxpayer must maintain records that clearly identify the renewable energy source property with respect to which a credit is claimed and substantiate its cost to the taxpayer.~~

## **23 VAC 10-110-260. Place of filing. (Repealed.)**

~~Every individual who is required to file an income tax return for any taxable year must file such return, as set out in 23 VAC 10-110-240, with the commissioner of revenue, director of finance, or supervisor of assessments in the city or county in which he resides or, in the case of a nonresident, in the city or county in which his income from Virginia sources was derived. Only one return should be filed; separate returns are not required for each locality.~~

## **23 VAC 10-110-290. Voluntary contribution to political party. (Repealed.)**

~~Any individual who is eligible for a state income tax refund of his state income tax may elect to designate that \$2.00 of such refund be paid to the State Central Committee of a qualifying political party. A husband and wife may each designate that \$2.00 of the refund be paid to a political party regardless of whether such husband and wife file separate returns, a joint return or separately on a combined return. Any individual electing to make the \$2.00 contribution must designate the political party which should receive the contribution. No contribution may be made in any amount other than \$2.00 and no contribution may be made unless the contributor is due a refund of tax.~~

~~For purposes of this section, a "qualifying political party" shall be a party "which at the last preceding statewide general election polled at least 10% of the total vote cast for the office filled in that election by the voters of the Commonwealth at large." (§ 24.1-1 of the Code of Virginia).~~

## **23 VAC 10-110-300. Penalty for failure to file timely return. (Repealed.)**

~~Any person who is required by law or regulation to do so must file an income tax return and must do so on or before the due date of the return or on or before the extended due date of the return if an extension is granted by the department pursuant to 23 VAC 10-110-270. When any tax is due for a taxable year and the return is not timely filed, a penalty equal to 10% of the tax due shall be added to the tax due. The penalty once assessed shall become a part of the tax.~~

V.A.R. Doc. No. R07-53; Filed November 29, 2006, 4:20 p.m.

## **Fast-Track Regulation**

**Title of Regulation: 23 VAC 10-110. Individual Income Tax (repealing 23 VAC 10-110-150 through 23 VAC 10-110-167, and 23 VAC 10-110-200).**

**Statutory Authority: § 58.1-203 of the Code of Virginia.**

**Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.**

(See Calendar of Events section for additional information)

**Effective Date: March 10, 2007.**



**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law. As these regulations are obsolete, they are being repealed. As these regulations are obsolete, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are obsolete, their repeal is not expected to be controversial.

**Substance:** This regulatory action repeals several sections of the Individual Income Tax regulations that conflict with current law and are thus obsolete.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating obsolete regulations that do not reflect the current law. As these regulations are obsolete, their repeal will result in no disadvantages to the public or the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation.** The Department of Taxation (TAX) proposes to repeal sections regarding Excess Cost Recovery (23 VAC 10-110-150 and 23 VAC 10-110-160 through 23 VAC 10-110-167) and Retirement Income Tax Credit (23 VAC 10-110-200) in the existing Individual Income Tax regulations (23 VAC 10-110). These sections have been made obsolete by changes in the statutes.

**Result of Analysis.** The proposed repeal is not likely to have any significant impact.

**Estimated Economic Impact.** The Department of Taxation proposes to repeal outdated regulations on Excess Cost Recovery (23 VAC 10-110-150 and 23 VAC 10-110-160 through 23 VAC 10-110-167) in the existing Individual Income Tax regulations. 23 VAC 10-110-150 was made obsolete because the corresponding Code section (58.1-323) was repealed by the 1987 Acts of Assembly. 23 VAC 10-110-160 through 23 VAC 10-110-167 have been outdated after

the 2000 Acts of Assembly repealed § 58.1-323.1 of the Code of Virginia on the cessation of the Excess Cost Recovery Program.

Regulations on Retirement Income Tax Credit (23 VAC 10-110-200) will be repealed due to the repeal of the corresponding Code section (58.1-330) by the 1990 Acts of Assembly.

Repeal of these outdated regulations does not reflect a change in existing TAX policy and will likely not have any significant impact.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

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the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

## Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law. As these regulations are obsolete, they are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

### **23 VAC 10-110-150. ~~Excess cost recovery. (Repealed.)~~**

~~A. In general. The purpose of the adjustments described by this section is to phase in the federal Accelerated Cost Recovery System (ACRS). All taxpayers must make an addition on their Virginia income tax returns for taxable years 1982 and thereafter which is equal to 30% of the ACRS deduction claimed on their federal income tax returns. For taxable years 1984 and thereafter a subtraction is allowed which is equal to a percentage of the ACRS additions made by the taxpayer in the taxpayer's Virginia income tax returns.~~

#### ~~B. Addition.~~

~~1. Any taxpayer claiming a deduction for ACRS on the federal return is required to add 30% of the federal ACRS deduction to Virginia taxable income. The addition is required regardless of the location of the property and regardless of the recovery method elected under ACRS.~~

~~2. The addition is equal to 30% of the ACRS deduction except that no addition shall be made for any federal deduction claimed with respect to property not used to produce Virginia taxable income (such as foreign source income).~~

~~3. The following refers to items on federal form 4562, Depreciation and Amortization for 1984.~~

~~a. No addition is required for the deduction under the election to expense recovery property. IRC §179.~~

~~b. The addition is required for all recovery property (3-year, 5-year, 10-year, 15-year public utility, 15-year real property low income housing, 15-year real property other than low income housing, 18-year real property) regardless of recovery period or method used or year placed in service.~~

~~c. No addition is required for property subject to IRC §168(e)(2) election to use a method not based on a term of years.~~

~~d. No addition is required for depreciation or amortization of non-recovery property.~~

~~4. Partnerships, estates, trusts and electing small business corporations (Subchapter S) report the ACRS addition on their Virginia returns. The ACRS addition is included in the additions and subtractions reported to each partner, beneficiary and shareholder in accordance with the distributive share for the taxable year.~~

~~5. When less than 100% of a taxpayer's income is from Virginia sources the addition is made as follows:~~

~~a. Resident individuals add 30% of the federal ACRS deduction regardless of where the property is located. No deduction, exclusion, exemption or proration of the addition is allowed except with respect to property used to produce foreign source income.~~

~~b. Nonresident individuals add 30% of the federal ACRS deduction in the same manner as resident individuals. The addition will be adjusted by the percentage of Virginia income in the computation of Virginia taxable income.~~

~~c. Part year residents add 30% of only the portion of the federal ACRS deduction earned while a resident of Virginia. The federal ACRS deduction shall be prorated based on the number of days of residence regardless of when the property is acquired or where the property is located.~~

~~d. Corporations add 30% of the federal ACRS deduction. Those corporations eligible to allocate and apportion income will adjust the ACRS addition as part of apportionment computations.~~

~~e. Partnerships, electing small business corporations (Subchapter S corporations), estates and trusts add 30% of the federal ACRS deduction. If a partnership, electing small business corporation, estate or trust has income from sources in Virginia and other states, and has partners, shareholders or beneficiaries who are not residents of Virginia, then the nonresident's share of the additions and subtractions shall be determined in accordance with generally accepted accounting principles.~~

~~C. Subtraction. For taxable years beginning on or after January 1, 1984, taxpayers may subtract a portion of the ACRS additions made in the taxpayer's Virginia income tax returns for 1982 and thereafter. The subtraction is computed as follows:~~

~~1. The ACRS additions for all taxable years beginning and during calendar years 1982 and 1983 are totaled. Twenty percent (20%) of this total may be subtracted in the first taxable year beginning on or after January 1, 1984, and in each of the four succeeding taxable years.~~

2. The ACRS additions for the two taxable years beginning on or after January 1, 1984 are totaled. Twenty percent (20%) of this total may be subtracted in the third taxable year beginning after January 1, 1984, and in each of the four succeeding taxable years.

3. This addition and subtraction cycle continues indefinitely. Thus, additions made in the third and fourth taxable years beginning after January 1, 1984 will be subtracted in the fifth through the ninth taxable years; additions made in the fifth and sixth taxable years will be subtracted in the seventh through the eleventh taxable years.

4. Short taxable years beginning after January 1, 1984, are treated as ordinary taxable years. However, the first biennium, calendar years 1982 and 1983, includes all taxable years beginning during 1982 and 1983.

5. Example. Corporation A was organized on January 20, 1982, and filed its first tax return electing a taxable year ending June 30, 1982. In 1986 A was acquired by another corporation and filed a short year return for the period July 1, 1986, to December 31, 1986, in order to be included in the acquiring corporation's consolidated federal return. A continued to file a separate Virginia return. The first biennium contains three taxable years beginning January 20, 1982, July 1, 1982, and July 1, 1983. The ACRS additions for these three years total \$900, twenty percent of which (\$180) will be subtracted in taxable years ending on June 30, 1985, June 30, 1986, December 31, 1986, December 31, 1987, and December 31, 1988. The ACRS additions for the second biennium (taxable years ending on June 30, 1985, and June 30, 1986) total \$600, twenty percent of which (\$120) will be subtracted in taxable years ending December 31, 1986, December 31, 1987, December 31, 1988, December 31, 1989, and December 31, 1990.

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

**D. Special situations.**

1. Additions. For taxable years beginning during 1982 and 1983, any taxable entity filing a federal return in which an ACRS deduction is claimed must add 30% of such deduction in computing Virginia taxable income. No subtraction may be claimed in 1982 and 1983 returns regardless of the taxpayer's situation.

2. Additions by other taxpayers.

a. Except for those situations set forth below, a taxpayer may claim a subtraction for only those ACRS additions made by the taxpayer. For this purpose a partner, beneficiary or shareholder is NOT deemed to have made ACRS additions reported by partnerships, estates, trusts and electing small business corporations (Subchapter S corporation). A partner, for example, may claim an

ACRS subtraction only to the extent that it is included in the partner's distributive share of the income, loss, additions and subtractions for the taxable year. No adjustments are required due to any changes in the partner's ownership interest between the time the ACRS addition is made by the partnership and the time the ACRS subtraction is claimed by the partnership.

b. Any taxpayer (other than a surviving spouse) claiming a subtraction based upon ACRS additions made by any other taxable entity must attach to the return a statement setting forth the name and taxpayer I.D. No. of such other taxable entity, details of the ACRS additions and previous subtractions claimed by such other taxable entity, an explanation of the relationship between the taxpayer and such other taxable entity and a statement signed by the taxpayer to the effect that the subtraction claimed has not, and will not, be claimed by any other person on any other return, including the final return of such other taxable entity.

c. A corporation may claim a subtraction based upon ACRS additions made by another corporation if there has been a merger or other form of reorganization and the corporation claiming the subtraction would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the corporation which made the ACRS additions, assuming such corporation had incurred a net operating loss.

d. A surviving spouse may claim a subtraction based upon ACRS additions made by the decedent and the surviving spouse on a joint or combined Virginia income tax return. The statement referred to in paragraph (b) above is not required.

3. When less than 100% of a taxpayer's income is from Virginia sources the subtraction is claimed in the same manner as additions. See subsection A 5 above.

**23 VAC 10-110-160. Excess cost recovery; definitions. (Repealed.)**

The following words and terms, when used in 23 VAC 10-110-160 through 23 VAC 10-110-167, shall have the following meanings unless the context clearly indicates otherwise:

"ACRS addition" means an excess cost recovery addition actually reported under § 58-151.013(b)(6) (prior to the recodification of Title 58), § 58.1-322 B-6 (for individuals) and § 58.1-402 B-3 (for corporations) of the Code of Virginia, on any return filed for a taxable year beginning between January 1, 1982, and December 31, 1987.

"ACRS subtraction" means an excess cost recovery subtraction allowable under § 58-151.013(e)(10) (prior to the recodification of Title 58), § 58.1-322 C-8 (for individuals) and § 58.1-402 C-9 (for corporations) of the Code of Virginia,

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for any taxable year beginning after December 31, 1983, but before January 1, 1988, regardless of whether or not a return was filed to claim the allowable subtraction.

"Corporation" means any person or entity subject to tax or required to file a return under Article 10, Chapter 3 (§ 58.1-400 et seq.) of Title 58.1 of the Code of Virginia.

"Individual" means any natural person, married or unmarried, who is subject to taxation or required to file a return under Article 2 of Chapter 3 (§ 58.1-300 et seq.) of Title 58.1 of the Code of Virginia.

"Outstanding balance of excess cost recovery" means the amount equal to the difference between:

1. The sum of the ACRS additions actually reported on Virginia returns filed for taxable years beginning on and after January 1, 1982, and before January 1, 1988; and
2. The sum of the ACRS subtractions allowed or allowable on Virginia returns, regardless of whether or not a Virginia return was actually filed, for taxable years beginning on and after January 1, 1984, and before January 1, 1988.

"Post 1987 ACRS subtraction" means the portion of the outstanding balance of excess cost recovery which may be subtracted by individuals on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1990, or by corporations on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1993.

## **23 VAC 10-110-161. Excess cost recovery; purpose. (Repealed.)**

A. Generally. The Virginia Tax Reform Act of 1987 added § 58.1-323.1 of the Code of Virginia which phases out the excess cost recovery program through the allowance of post-1987 subtractions effective for taxable years beginning on and after January 1, 1988. In 1988 § 58.1-323.1 was amended to permit a refund if a final federal and Virginia return was filed for a taxable year beginning prior to January 1, 1988. This regulation sets forth the rules applicable to both individual and corporate taxpayers. In most cases the outstanding balance of excess cost recovery may be recouped through annual post-1987 subtractions over a two year period for individual taxpayers and a five year period for corporate taxpayers (see 23 VAC 10-110-163). Generally, if a taxpayer has insufficient income to benefit from a subtraction in a particular year, all or part of the subtraction may be carried over to the next year (see 23 VAC 10-110-164). A taxpayer who files a final federal and Virginia return may claim an immediate subtraction for the unrecovered outstanding balance of excess cost recovery (see 23 VAC 10-110-165). If at a conclusion of the applicable subtraction period (1989 for individuals and 1992 for corporations), or after filing a final federal and Virginia return, the taxpayer still has not recouped the outstanding balance of excess cost recovery, the taxpayer

may qualify to file an application for a refund (see 23 VAC 10-110-166).

B. Exclusive method. Effective for taxable years beginning on and after January 1, 1988, the post-1987 subtractions and refunds allowable under this regulation shall be the exclusive means of recovering the outstanding balance of excess cost recovery.

## **23 VAC 10-110-162. Excess cost recovery; computation of the outstanding balance of excess cost recovery. (Repealed.)**

A. Generally. A taxpayer's outstanding balance of excess cost recovery is computed only with respect to ACRS additions attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and ACRS subtractions attributable to such ACRS additions. For the treatment of ACRS additions and ACRS subtractions passed through from a conduit entity see 23 VAC 10-110-163 D.

B. Computation.

1. The outstanding balance of excess cost recovery includes the sum of ACRS additions actually reported on a Virginia return for taxable years beginning on and after January 1, 1982, and before January 1, 1988. If no Virginia return was filed for a taxable year then no ACRS addition with respect to such taxable year may be included in the outstanding balance of excess cost recovery.

2. For most taxpayers the information necessary to compute the "outstanding balance of excess cost recovery" can be found on the Form 302 included with the Virginia returns for taxable years 1986 and 1987.

a. The "ACRS additions" for taxable years 1982, 1983, 1984, and 1985 can be found in Column B of part II of the Form 302 attached to the 1986 and 1987 return.

b. The "ACRS additions" for taxable years 1986 and 1987 can be found in Part I of the Form 302 attached to the 1986 and 1987 return, respectively.

3. The outstanding balance of excess cost recovery is reduced by the sum of ACRS subtractions which would have been allowable with respect to each biennium's ACRS additions, whether or not a return was actually filed claiming an ACRS subtraction in each taxable year beginning on and after January 1, 1984, and before January 1, 1988.

a. The ACRS subtractions which would have been allowable with respect to the first biennium, 1982/1983, are the sum of the ACRS additions actually reported on a Virginia return for all taxable years beginning on and after January 1, 1982, and before January 1, 1984, multiplied by 80% (the percentage allowed or allowable in the four taxable years following the close of the

1982/1983 biennium, i.e., 20% X 4) or by 100% (see subdivision (2) of this subdivision).

(1) The number of taxable years included in the first biennium may be one, two, or more, depending upon when the taxpayer was required to file a Virginia return and whether returns for short taxable years were filed during the period.

(2) If one or more returns for a short taxable year were filed for a period beginning after the close of the 1982/1983 biennium the percentage allowed or allowable may be 100% for the first biennium (20% X 5).

b. The ACRS subtractions which would have been allowable with respect to the second biennium, 1984/1985, are the sum of the ACRS additions actually reported on a Virginia return for the first two taxable years beginning on and after January 1, 1984, multiplied by 40% (the percentage allowed or allowable in the two taxable years following the close of the 1984/1985 biennium, i.e., 20% X 2).

(1) The number of taxable years included in the second biennium will be two unless the taxpayer did not file a return or only filed one Virginia return during the period beginning after January 1, 1984.

(2) The percentage allowed or allowable may be more or less than 40% if one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984, or if the taxpayer was not required to file a Virginia return for a period beginning before January 1, 1985.

(3) For example: If a calendar year taxpayer first became subject to Virginia income tax in 1985, there would be no ACRS subtractions with respect to the first biennium because no returns were filed in 1982 and 1983, therefore, no ACRS additions were reported. The ACRS subtractions with respect to the second biennium would be based on ACRS additions reported on the 1985 and 1986 Virginia returns multiplied by 20% (i.e., 20% X 1, the number of taxable years beginning after the close of the second biennium and before January 1, 1988).

e. The ACRS subtractions which would have been allowable with respect to the third biennium, 1986/1987, will be zero unless one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984.

### **23 VAC 10-110-163. Excess cost recovery; post-1987 ACRS subtractions. (Repealed.)**

#### **A. Generally.**

1. Except as otherwise provided in 23 VAC 10-110-164 through 23 VAC 10-110-167, the outstanding balance of excess cost recovery as computed in 23 VAC 10-110-162 shall be claimed as post-1987 ACRS subtractions on returns filed for taxable years beginning on and after January 1, 1988, as set forth in this section.

2. A taxpayer's post-1987 ACRS subtraction for a taxable year is the sum of:

a. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and

b. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery computed in accordance with 23 VAC 10-110-162 B by a conduit entity and passed through to the taxpayer in accordance with subsection D of this section.

#### **B. Individuals.**

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to two thirds of the outstanding balance of excess cost recovery.

2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to one third of the outstanding balance of excess cost recovery.

3. 1990 and after. If a post-1987 subtraction is included in the Virginia modifications distributed by an S corporation, partnership, estate or trust for its fiscal year ending after December 31, 1989, the individual may elect to include such amounts in the individual's subtractions for the taxable year, or may claim a refund under 23 VAC 10-110-166.

#### **C. Corporations.**

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.

2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.

3. 1990. For the taxable year beginning in 1990 the post-1987 ACRS subtraction is equal to 30% of the outstanding balance of excess cost recovery.

4. 1991. For the taxable year beginning 1991 the post-1987 ACRS subtraction is equal to 30% of the outstanding balance of excess cost recovery.

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5. 1992. For the taxable year beginning 1992 the post 1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery.

## D. Conduit entities.

1. A conduit entity (estate, trust, partnership and S corporation) shall compute its outstanding balance of excess cost recovery in accordance with 23 VAC 10-110-162 B.

2. In each taxable year beginning on and after January 1, 1988, and before January 1, 1990, a conduit entity shall compute the post 1987 ACRS subtraction in accordance with subsection B of this section relating to individuals without regard to whether or not the beneficiary, fiduciary, partner or shareholder is an individual, and shall provide each beneficiary, partner or shareholder with sufficient information to report the appropriate post 1987 ACRS subtraction.

3. If a conduit entity files a short year return for the fiscal year ended December 31, 1987, in order to change its taxable year to a calendar year, each beneficiary, partner, or shareholder may, in certain circumstances, elect to spread the income from the conduit entity's short taxable year over four taxable years for federal income tax purposes. If such an election is made:

a. One quarter of the conduit entity's Virginia modifications for the short taxable year (including the ACRS addition and ACRS subtraction) must be included in the 1987 Virginia taxable income of the beneficiary, partner, or shareholder;

b. One quarter of the conduit entity's Virginia modifications for the short taxable year (excluding the ACRS addition and ACRS subtraction) must be included in the Virginia taxable income of the beneficiary, partner, or shareholder in each of the three following taxable years; and

c. The beneficiary, partner, or shareholder shall adjust the the post 1987 ACRS subtraction passed through from the conduit entity in each taxable year as follows: (i) For 1988, by subtracting one half of the conduit entity's 1987 ACRS addition and adding one half of the conduit entity's 1987 ACRS subtraction; (ii) For 1989, by subtracting one quarter of the conduit entity's 1987 ACRS addition and adding one quarter of the conduit entity's 1987 ACRS subtraction.

d. Example. An S corporation was formed in July 1985 and elected a fiscal year ending June 30. It reported and passed through ACRS additions of \$200 in each of its F.Y.E. 6/30/86 and 6/30/87. There were no other Virginia additions or subtractions. The S corporation filed a short-year return for F.Y.E. 12/31/87 reporting an ACRS addition of \$100 and an ACRS subtraction of \$80. The

sole shareholder of the S corporation elected to spread the short year income over four years for federal purposes, reporting only \$25 and \$20 of the short year ACRS additions and subtractions in 1987. In 1988 the S corporation passed through a post 1987 subtraction of \$280 ( $\frac{23}{100}$  of \$500 = \$80). Because of the shareholder's election the \$280 must be reduced by  $\frac{1}{2}$  of the F.Y.E. 12/31/87 addition ( $\frac{1}{2}$  of 100 = 50) and increased by  $\frac{1}{2}$  of the F.Y.E. 12/31/87 subtraction ( $\frac{1}{2}$  of 80 = 40) for a net modification of \$270. The net effect of these modifications is represented in the following table:

Description of Modification	Total Passed Through	Reported in Shareholder's Virginia Return For			
		1986	1987	1988	1989
F.Y.E. 6/30/86 ACRS Addition	200	200			
F.Y.E. 6/30/87 ACRS Addition	200		200		
F.Y.E. 12/31/87 ACRS Addition	100		25	50	25
F.Y.E. 12/31/87 ACRS Subtract.	(80)		(20)	(40)	(20)
Post 87 ACRS Subtraction	(420)			(280)	(140)
Net Modifications	0	200	205	(270)	(135)

## E. Short taxable year.

1. If there is more than one taxable year beginning on or after January 1, 1988, because of a taxable year of less than 12 months, the allowable portion of the subtraction shall be prorated between all taxable years which begin in the same calendar year. The proration will be based on the number of months in each taxable year divided by the total number of months in all taxable years beginning during the calendar year.

2. Example. XYZ, Inc. files on a calendar year basis. On December 21, 1987, XYZ, Inc. is acquired by Holding, Inc., which files its returns on the basis of a fiscal year ending on September 30. In order to be included in a consolidated return with Holding, Inc., XYZ, Inc. files two returns for taxable years beginning in 1988—a short year return for the period January 1, 1988, through September 30, 1988, (nine months) and a return for the period October 1, 1988, through September 30, 1989, (12 months). Because there are two taxable years beginning in 1988, which cover a total of 21 months, the post 1987 ACRS subtraction for 1988 (10% of the outstanding balance of excess cost recovery) must be prorated between the nine-month taxable year and the 12 month taxable year as follows:

$$\begin{aligned} \text{Taxable year 1/1/88 - 9/30/88: } & 10\% \times 9/21 = 4.29\% \\ \text{Taxable year 10/1/88 - 9/30/89: } & 10\% \times 12/21 = 5.71\% \\ \text{Total subtractions for 1988} & = 10.00\% \end{aligned}$$

## F. Former S corporation.

1. If an S corporation becomes taxable under subchapter C of the I.R.C., its post 1987 ACRS subtraction for taxable years after termination of the election shall be the amount by which:

- a. The total post 1987 ACRS subtractions for the current and all prior taxable years computed under subsection C of this section relating to corporations, exceeds
- b. The total post 1987 ACRS subtractions which were actually passed through to beneficiaries, partners and shareholders by the former S corporation or which were claimed by the corporation after it ceased to qualify as an S corporation.

2. Example. An S corporation is acquired by another corporation as of the first day of 1989, thereby terminating its status as an S corporation for 1989. Two thirds of the outstanding balance of excess cost recovery was passed through to the former S corporation's shareholders in 1988. The remaining one third will be subtracted as follows:

Post 1987 ACRS Subtraction	1989	1990	1991	1992
1. Percent allowable for current years	20%	50%	80%	100%
2. Percent previously passed through or allowed	66.7%	66.7%	66.7%	80%
3. Percent allowable for current year (L. 1 minus L. 2, but not less than 0)	0.0%	0.0%	13.3%	20%

3. If a corporation makes a valid election to be taxed under subchapter S of the I.R.C. after 1987, any post 1987 ACRS subtraction which has not been used by the corporation shall be passed through to its shareholders in accordance with subsection D of this section. However, if the election is made for a taxable year beginning on and after January 1, 1990, no amount shall be passed through to the shareholder under subsection D of this section, but the corporation shall be eligible to apply for a refund under 23 VAC 10-110-166.

**23 VAC 10-110-164. Excess cost recovery; carryover of unused subtractions. (Repealed.)**

**A. Individuals:**

1. Any individual who has insufficient income to offset the full amount of the post 1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this paragraph in any taxable year beginning on or after January 1, 1990. An individual who has not recovered the full amount of the outstanding balance of excess cost recovery under this section or under 23 VAC 10-110-163 on his income tax returns filed for taxable years 1988 and 1989, may qualify to file an application for a refund under 23 VAC 10-110-166.

2. The portion of any post 1987 ACRS subtraction available for carryover is the lesser of:

a. The amount by which Virginia taxable income is less than zero, or

b. The post 1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. A taxpayer may not elect to claim less than the allowable post 1987 ACRS subtraction in any year in order to take advantage of a credit, or for any other reason.

**4. Example.**

a. Taxpayer A, an individual filing on a calendar year, has an outstanding balance of excess cost recovery equal to \$9,000 after taxable year 1987. For calendar year 1988 he is single with federal adjusted gross income of \$12,350 and Virginia itemized deductions of \$7,250. For Virginia income tax purposes, he has no additions to federal adjusted gross income and he has no subtractions from federal adjusted gross income other than his post 1987 ACRS subtraction. His carryover from taxable year 1988 to 1989 is \$1,700, which is computed in the following manner:

Federal Adjusted Gross Income	\$12,350
Va. Personal Exemption	800
Va. Itemized Deductions	7,250
Post 1987 ACRS Subtraction	
(\$9,000 x 2/3)	6,000
Va. Taxable Income	1,700

b. Taxpayer A would be allowed to carryover \$1,700 of his post 1987 ACRS subtraction for 1988 to 1989 and add it to the post 1987 ACRS subtraction (\$3,000) otherwise allowable as a subtraction in 1989. Therefore, in 1989 Taxpayer A will have a total post 1987 ACRS subtraction of \$4,700 (\$1,700 carryover from 1988 + \$3,000 for 1989).

e. Taxpayer A may not claim a post 1987 ACRS subtraction of less than \$6,000 in 1988 (increasing the amount carried over to 1989) in order to take advantage of an energy income tax credit carried over from 1987 (which cannot be carried over to 1989).

**B. Corporations:**

1. Any corporation which has insufficient income to offset the full amount of the post 1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this subdivision in any taxable year beginning on or after January 1, 1993. Any corporation that has not recovered the full amount of the outstanding balance of excess cost recovery under 23 VAC 10-110-163 or under this section on income tax returns filed for taxable years beginning on or after January 1, 1988, but before January 1,

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1993, may qualify to file an application for a refund under 23 VAC 10-110-166.

2. The amount of the post 1987 ACRS subtraction available for carryover is the lesser of:

a. The amount by which Virginia taxable income is less than zero, or

b. The post 1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. Example. ABC, Inc. has an outstanding balance of excess cost recovery equal to \$120,000 after taxable year 1987. Under 23 VAC 10-110-163 the allowable post 1987 ACRS subtraction is \$12,000 for 1988 and 1989, \$36,000 for 1990 and 1991, and \$24,000 for 1992. ABC has losses or income which are insufficient to absorb the full amount of the post 1987 ACRS subtractions in every year. The Virginia taxable income and carryover would be computed as follows:

<b>EDITOR'S NOTE:</b> The table that appears here is also stricken but is not set out because of formatting constraints.
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C. Conduit entities. Estates, trusts, partnerships and S corporations do not carryover post 1987 ACRS subtractions under this section. Amounts distributed under subsection D of 23 VAC 10-110-163 may be carried over by the beneficiaries, partners or shareholders.

D. Nonresidents. If a nonresident has income from Virginia sources or is required to file a Virginia return the nonresident may claim a post 1987 ACRS subtraction and carryover unused amounts under this section.

## **23 VAC 10-110-165. Excess cost recovery; final return. (Repealed.)**

A. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or corporation, for a taxable year beginning on and after January 1, 1988, the taxpayer may claim the entire outstanding balance of excess cost recovery (less amounts already claimed as a post 1987 ACRS subtraction) on the final Virginia return:

1. Conduit entities. Amounts claimed on the final Virginia return of an estate, trust, partnership or S corporation shall be distributed in accordance with subsection D of 23 VAC 10-110-163.

2. Other taxpayers. If the taxpayer has insufficient income on the final Virginia return to offset the entire amount allowable under this subdivision, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed under 23 VAC 10-110-166.

B. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued operations in Virginia shall not entitle the taxpayer to the immediate subtraction or refund allowed in subdivision A 1 of 23 VAC 10-110-166.

## **23 VAC 10-110-166. Excess cost recovery; application for refund. (Repealed.)**

A. Generally.

1. Any taxpayer who can demonstrate that the entire outstanding balance of the excess cost recovery as computed in 23 VAC 10-110-162 has not been recovered through post 1987 ACRS subtractions allowable under 23 VAC 10-110-163 or 23 VAC 10-110-164 by such taxpayer or any other taxpayer may apply for a refund of unrecovered taxes paid on the outstanding balance of excess cost recovery.

2. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or corporation, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed by the person authorized to act on behalf of the deceased or dissolved taxpayer.

3. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued its operations in Virginia shall not entitle the taxpayer to apply for a refund under this section.

4. Estates, trusts, partnerships and S corporations shall not apply for a refund under this section except to the extent that the fiduciary of an estate or trust paid tax on undistributed income.

5. No refund shall be allowed under this section unless the taxpayer has income from Virginia sources or is required to file a Virginia return for each taxable year in which a subtraction is allowed under 23 VAC 10-110-163 or, if earlier, for each taxable year until a final federal return is filed.

B. Computation of the refund amount.

1. The refund shall be computed upon the amount of the outstanding balance of excess cost recovery which has not been recovered through post 1987 ACRS subtractions allowable under 23 VAC 10-110-163 or 23 VAC 10-110-164. This amount shall be multiplied by 5.75% (0.0575) in the case of an individual or by 6.0% (0.06) in the case of a corporation.

2. In no case shall the amount of refund allowed under this section exceed the amount of tax that was actually paid on the outstanding balance of excess cost recovery and not otherwise recovered through post 1987 ACRS subtractions.



For the purpose of computing the limitation under this subdivision:

a. The refund shall be limited to the amount by which (i) the sum of the difference between the tax actually paid and the tax computed without the ACRS addition and ACRS subtraction for each taxable year beginning on and after January 1, 1982, and before January 1, 1988, exceeds (ii) the sum of the difference between the tax actually paid and the tax computed without the post 1987 ACRS subtraction for each taxable year beginning on and after January 1, 1988.

b. A beneficiary may include tax paid by an estate or trust with respect to a distribution of accumulated income.

c. A shareholder of an S corporation may include the distributive share of tax paid by the corporation in years before it elected S corporation status.

d. In the case of a net operating loss, a taxpayer may include either:

(1) Virginia income tax paid in the year of the loss (if any), or

(2) Virginia income tax paid in a year to which any portion of the loss year ACRS addition and ACRS subtraction may have been carried with a federal net operating loss deduction.

e. In the case of a corporation required to allocate and apportion its income for any taxable year in which an ACRS addition was reported the Virginia income tax paid for such year shall be the tax attributable to the ACRS addition (net of any allowable ACRS subtraction) after apportionment.

3. Examples.

a. Newco, Inc. is incorporated in 1986 and dissolved in 1988. Newco reports ACRS additions of \$1,000 on its 1986 return and \$1,500 on its 1987 return. Newco's outstanding balance of excess cost recovery is \$2,500, all of which is reported on the 1988 final return under 23 VAC 10 110 165. Since Newco only has sufficient income in 1988 to offset \$1,000 of the final post 1987 ACRS subtraction, Newco has \$1,500 of unrecovered outstanding balance of excess cost recovery eligible for a refund under subsection A of this section. The refund amount would be \$90 (\$1,500 X 6%) under subdivision B 1 of this section; however, under subdivision B 2 of this section the refund is limited to \$24 (the tax of \$60 actually paid in 1986 and 1987 attributable to the ACRS additions less the tax of \$36 attributable to the post 1987 subtraction in 1988). The calculation of the limitation is shown below:

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

b. James Smith moved to Virginia in 1987 and was required to report an ACRS addition in the amount of \$6,000 on his 1987 return. His outstanding balance of excess cost recovery is \$6,000 which will be subtracted in 1988 and 1989. After filing his 1989 return, Mr. Smith still has \$2,000 of the outstanding balance of excess cost recovery which has not offset income and requests a refund in the amount of \$115 (2,000 X 0.0575). However Mr. Smith's refund is limited to \$66, (the tax of \$266 actually paid in 1987 attributable to the ACRS additions less the tax of \$200 attributable to the ACRS additions in 1988 and 1989). The calculation of the limitation is shown below:

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

C. When to file the application for refund.

1. The application for refund may be filed after filing final federal and Virginia income tax returns as provided in 23 VAC 10 110 165 or after filing the income tax return for the last taxable year specified under 23 VAC 10 110 163 for claiming a post 1987 ACRS subtraction.

2. An application for refund must be filed within three years of the applicable date.

a. In the case of a final federal and Virginia return due to the death or dissolution of a taxpayer, the applicable date is the later of July 1, 1988, for a final return for a period beginning before January 1, 1988, or the due date of the final return for a period beginning on or after January 1, 1988.

b. In the case of an application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery, the applicable date is the due date of the last return on which the taxpayer is entitled to claim a subtraction under 23 VAC 10 110 163 or 23 VAC 10 110 164. A calendar year individual may file such application after filing the income tax return for 1989. A calendar year corporation may file such application after filing the income tax return for 1992.

D. Form of application. Any application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery shall be filed by a letter to the Tax Commissioner requesting the refund or by amended return. The letter shall provide sufficient documentation to demonstrate that the amount of refund requested does not exceed the amount specified in subdivision B 2 of this section (tax actually paid).

E. Accelerated application for refund. A corporation which would be entitled to file an application for a refund under this

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section may apply to the Tax Commissioner for permission to claim the refund in an earlier taxable year. The Tax Commissioner shall have the authority, at his discretion, to allow the refund to be claimed in an earlier taxable year if the taxpayer has demonstrated to the satisfaction of the Tax Commissioner that:

1. The taxpayer has paid Virginia income tax with respect to its outstanding balance of excess cost recovery;
2. The taxpayer has not recovered any portion of the outstanding balance of excess cost recovery;
3. The taxpayer will be required to file a Virginia income tax return for each year in which a subtraction is allowable under 23 VAC 10-110-163 and 23 VAC 10-110-164;
4. The taxpayer can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under 23 VAC 10-110-163 and 23 VAC 10-110-164; and
5. No other taxpayer may claim or has claimed a subtraction or a refund with respect to the taxpayer's outstanding balance of excess cost recovery by reason of 23 VAC 10-110-167 A (Successor entities) or 23 VAC 10-110-163 D (Conduit entities);
6. Example. A Real Estate Investment Trust (REIT) is required to distribute its income to shareholders and generally has no federal taxable income subject to tax. Because items of income and deduction do not have the same character in the hands of a REIT's shareholders, the ACRS modifications do not flow through to the shareholders. Therefore, a REIT can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under 23VAC10-110-163 and 23 VAC 10-110-164, and would qualify for the immediate refund under this subsection.

F. Interest. No interest shall be paid on refunds made under this section.

## **23 VAC 10-110-167. Excess cost recovery; special rules. (Repealed.)**

A. Successor entities. In computing the outstanding balance of excess cost recovery a taxpayer may include ACRS additions and ACRS subtractions made by other taxpayers in the following situations:

1. A surviving spouse may include ACRS additions and ACRS subtractions made on a joint or combined Virginia return with the decedent.
2. A corporate taxpayer may include ACRS additions and ACRS subtractions made by another corporation if there has been a merger or other form of reorganization under the following conditions:

a. The taxpayer would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the other corporation, assuming such other corporation incurred a net operating loss.

b. A statement shall be attached to the return setting forth:

- (1) The name and taxpayer I.D. No. of such other corporation;
- (2) Details of the ACRS additions, ACRS subtractions and post 1987 ACRS subtractions claimed by such other corporation;
- (3) An explanation of the relationship between the taxpayer and such other corporation; and
- (4) A statement signed by the taxpayer to the effect that the post 1987 ACRS subtraction has not, and will not, be claimed by any other taxpayer on any other return, including the final return of such other corporation.

3. A successor entity which elects to include ACRS additions and ACRS subtractions of another taxpayer in its outstanding balance of excess cost recovery shall not be eligible to apply for a refund under 23 VAC 10-110-166 due to the final federal and Virginia return of such other taxpayer.

B. Multiple recovery prohibited. A taxpayer may not claim a subtraction under 23 VAC 10-110-163 or 23 VAC 10-110-164 or a refund under 23 VAC 10-110-166 with respect to any portion of the outstanding balance of excess cost recovery which such taxpayer or any other taxpayer has previously recovered.

C. Net operating losses.

1. In the case of net operating losses occurring in a taxable year beginning before January 1, 1988:

a. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning before January 1, 1988, shall carry with it the ACRS additions and ACRS subtractions as provided in 23 VAC 10-120-100 B-5 (iii) and 23 VAC 10-110-83.

b. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning on and after January 1, 1988, shall not carry with it any ACRS additions or ACRS subtractions.

e. In computing the outstanding balance of excess cost recovery, the ACRS additions and ACRS subtractions for the loss year shall be included only once, for the year of the loss. Amounts carried to other years with the federal net operating loss deduction shall be ignored.

~~2. For net operating losses occurring in a taxable year beginning on and after January 1, 1988, a federal net operating loss deduction with respect to such loss shall not carry with it any portion of the subtraction allowable under 23 VAC 10-110-163 and 23 VAC 10-110-164.~~

**23 VAC 10-110-200. Retirement income tax credit. (Repealed.)**

~~A. Generally. Every individual taxpayer age 62 or over is allowed a credit against his Virginia taxable income subject to the limitations set forth below. Any individual who attains age 62 on or before December 31 of the taxable year is eligible for the credit. (NOTE: An individual is deemed to be 62 on the day preceding his/her birthday. Therefore, an individual who turns 62 on January 1 is deemed to have been 62 on the preceding December 31.)~~

~~B. Amount of the credit. The credit is equal to 5% of the maximum social security benefit based upon the taxpayer's age less benefits actually received during the taxable year from social security or the Railroad Retirement Act and two times the amount by which the taxpayer's FAGI exceeds \$12,000. The credit may not exceed the individual's tax liability. In computing the credit, a husband and wife must allocate FAGI to the spouse who earned the income or to the owner of the property from which the income was derived. This must be done even though the husband and wife may file a joint return. If such recomputation results in one spouse having no Virginia taxable income, the joint tax liability must be attributable to the spouse with Virginia taxable income. Social security benefits mean gross benefits before any deduction, including the deduction for medicare insurance. Examples of the computation of this credit follow.~~

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

**C. Limitations on credit.**

~~1. The retirement income tax credit is a nonrefundable credit, i.e., the amount of the credit may not exceed the tax liability, computed after application of the credit for tax paid to another state, of the individual claiming the credit.~~

~~2. Any individual who claims a deduction from FAGI in computing Virginia taxable income for pension or retirement income received as an officer or employee of the Commonwealth or as a surviving spouse thereof pursuant to the provisions of subdivision 3 of 23 VAC 10-110-142 or who claims a disability income deduction pursuant to subdivision 4 of 23 VAC 10-110-142 may not also claim a retirement income tax credit.~~

VA.R. Doc. No. R07-66; Filed November 29, 2006, 4:10 p.m.

**Fast-Track Regulation**

**Title of Regulation: 23 VAC 10-120. Corporation Income Tax (repealing 23 VAC 10-120-50 through 23 VAC 10-**

**120-67, 23 VAC 10-120-290, and 23 VAC 10-120-360 through 23 VAC 10-120-364).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

Effective Date: March 10, 2007.

Agency Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

Rationale for Using Fast-Track Process: As the regulations being repealed are obsolete, their repeal is not expected to be controversial.

Substance: This regulatory action will repeal 15 Corporation Income Tax regulations that are obsolete due to a statutory change.

Issues: This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating obsolete regulations that do not reflect the current law. As these regulations are obsolete their repeal will result in no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal 23 VAC 10-120-50 (Excess cost recovery), 23 VAC 10-120-60 (Excess cost recovery; definitions), 23 VAC 10-120-61 (Excess cost recovery; purpose), 23 VAC 10-120-62 (Excess cost recovery; computation of the outstanding balance of excess cost recovery), 23 VAC 10-120-63 (Excess cost recovery; post-1987 ACRS subtractions), 23 VAC 10-120-64 (Excess cost recovery; carryover of unused subtractions),

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23 VAC 10-120-65 (Excess cost recovery; final return), 23 VAC 10-120-66 (Excess cost recovery; application for refund), 23 VAC 10-120-67 (Excess cost recovery; special rules), 23 VAC 10-120-290 (Energy income tax credit), 23 VAC 10-120-360 (Intragroup transactions; definitions), 23 VAC 10-120-361 (Factors utilized in determining whether intragroup transactions distort income from business done in Virginia), 23 VAC 10-120-362 (Circumstances under which taxpayers may request that 23 VAC 10-120-360 through 23 VAC 10-120-364 be applied to intragroup transactions), 23 VAC 10-120-363 (Intragroup transactions; accurately reflecting the income from business done in Virginia), and 23 VAC 10-120-364 (Intragroup transactions; examples).

**Result of Analysis.** The proposed amendments are not likely to have any significant impact.

**Estimated Economic Impact** 23 VAC 10-120-50 (Excess cost recovery), 23 VAC 10-120-60 (Excess cost recovery; definitions), 23 VAC 10-120-61 (Excess cost recovery; purpose), 23 VAC 10-120-62 (Excess cost recovery; computation of the outstanding balance of excess cost recovery), 23 VAC 10-120-63 (Excess cost recovery; post-1987 ACRS subtractions), 23 VAC 10-120-64 (Excess cost recovery; carryover of unused subtractions), 23 VAC 10-120-65 (Excess cost recovery; final return), 23 VAC 10-120-66 (Excess cost recovery; application for refund), and 23 VAC 10-120-67 (Excess cost recovery; special rules) all pertain to: 1) the phase-in of the federal Accelerated Cost Recovery System (ACRS), 2) Virginia's initial requirement to add back for Virginia income tax purposes 30 percent of the dollars deducted from income for federal tax purposes due to ACRS, and 3) the subsequent permission for Virginia taxpayers to recover these add-backs in following years. According to the department, the ACRS additions were recovered on Virginia income tax returns in 1988 through 1997 for corporations, and therefore 23 VAC 10-120-50, 23 VAC 10-120-60, 23 VAC 10-120-61, 23 VAC 10-120-62, 23 VAC 10-120-63, 23 VAC 10-120-64, 23 VAC 10-120-65, 23 VAC 10-120-66 and 23 VAC 10-120-67 are no longer relevant. Thus the repeal of these regulatory sections should not have a significant impact.

Section 58.1-431 of the Code of Virginia permits corporations to claim an energy income tax credit for a portion of renewable energy source expenditures made prior to January 1, 1988. 23 VAC 10-120-290 (Energy income tax credit) adds detail concerning the energy income tax credit. According to the department, even if a corporation had renewable energy source expenditures prior to January 1, 1988, for which it had not previously applied for a credit, it can no longer apply for energy income tax credit due to a three-year statute of limitations.

According to the department, for many years virtually the only application of Va. Code § 58.1-446 of the Code of Virginia has been by auditors to address royalties and interest

paid to intangible holding company affiliates of taxpayers. Almost every one of these assessments has been contested, and because the statutory standard is so subjective, resolution of these cases has consumed an extraordinary amount of the department's resources. The department stopped invoking its authority under this section in the late 1990's and sought legislation mandating an add-back of royalties paid to intangible holding company affiliates. House Bill 5018 of the 2004 Virginia Acts of Assembly included this mandate. Given this change in the Code of Virginia, 23 VAC 10-120-360 (Intragroup transactions; definitions), 23 VAC 10-120-361 (Factors utilized in determining whether intragroup transactions distort income from business done in Virginia), 23 VAC 10-120-362 (Circumstances under which taxpayers may request that 23 VAC 10-120-360 through 23 VAC 10-120-364 be applied to intragroup transactions), 23 VAC 10-120-363 (Intragroup transactions; accurately reflecting the income from business done in Virginia) and 23 VAC 10-120-364 (Intragroup transactions; examples) no longer apply.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected

reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law. As these regulations are obsolete, they are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

*23 VAC 10-120-50 and 23 VAC 10-120-60 through 23 VAC 10-120-67: Effective July 1, 2000, the obsolete statutes enacted in 1987 to eliminate the excess cost recovery program were repealed (Chapter 419 of the 2000 Acts of Assembly). The repealed statutes created the program to eliminate the outstanding Accelerated Cost Recovery System (ACRS) additions and the excess cost recovery repeal fund. This regulatory action will repeal this regulation that is obsolete due to the statutory change.*

*23 VAC 10-120-290 and 23 VAC 10-120-360 through 23 VAC 10-120-364: Effective January 1, 2004, House Bill 5018 (Chapter 3 of the 2004 Special Session I) added an additional statutory provision that required corporations to add back intangible and interest expenses paid to related members, rendering the regulations listed here obsolete.*

**23 VAC 10-120-50. Excess cost recovery. (Repealed.)**

**A. In general.** The purpose of the adjustments described by this section is to phase in the federal Accelerated Cost Recovery System (ACRS). All taxpayers must make an addition on their Virginia income tax returns for taxable years 1982 and thereafter which is equal to 30% of the ACRS deduction claimed on their federal income tax returns. For taxable years 1984 and thereafter a subtraction is allowed which is equal to a percentage of the ACRS additions made by the taxpayer in the taxpayer's Virginia income tax returns.

**B. Addition.**

1. Any taxpayer claiming a deduction for ACRS on the federal return is required to add 30% of the federal ACRS deduction to Virginia taxable income. The addition is

required regardless of the location of the property and regardless of the recovery method elected under ACRS.

2. The addition is equal to 30% of the ACRS deduction except that no addition shall be made for any federal deduction claimed with respect to property not used to produce Virginia taxable income (such as foreign source income).

3. The following refers to items on federal form 4562, Depreciation and Amortization for 1984.

a. No addition is required for the deduction under the election to expense recovery property. IRC § 179.

b. The addition is required for all recovery property (3-year, 5-year, 10-year, 15-year public utility, 15-year real property low income housing, 15-year real property other than low income housing, 18-year real property) regardless of recovery period or method used or year placed in service.

e. No addition is required for property subject to IRC § 168(e)(2) election to use a method not based on a term of years.

d. No addition is required for depreciation or amortization of non recovery property.

4. Partnerships, estates, trusts and electing small business corporations (Subchapter S) report the ACRS addition on their Virginia returns. The ACRS addition is included in the additions and subtractions reported to each partner, beneficiary and shareholder in accordance with the distributive share for the taxable year.

5. When less than 100% of a taxpayer's income is from Virginia sources the addition is made as follows:

a. Resident individuals add 30% of the federal ACRS deduction regardless of where the property is located. No deduction, exclusion, exemption or proration of the addition is allowed except with respect to property used to produce foreign source income.

b. Nonresident individuals add 30% of the federal ACRS deduction in the same manner as resident individuals. The addition will be adjusted by the percentage of Virginia income in the computation of Virginia taxable income.

c. Part-year residents add 30% of only the portion of the federal ACRS deduction earned while a resident of Virginia. The federal ACRS deduction shall be prorated based on the number of days of residence regardless of when the property is acquired or where the property is located.

d. Corporations add 30% of the federal ACRS deduction. Those corporations eligible to allocate and apportion

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income will adjust the ACRS addition as part of apportionment computations.

e. Partnerships, electing small business corporations (Subchapter S corporations), estates and trusts add 30% of the federal ACRS deduction. If a partnership, electing small business corporation, estate or trust has income from sources in Virginia and other states, and has partners, shareholders or beneficiaries who are not residents of Virginia, then the nonresident's share of the additions and subtractions shall be determined in accordance with generally accepted accounting principles.

C. Subtraction. For taxable years beginning on or after January 1, 1984, taxpayers may subtract a portion of the ACRS additions made in the taxpayer's Virginia income tax returns for 1982 and thereafter. The subtraction is computed as follows:

1. The ACRS additions for all taxable years beginning and during calendar years 1982 and 1983 are totaled. Twenty percent of this total may be subtracted in the first taxable year beginning on or after January 1, 1984 and in each of the four succeeding taxable years.

2. The ACRS additions for the two taxable years beginning on or after January 1, 1984 are totaled. Twenty percent of this total may be subtracted in the third taxable year beginning after January 1, 1984 and in each of the four succeeding taxable years.

3. This addition and subtraction cycle continues indefinitely. Thus, additions made in the third and fourth taxable years beginning after January 1, 1984 will be subtracted in the fifth through the ninth taxable years; additions made in the fifth and sixth taxable years will be subtracted in the seventh through the eleventh taxable years.

4. Short taxable years beginning after January 1, 1984 are treated as ordinary taxable years. However, the first biennium, calendar years 1982 and 1983, includes all taxable years beginning during 1982 and 1983.

5. Example. Corporation A was organized on January 20, 1982 and filed its first tax return electing a taxable year ending June 30, 1982. In 1986 A was acquired by another corporation and filed a short year return for the period July 1, 1986 to December 31, 1986 in order to be included in the acquiring corporation's consolidated federal return. A continued to file a separate Virginia return. The first biennium contains three taxable years beginning January 20, 1982, July 1, 1982 and July 1, 1983. The ACRS additions for these three years total \$900, twenty percent of which (\$180) will be subtracted in taxable years ending on June 30, 1985, June 30, 1986, December 31, 1986, December 31, 1987 and December 31, 1988. The ACRS additions for the second biennium (taxable years ending on

June 30, 1985 and June 30, 1986) total \$600, twenty percent of which (\$120) will be subtracted in taxable years ending December 31, 1986, December 31, 1987, December 31, 1988, December 31, 1989 and December 31, 1990.

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

D. Special situations.

1. Additions. For taxable years beginning during 1982 and 1983, any taxable entity filing a federal return in which an ACRS deduction is claimed must add 30% of such deduction in computing Virginia taxable income. No subtraction may be claimed in 1982 and 1983 returns regardless of the taxpayer's situation.

2. Additions by other taxpayers.

a. Except for those situations set forth below, a taxpayer may claim a subtraction for only those ACRS additions made by the taxpayer. For this purpose a partner, beneficiary or shareholder is NOT deemed to have made ACRS additions reported by partnerships, estates, trusts and electing small business corporations (Subchapter S corporation). A partner, for example, may claim an ACRS subtraction only to the extent that it is included in the partner's distributive share of the income, loss, additions and subtractions for the taxable year. No adjustments are required due to any changes in the partner's ownership interest between the time the ACRS addition is made by the partnership and the time the ACRS subtraction is claimed by the partnership.

b. Any taxpayer (other than a surviving spouse) claiming a subtraction based upon ACRS additions made by any other taxable entity must attach to the return a statement setting forth the name and taxpayer I.D. No. of such other taxable entity, details of the ACRS additions and previous subtractions claimed by such other taxable entity, an explanation of the relationship between the taxpayer and such other taxable entity and a statement signed by the taxpayer to the effect that the subtraction claimed has not, and will not, be claimed by any other person on any other return, including the final return of such other taxable entity.

e. A corporation may claim a subtraction based upon ACRS additions made by another corporation if there has been a merger or other form of reorganization and the corporation claiming the subtraction would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the corporation which made the ACRS additions, assuming such corporation had incurred a net operating loss.

d. A surviving spouse may claim a subtraction based upon ACRS additions made by the decedent and the surviving spouse on a joint or combined Virginia income

tax return. The statement referred to in paragraph b above is not required.

3. When less than 100% of a taxpayer's income is from Virginia sources the subtraction is claimed in the same manner as additions. See subsection A 5 above.

**23 VAC 10-120-60. Excess cost recovery; definitions. (Repealed.)**

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

"ACRS addition" means an excess cost recovery addition actually reported under § 58.1-51.013(b)(6) (prior to the recodification of Title 58), § 58.1-322 B 6 (for individuals) and 58.1-402 B 3 (for corporations) of the Code of Virginia, on any return filed for a taxable year beginning between January 1, 1982 and December 31, 1987.

"ACRS subtraction" means an excess cost recovery subtraction allowable under § 58.1-51.013(c)(10) (prior to the recodification of Title 58), § 58.1-322 C 8 (for individuals) and § 58.1-402 C 9 (for corporations) of the Code of Virginia, for any taxable year beginning after December 31, 1983, but before January 1, 1988, regardless of whether or not a return was filed to claim the allowable subtraction.

"Corporation" means any person or entity subject to tax or required to file a return under Article 10, Chapter 3 (§ 58.1-400 et seq.) of Title 58.1 of the Code of Virginia.

"Individual" means any natural person, married or unmarried, who is subject to taxation or required to file a return under Article 2 of Chapter 3 (§ 58.1-300 et seq.) of Title 58.1 of the Code of Virginia.

"Outstanding balance of excess cost recovery" means the amount equal to the difference between:

1. The sum of the ACRS additions actually reported on Virginia returns filed for taxable years beginning on and after January 1, 1982, and before January 1, 1988; and
2. The sum of the ACRS subtractions allowed or allowable on Virginia returns, regardless of whether or not a Virginia return was actually filed, for taxable years beginning on and after January 1, 1984, and before January 1, 1988.

"Post 1987 ACRS subtraction" means the portion of the outstanding balance of excess cost recovery which may be subtracted by individuals on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1990, or by corporations on returns for taxable years beginning on or after January 1, 1988, and before January 1, 1993.

**23 VAC 10-120-61. Excess cost recovery; purpose. (Repealed.)**

A. Generally. The Virginia Tax Reform Act of 1987 added § 58.1-323.1 of the Code of Virginia which phases out the excess cost recovery program through the allowance of post-1987 subtractions effective for taxable years beginning on and after January 1, 1988. In 1988 § 58.1-323.1 was amended to permit a refund if a final federal and Virginia return was filed for a taxable year beginning prior to January 1, 1988. This regulation sets forth the rules applicable to both individual and corporate taxpayers. In most cases the outstanding balance of excess cost recovery may be recouped through annual post 1987 subtractions over a two year period for individual taxpayers and a five year period for corporate taxpayers (see 23 VAC 10-120-63). Generally, if a taxpayer has insufficient income to benefit from a subtraction in a particular year, all or part of the subtraction may be carried over to the next year (see 23 VAC 10-120-64). A taxpayer who files a final federal and Virginia return may claim an immediate subtraction for the unrecovered outstanding balance of excess cost recovery (see 23 VAC 10-120-65). If at the conclusion of the applicable subtraction period (1989 for individuals and 1992 for corporations), or after filing a final federal and Virginia return, the taxpayer still has not recouped the outstanding balance of excess cost recovery, the taxpayer may qualify to file an application for a refund (see 23 VAC 10-120-66).

B. Exclusive method. Effective for taxable years beginning on and after January 1, 1988, the post 1987 subtractions and refunds allowable under this regulation shall be the exclusive means of recovering the outstanding balance of excess cost recovery.

**23 VAC 10-120-62. Excess cost recovery; computation of the outstanding balance of excess cost recovery. (Repealed.)**

A. Generally. A taxpayer's outstanding balance of excess cost recovery is computed only with respect to ACRS additions attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and ACRS subtractions attributable to such ACRS additions. For the treatment of ACRS additions and ACRS subtractions passed through from a conduit entity see 23 VAC 10-120-63 D.

B. Computation:

1. The outstanding balance of excess cost recovery includes the sum of ACRS additions actually reported on a Virginia return for taxable years beginning on and after January 1, 1982, and before January 1, 1988. If no Virginia return was filed for a taxable year then no ACRS addition with respect to such taxable year may be included in the outstanding balance of excess cost recovery.

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2. For most taxpayers the information necessary to compute the "outstanding balance of excess cost recovery" can be found on the Form 302 included with the Virginia returns for taxable years 1986 and 1987.

a. The "ACRS additions" for taxable years 1982, 1983, 1984, and 1985 can be found in Column B of part II of the Form 302 attached to the 1986 and 1987 returns.

b. The "ACRS additions" for taxable years 1986 and 1987 can be found in Part I of the Form 302 attached to the 1986 and 1987 returns, respectively.

3. The outstanding balance of excess cost recovery is reduced by the sum of ACRS subtractions which would have been allowable with respect to each biennium's ACRS additions, whether or not a return was actually filed claiming an ACRS subtraction in each taxable year beginning on and after January 1, 1984, and before January 1, 1988.

a. The ACRS subtractions which would have been allowable with respect to the first biennium, 1982/1983, are the sum of the ACRS additions actually reported on a Virginia return for all taxable years beginning on and after January 1, 1982, and before January 1, 1984, multiplied by 80% (the percentage allowed or allowable in the four taxable years following the close of the 1982/1983 biennium, i.e., 20% X 4) or by 100% (see subdivision (2) of this subdivision).

(1) The number of taxable years included in the first biennium may be one, two, or more, depending upon when the taxpayer was required to file a Virginia return and whether returns for short taxable years were filed during the period.

(2) If one or more returns for a short taxable year were filed for a period beginning after the close of the 1982/1983 biennium the percentage allowed or allowable may be 100% for the first biennium (20% X 5).

b. The ACRS subtractions which would have been allowable with respect to the second biennium, 1984/1985, are the sum of the ACRS additions actually reported on a Virginia return for the first two taxable years beginning on and after January 1, 1984, multiplied by 40% (the percentage allowed or allowable in the two taxable years following the close of the 1984/1985 biennium, i.e., 20% X 2).

(1) The number of taxable years included in the second biennium will be two unless the taxpayer did not file a return or only filed one Virginia return during the period beginning after January 1, 1984.

(2) The percentage allowed or allowable may be more or less than 40% if one or more returns for a short

taxable year were filed for a period beginning on and after January 1, 1984, or if the taxpayer was not required to file a Virginia return for a period beginning before January 1, 1985.

(3) For example: If a calendar year taxpayer first became subject to Virginia income tax in 1985, there would be no ACRS subtractions with respect to the first biennium because no returns were filed in 1982 and 1983; therefore, no ACRS additions were reported. The ACRS subtractions with respect to the second biennium would be based on ACRS additions reported on the 1985 and 1986 Virginia returns multiplied by 20% (i.e., 20% X 1, the number of taxable years beginning after the close of the second biennium and before January 1, 1988).

e. The ACRS subtractions which would have been allowable with respect to the third biennium, 1986/1987, will be zero unless one or more returns for a short taxable year were filed for a period beginning on and after January 1, 1984.

## **23 VAC 10-120-63. Excess cost recovery; post-1987 ACRS subtractions. (Repealed.)**

### **A. Generally.**

1. Except as otherwise provided in 23 VAC 10-120-64 through 23 VAC 10-120-67, the outstanding balance of excess cost recovery as computed in 23 VAC 10-120-62 shall be claimed as post-1987 ACRS subtractions on returns filed for taxable years beginning on and after January 1, 1988, as set forth in this section.

2. A taxpayer's post-1987 ACRS subtraction for a taxable year is the sum of:

a. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery attributable to federal ACRS deductions on property owned directly by the taxpayer or deemed to be owned by the taxpayer for federal income tax purposes, and

b. The post-1987 ACRS subtraction computed as set forth in this section with respect to the outstanding balance of excess cost recovery computed in accordance with 23 VAC 10-120-62 B by a conduit entity and passed through to the taxpayer in accordance with subsection D of this section.

### **B. Individuals.**

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to two thirds of the outstanding balance of excess cost recovery.



2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to one third of the outstanding balance of excess cost recovery.

3. 1990 and after. If a post-1987 subtraction is included in the Virginia modifications distributed by an S corporation, partnership, estate or trust for its fiscal year ending after December 31, 1989, the individual may elect to include such amounts in the individual's subtractions for the taxable year, or may claim a refund under 23VAC10-120-66.

C. Corporations.

1. 1988. For the taxable year beginning in 1988 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.

2. 1989. For the taxable year beginning in 1989 the post-1987 ACRS subtraction is equal to 10% of the outstanding balance of excess cost recovery.

3. 1990. For the taxable year beginning in 1990 the post-1987 ACRS subtraction is equal to 30% of the outstanding balance of excess cost recovery.

4. 1991. For the taxable year beginning in 1991 the post-1987 ACRS subtraction is equal to 30% of the outstanding balance of excess cost recovery.

5. 1992. For the taxable year beginning in 1992 the post-1987 ACRS subtraction is equal to 20% of the outstanding balance of excess cost recovery.

D. Conduit entities.

1. A conduit entity (estate, trust, partnership and S corporation) shall compute its outstanding balance of excess cost recovery in accordance with 23 VAC 10-120-62-B.

2. In each taxable year beginning on and after January 1, 1988, and before January 1, 1990, a conduit entity shall compute the post-1987 ACRS subtraction in accordance with subsection B of this section relating to individuals without regard to whether or not the beneficiary, fiduciary, partner or shareholder is an individual, and shall provide each beneficiary, partner or shareholder with sufficient information to report the appropriate post-1987 ACRS subtraction.

3. If a conduit entity files a short year return for the fiscal year ended December 31, 1987, in order to change its taxable year to a calendar year, each beneficiary, partner, or shareholder may, in certain circumstances, elect to spread the income from the conduit entity's short taxable year over four taxable years for federal income tax purposes. If such an election is made:

a. One quarter of the conduit entity's Virginia modifications for the short taxable year (including the ACRS addition and ACRS subtraction) must be included

in the 1987 Virginia taxable income of the beneficiary, partner, or shareholder;

b. One quarter of the conduit entity's Virginia modifications for the short taxable year (excluding the ACRS addition and ACRS subtraction) must be included in the Virginia taxable income of the beneficiary, partner, or shareholder in each of the three following taxable years; and

c. The beneficiary, partner, or shareholder shall adjust the post-1987 ACRS subtraction passed through from the conduit entity in each taxable year as follows: (i) For 1988, by subtracting one half of the conduit entity's 1987 ACRS addition and adding one half of the conduit entity's 1987 ACRS subtraction; (ii) For 1989, by subtracting one quarter of the conduit entity's 1987 ACRS addition and adding one quarter of the conduit entity's 1987 ACRS subtraction.

d. Example. An S corporation was formed in July 1985 and elected a fiscal year ending June 30. It reported and passed through ACRS additions of \$200 in each of its F.Y.E. 6/30/86 and 6/30/87. There were no other Virginia additions or subtractions. The S corporation filed a short-year return for F.Y.E. 12/31/87 reporting an ACRS addition of \$100 and an ACRS subtraction of \$80. The sole shareholder of the S corporation elected to spread the short year income over four years for federal purposes, reporting only \$25 and \$20 of the short year ACRS additions and subtractions in 1987. In 1988 the S corporation passed through a post-1987 subtraction of \$280 ( $\frac{2}{3}$  of \$500 - \$80). Because of the shareholder's election the \$280 must be reduced by  $\frac{1}{2}$  of the F.Y.E. 12/31/87 addition ( $\frac{1}{2}$  of 100 = 50) and increased by  $\frac{1}{2}$  of the F.Y.E. 12/31/87 subtraction ( $\frac{1}{2}$  of 80 = 40) for a net modification of \$270. The net effect of these modifications is represented in the following table:

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

E. Short taxable year.

1. If there is more than one taxable year beginning on or after January 1, 1988, because of a taxable year of less than 12 months, the allowable portion of the subtraction shall be prorated between all taxable years which begin in the same calendar year. The proration will be based on the number of months in each taxable year divided by the total number of months in all taxable years beginning during the calendar year.

2. Example. XYZ, Inc. files on a calendar year basis. On December 31, 1987, XYZ, Inc. is acquired by Holding, Inc., which files its returns on the basis of a fiscal year ending on September 30. In order to be included in a consolidated return with Holding, Inc., XYZ, Inc. files two

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returns for taxable years beginning in 1988 — a short-year return for the period January 1, 1988, through September 30, 1988, (nine months) and a return for the period October 1, 1988, through September 30, 1989, (12 months). Because there are two taxable years beginning in 1988, which cover a total of 21 months, the post 1987 ACRS subtraction for 1988 (10% of the outstanding balance of excess cost recovery) must be prorated between the nine-month taxable year and the 12 month taxable year as follows:

Taxable year 1/1/88 — 9/30/88:  $10\% \times 9/21 = 4.29\%$  —  
Taxable year 10/1/88 — 9/30/89:  $10\% \times 12/21 = 5.71\%$  —  
————— Total subtractions for 1988 = 10.00% —

## F. Former S corporation.

1. If an S corporation becomes taxable under subchapter C of the IRC, its post 1987 ACRS subtraction for taxable years after termination of the election shall be the amount by which:

a. The total post 1987 ACRS subtractions for the current and all prior taxable years computed under subsection C of this section relating to corporations, exceeds

b. The total post 1987 ACRS subtractions which were actually passed through to beneficiaries, partners and shareholders by the former S corporation or which were claimed by the corporation after it ceased to qualify as an S corporation.

2. Example. An S corporation is acquired by another corporation as of the first day of 1989, thereby terminating its status as an S corporation for 1989. Two thirds of the outstanding balance of excess cost recovery was passed through to the former S corporation's shareholders in 1988. The remaining one third will be subtracted as follows:

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

3. If a corporation makes a valid election to be taxed under subchapter S of the IRC after 1987, any post 1987 ACRS subtraction which has not been used by the corporation shall be passed through to its shareholders in accordance with subsection D of this section. However, if the election is made for a taxable year beginning on and after January 1, 1990, no amount shall be passed through to the shareholder under subsection D of this section, but the corporation shall be eligible to apply for a refund under 23VAC10-120-66.

## 23 VAC 10-120-64. Excess cost recovery; carryover of unused subtractions. (Repealed.)

### A. Individuals.

1. Any individual who has insufficient income to offset the full amount of the post 1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following

taxable year. No amount may be subtracted under this subdivision in any taxable year beginning on or after January 1, 1990. An individual who has not recovered the full amount of the outstanding balance of excess cost recovery under this section or under 23 VAC 10-120-63 on his income tax returns filed for taxable years 1988 and 1989, may qualify to file an application for a refund under 23 VAC 10-120-66.

2. The portion of any post 1987 ACRS subtraction available for carryover is the lesser of:

a. The amount by which Virginia taxable income is less than zero, or

b. The post 1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. A taxpayer may not elect to claim less than the allowable post 1987 ACRS subtraction in any year in order to take advantage of a credit, or for any other reason.

### 4. Example.

a. Taxpayer A, an individual filing on a calendar year, has an outstanding balance of excess cost recovery equal to \$9,000 after taxable year 1987. For calendar year 1988 he is single with federal adjusted gross income of \$12,350 and Virginia itemized deductions of \$7,250. For Virginia income tax purposes, he has no additions to federal adjusted gross income and he has no subtractions from federal adjusted gross income other than his post 1987 ACRS subtraction. His carryover from taxable year 1988 to 1989 is \$1,700, which is computed in the following manner:

Federal Adjusted Gross Income	\$12,350
- Va. Personal Exemption	800
- Va. Itemized Deductions	7,250
- Post 1987 ACRS Subtraction $(\$9,000 \times 2/3)$	6,000

- Va. Taxable Income	1,700
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b. Taxpayer A would be allowed to carryover \$1,700 of his post 1987 ACRS subtraction for 1988 to 1989 and add it to the post 1987 ACRS subtraction (\$3,000) otherwise allowable as a subtraction in 1989. Therefore, in 1989 Taxpayer A will have a total post 1987 ACRS subtraction of \$4,700 (\$1,700 carryover from 1988 + \$3,000 for 1989).

c. Taxpayer A may not claim a post 1987 ACRS subtraction of less than \$6,000 in 1988 (increasing the amount carried over to 1989) in order to take advantage of an energy income tax credit carried over from 1987 (which cannot be carried over to 1989).

### B. Corporations.

1. Any corporation which has insufficient income to offset the full amount of the post 1987 ACRS subtraction shall add the amount not offset to the amount allowable for the following taxable year. No amount may be subtracted under this subdivision in any taxable year beginning on or after January 1, 1993. Any corporation that has not recovered the full amount of the outstanding balance of excess cost recovery under 23 VAC 10-120-63 or under this section on income tax returns filed for taxable years beginning on or after January 1, 1988, but before January 1, 1993, may qualify to file an application for a refund under 23 VAC 10-120-66.

2. The amount of the post 1987 ACRS subtraction available for carryover is the lesser of:

- a. The amount by which Virginia taxable income is less than zero, or
- b. The post 1987 ACRS subtraction for the taxable year including amounts carried over from a prior year under this section.

3. Example. ABC, Inc. has an outstanding balance of excess cost recovery equal to \$120,000 after taxable year 1987. Under 23 VAC 10-120-63 the allowable post 1987 ACRS subtraction is \$12,000 for 1988 and 1989, \$36,000 for 1990 and 1991, and \$24,000 for 1992. ABC has losses or income which are insufficient to absorb the full amount of the post 1987 ACRS subtractions in every year. The Virginia taxable income and carryover would be computed as follows:

EDITOR'S NOTE: The table that appears here is also stricken but is not set out because of formatting constraints.

C. Conduit entities. Estates, trusts, partnerships and S corporations do not carry over post 1987 ACRS subtractions under this section. Amounts distributed under subsection D of 23 VAC 10-120-63 may be carried over by the beneficiaries, partners or shareholders.

D. Nonresidents. If a nonresident has income from Virginia sources or is required to file a Virginia return the nonresident may claim a post 1987 ACRS subtraction and carryover unused amounts under this section.

**23 VAC 10-120-65. Excess cost recovery; final return. (Repealed.)**

When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or corporation, for a taxable year beginning on and after January 1, 1988, the taxpayer may claim the entire outstanding balance of excess cost recovery (less amounts already claimed as a post 1987 ACRS subtraction) on the final Virginia return.

a. Conduit entities. Amounts claimed on the final Virginia return of an estate, trust, partnership or S corporation shall be distributed in accordance with subsection D of 23 VAC 10-120-63.

b. Other taxpayers. If the taxpayer has insufficient income on the final Virginia return to offset the entire amount allowable under this subdivision, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed under 23 VAC 10-120-66.

The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued operations in Virginia shall not entitle the taxpayer to the immediate subtraction or refund allowed in subdivision A 1 of 23 VAC 10-120-66.

**23 VAC 10-120-66. Excess cost recovery; application for refund. (Repealed.)**

A. Generally.

1. Any taxpayer who can demonstrate that the entire outstanding balance of the excess cost recovery as computed in 23 VAC 10-120-62 has not been recovered through post 1987 ACRS subtractions allowable under 23 VAC 10-120-63 or 23 VAC 10-120-64 by such taxpayer or any other taxpayer may apply for a refund of unrecovered taxes paid on the outstanding balance of excess cost recovery.

2. When any taxpayer has filed a final federal return due to the death of an individual or the dissolution of a partnership, estate, trust, or individual, an application for the refund of unrecovered taxes paid on the outstanding balance of excess cost recovery may be filed by the person authorized to act on behalf of the deceased or dissolved taxpayer.

3. The fact that a taxpayer files a final Virginia return because an individual has moved from Virginia or a business has discontinued its operations in Virginia shall not entitle the taxpayer to apply for a refund under this section.

4. Estates, trusts, partnerships and S corporations shall not apply for a refund under this section except to the extent that the fiduciary of an estate or trust paid tax on undistributed income.

5. No refund shall be allowed under this section unless the taxpayer has income from Virginia sources or is required to file a Virginia return for each taxable year in which a subtraction is allowed under 23 VAC 10-120-63 or, if earlier, for each taxable year until a final federal return is filed.

B. Computation of the refund amount.

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1. The refund shall be computed upon the amount of the outstanding balance of excess cost recovery which has not been recovered through post 1987 ACRS subtractions allowable under 23 VAC 10-120-63 or 23 VAC 10-120-64. This amount shall be multiplied by 5.75% (0.0575) in the case of an individual or by 6.0% (0.06) in the case of a corporation.

2. In no case shall the amount of refund allowed under this section exceed the amount of tax that was actually paid on the outstanding balance of excess cost recovery and not otherwise recovered through post 1987 ACRS subtractions. For the purpose of computing the limitation under this subdivision:

a. The refund shall be limited to the amount by which (i) the sum of the difference between the tax actually paid and the tax computed without the ACRS addition and ACRS subtraction for each taxable year beginning on and after January 1, 1982, and before January 1, 1988, exceeds (ii) the sum of the difference between the tax actually paid and the tax computed without the post 1987 ACRS subtraction for each taxable year beginning on and after January 1, 1988.

b. A beneficiary may include tax paid by an estate or trust with respect to a distribution of accumulated income.

e. A shareholder of an S corporation may include the distributive share of tax paid by the corporation in years before it elected S corporation status.

d. In the case of a net operating loss, a taxpayer may include either:

(1) Virginia income tax paid in the year of the loss (if any), or

(2) Virginia income tax paid in a year to which any portion of the loss year ACRS addition and ACRS subtraction may have been carried with a federal net operating loss deduction.

e. In the case of a corporation required to allocate and apportion its income for any taxable year in which an ACRS addition was reported the Virginia income tax paid for such year shall be the tax attributable to the ACRS addition (net of any allowable ACRS subtraction) after apportionment.

### 3. Examples:

a. Newco, Inc. is incorporated in 1986 and dissolved in 1988. Newco reports ACRS additions of \$1,000 on its 1986 return and \$1,500 on its 1987 return. Newco's outstanding balance of excess cost recovery is \$2,500, all of which is reported on the 1988 final return under § 6. Since Newco only has sufficient income in 1988 to offset \$1,000 of the final post 1987 ACRS subtraction, Newco

has \$1,500 of unrecovered outstanding balance of excess cost recovery eligible for a refund under § 7 A. The refund amount would be \$90 ( $\$1,500 \times 6\%$ ) under § 7 B 1; however, under § 7 B 2 the refund is limited to \$24 (the tax of \$60 actually paid in 1986 and 1987 attributable to the ACRS additions less the tax of \$36 attributable to the ACRS additions less the tax of \$36 attributable to the post 1987 subtraction in 1988). The calculation of the limitation is shown below:

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

b. James Smith moved to Virginia in 1987 and was required to report an ACRS addition in the amount of \$6,000 on his 1987 return. His outstanding balance of excess cost recovery is \$6,000 which will be subtracted in 1988 and 1989. After filing his 1989 return, Mr. Smith still has \$2,000 of the outstanding balance of excess cost recovery which has not offset income and requests a refund in the amount of \$115 ( $2,000 \times 0.0575$ ). However Mr. Smith's refund is limited to \$66, (the tax of \$266 actually paid in 1987 attributable to the ACRS additions less the tax of \$200 attributable to the ACRS additions less the tax of \$200 attributable to the post 1987 subtractions in 1988 and 1989). The calculation of the limitation is shown below:

**EDITOR'S NOTE:** The table that appears here is also stricken but is not set out because of formatting constraints.

### C. When to file the application for refund.

1. The application for refund may be filed after filing final federal and Virginia income tax returns as provided in 23 VAC 10-120-65 or after filing the income tax return for the last taxable year specified under 23 VAC 10-120-63 for claiming a post 1987 ACRS subtraction.

2. An application for refund must be filed within three years of the applicable date.

a. In the case of a final federal and Virginia return due to the death or dissolution of a taxpayer, the applicable date is the later of July 1, 1988, for a final return for a period beginning before January 1, 1988, or the due date of the final return for a period beginning on or after January 1, 1988.

b. In the case of an application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery, the applicable date is the due date of the last return on which the taxpayer is entitled to claim a subtraction under 23 VAC 10-120-63 or 23 VAC 10-120-64. A calendar year individual may file such application after filing the income tax return for 1989. A calendar year corporation may file such application after filing the income tax return for 1992.

~~D. Form of application. Any application for refund of unrecovered taxes paid on the outstanding balance of excess cost recovery shall be filed by a letter to the Tax Commissioner requesting the refund or by amended return. The letter shall provide sufficient documentation to demonstrate that the amount of refund requested does not exceed the amount specified in subdivision B 2 of this section (tax actually paid).~~

~~E. Accelerated application for refund. A corporation which would be entitled to file an application for a refund under this section may apply to the Tax Commissioner for permission to claim the refund in an earlier taxable year. The Tax Commissioner shall have the authority, at his discretion, to allow the refund to be claimed in an earlier taxable year if the taxpayer has demonstrated to the satisfaction of the Tax Commissioner that:~~

- ~~1. The taxpayer has paid Virginia income tax with respect to its outstanding balance of excess cost recovery;~~
- ~~2. The taxpayer has not recovered any portion of the outstanding balance of excess cost recovery;~~
- ~~3. The taxpayer will be required to file a Virginia income tax return for each year in which a subtraction is allowable under 23 VAC 10-120-63 and 23 VAC 10-120-64;~~
- ~~4. The taxpayer can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under 23 VAC 10-120-63 and 23 VAC 10-120-64; and~~
- ~~5. No other taxpayer may claim or has claimed a subtraction or a refund with respect to the taxpayer's outstanding balance of excess cost recovery by reason of 23 VAC 10-120-67 A or 23 VAC 10-120-63-D.~~
- ~~6. Example. A Real Estate Investment Trust (REIT) is required to distribute its income to shareholders and generally has no federal taxable income subject to tax. Because items of income and deduction do not have the same character in the hands of a REIT's shareholders, the ACRS modifications do not flow through to the shareholders. Therefore, a REIT can reasonably expect never to have any federal taxable income or Virginia taxable income to offset the subtractions allowable under 23 VAC 10-120-63 and 23 VAC 10-120-64, and would qualify for the immediate refund under this subsection.~~

~~F. Interest. No interest shall be paid on refunds made under this section.~~

**23 VAC 10-120-67. Excess cost recovery; special rules. (Repealed.)**

~~A. Successor entities. In computing the outstanding balance of excess cost recovery a taxpayer may include ACRS additions and ACRS subtractions made by other taxpayers in the following situations:~~

~~1. A surviving spouse may include ACRS additions and ACRS subtractions made on a joint or combined Virginia return with the decedent.~~

~~2. A corporate taxpayer may include ACRS additions and ACRS subtractions made by another corporation if there has been a merger or other form of reorganization under the following conditions:~~

~~a. The taxpayer would be allowed under federal law to claim a net operating loss deduction based upon a net operating loss incurred by the other corporation, assuming such other corporation incurred a net operating loss.~~

~~b. A statement shall be attached to the return setting forth:~~

~~(1) The name and taxpayer I.D. No. of such other corporation;~~

~~(2) Details of the ACRS additions, ACRS subtractions and post 1987 ACRS subtractions claimed by such other corporation;~~

~~(3) An explanation of the relationship between the taxpayer and such other corporation; and~~

~~(4) A statement signed by the taxpayer to the effect that the post 1987 ACRS subtraction has not, and will not, be claimed by any other taxpayer on any other return, including the final return of such other corporation.~~

~~3. A successor entity which elects to include ACRS additions and ACRS subtractions of another taxpayer in its outstanding balance of excess cost recovery shall not be eligible to apply for a refund under 23 VAC 10-120-66 due to the final federal and Virginia return of such other taxpayer.~~

~~B. Multiple recovery prohibited. A taxpayer may not claim a subtraction under 23 VAC 10-120-63 or 23 VAC 10-120-64 or a refund under 23 VAC 10-120-66 with respect to any portion of the outstanding balance of excess cost recovery which such taxpayer or any other taxpayer has previously recovered.~~

~~C. Net operating losses:~~

~~1. In the case of net operating losses occurring in a taxable year beginning before January 1, 1988:~~

~~a. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning before January 1, 1988, shall carry with it the ACRS additions and ACRS subtractions as provided in subdivision B 5 (iii) of 23 VAC 10-120-100 and 23 VAC 10-20-70.~~

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b. A federal net operating loss deduction with respect to such loss which is claimed in a taxable year beginning on and after January 1, 1988, shall not carry with it any ACRS additions or ACRS subtractions.

c. In computing the outstanding balance of excess cost recovery, the ACRS additions and ACRS subtractions for the loss year shall be included only once, for the year of the loss. Amounts carried to other years with the federal net operating loss deduction shall be ignored.

2. For net operating losses occurring in a taxable year beginning on and after January 1, 1988, a federal net operating loss deduction with respect to such loss shall not carry with it any portion of the subtraction allowable under 23 VAC 10-120-63 and 23 VAC 10-120-64.

## **23 VAC 10-120-290. Energy income tax credit. (Repealed.)**

A. Effective for taxable years beginning on and after January 1, 1983, a credit is allowed against the income tax liability of a corporation for a portion of "renewable energy source expenditures" as defined by Section 44C of the Internal Revenue Code (IRC) of 1954 (as amended 1982) and the regulations thereunder except as modified by this section.

1. Termination of federal credit. If the federal renewable energy source income tax credit is terminated prior to January 1, 1988, all references herein to IRC Section 44C and its accompanying regulations shall mean the statute and regulations as they exist at the date of termination.

2. Qualifying expenditures. This credit is applicable only to qualifying renewable energy source expenditures (as defined in subsection B below) installed in, on or in connection with a building or complex of buildings located in Virginia. No credit is allowed for energy conservation expenditures regardless of the fact that such expenditures also qualify for federal credit under IRC Section 44C.

3. Credit amount. A credit, in the amounts set forth below, but not in excess of \$1,000 per expenditure, is allowable for expenditures made within the specified time period. An expenditure will be deemed made when original installation of the renewable energy source property is completed or, in the case of an expenditure in connection with the construction or reconstruction of a building, when the building is completed and available for use by the taxpayer. See subdivision C 1.

% of Expenditure Allowable as Credit	Period in Which Expenditure is Made
25%	January 1, 1983 through December 31, 1984
20%	January 1, 1985 through December 31, 1985
15%	January 1, 1986 through December 31, 1986

10% January 1, 1987 through December 31, 1987

Renewable energy source expenditures made prior to January 1, 1983, or after December 31, 1987, do not qualify for this credit.

4. Limitations and carryover. Only one \$1,000 credit is allowed for each expenditure. The credit allowable in any taxable year may not exceed the actual tax liability of a corporation for such year; however, if an otherwise allowable credit exceeds the tax liability, such excess may be carried forward to the succeeding taxable year until used. No excess credit may be carried to a taxable year beginning on or after January 1, 1989.

B. The term "renewable energy source expenditures" means an expenditure by a corporation subject to Virginia income tax made on or after January 1, 1983 and before January 1, 1988 for renewable energy source property (as defined below) installed and located in Virginia.

The term "renewable energy source expenditure" does not include any expenditure made for, or allocable to, any of the following:

- (i) labor of the taxpayer;
- (ii) a swimming pool or other energy storage medium whose primary function is other than the storage of energy;
- (iii) the cost of maintenance of an installed system; or
- (iv) the cost of leasing renewable energy source property.

The term "renewable energy source property" includes any solar energy property, wind energy property, geothermal energy property, or certain property specified by the Secretary of the U.S. Treasury as these terms are defined in Section 44C IRC and Treasury Regulation Section 1.44C-2, except that:

- a. References to a "dwelling" shall be interpreted to mean "building or complex of buildings."
- b. Restrictions to "principal residence" and "residential use" shall be ignored.

C. 1. When expenditures are treated as made. In general, an expenditure is treated as made when original installation of the renewable energy source property is completed. In the case of renewable energy source property which is included in the construction of a new building or the reconstruction of an existing building, the expenditure is treated as made when construction has progressed to the point where the building may be put to its intended use by the taxpayer even though comparatively minor items remain to be finished or performed in order to conform to the plans or specifications of the completed building.

2. Expenditures financed with federal, etc., grants. Qualified expenditures financed with Federal, State or other grants shall be taken into account for purposes of computing the energy credit only if such grants are subject to Virginia income tax.

3. Joint occupancy. If two or more corporations (or other persons) jointly occupy a building or complex of buildings during any portion of a calendar year, the amount of the credit allowable by reason of renewable energy source expenditures shall be determined by treating all of the joint occupants as one corporate taxpayer whose taxable year is such calendar year. The credit shall be allocated to such joint occupants according to the expenditures of each joint occupant.

4. Joint ownership. If renewable energy source property is owned by two or more corporations (or other persons) and such property serves two or more buildings or complex of buildings then each corporation may treat its share of the cost of such property as a separate expenditure related to its own building or complex of buildings.

Example. Corporation A, B and C own buildings in an industrial park. A owns one building, B owns two buildings, C owns one building, but it rents to D, a corporation. The corporations agree to build a solar hot water heater to serve the four buildings, the cost to be divided on a per building basis. The renewable energy source property is completed on November 1, 1984 at the cost of \$40,000. Corporation A's share of the expenditure is \$10,000 and may claim a credit of \$1,000 (10,000 X 25%, limited to \$1,000). Corporation B's share of the expenditure is \$20,000 and may claim a credit of \$1,000 (20,000 X 25% limited to \$1,000 for the complex of buildings.) Corporation C and D are treated as joint occupants and their share of the expenditure is \$10,000. If C and D each pay half of the cost for the building, each may claim a credit of \$500.

5. Recordkeeping. A taxpayer claiming an energy income tax credit shall maintain records that clearly identify the renewable energy source property with respect to which an energy income tax credit is claimed, and substantiate its cost to the taxpayer, any labor costs properly allocable to the onsite preparation, assembly or original installation of renewable energy source property which is paid for by the taxpayer, and the method used for allocating such labor costs. Such records shall be retained so long as the contents thereof may become material in the administration of the Virginia income tax.

6. Separate expenditures, effect on \$1,000 limitation. All costs incurred in purchasing, constructing and installing a renewable energy source system in, on or in connection with a building, or complex of buildings, shall be considered a single expenditure. All renewable energy source property installed in, on or in connection with a

building, or a complex of buildings, shall be deemed part of a single system.

In the case of a renewable energy source system consisting of separate components capable of functioning independently, which are installed or constructed in stages, the energy income tax credit may be claimed with respect to each component as each is completed, provided that no more than \$1,000 is claimed as a credit with respect to the entire system.

7. Carry over of unused credit to subsequent years. If any portion of an otherwise allowable energy income tax credit is not used solely because it exceeds the income tax liability of the corporation, the unused portion of the credit may be carried to the succeeding taxable year and added to any credit allowable for that taxable year. No credit is allowable for expenditures made on or after January 1, 1988, however a credit can be carried to the succeeding taxable year beginning on or after January 1, 1988. No credit can be carried to a taxable year beginning on or after January 1, 1989.

## **23 VAC 10-120-360. Intragroup transactions; definitions. (Repealed.)**

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

"Arm's length" means a charge for goods or services such that the price structure of intragroup transactions is substantially equivalent to the price structure of transactions between unrelated taxpayers, each acting in its own best interest.

"Group" means two or more corporations, which are owned or controlled, directly or indirectly by the same interests. Corporations eligible for inclusion in a federal consolidated return are members of a group. However, corporations ineligible for inclusion in a federal consolidated return (e.g., 79% stock ownership) are not precluded from being part of a group for purposes of this regulation if other facts demonstrate that one corporation has sufficient influence over another corporation's affairs to cause the corporations to enter into transactions with each other on terms that would not be offered to unrelated parties.

"Intragroup transaction" means a sale, exchange, or transfer of property or services between members of a group.

## **23 VAC 10-120-361. Factors utilized in determining whether intragroup transactions distort income from business done in Virginia. (Repealed.)**

A. A group's collective income from business done in Virginia is considered to be distorted if all of the following elements exist:

1. There is an arrangement;

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2. Between one or more members of a group subject to Virginia income tax, engaging in one or more intragroup transactions;

3. Where the consideration for an intragroup transaction does not accurately reflect the income from business done in Virginia of the participating group members; and

4. The intragroup transaction has the purpose or effect of distorting income from business done in Virginia.

B. Group members' transactions with unrelated parties are relevant, but not conclusive, in determining whether income from business done in Virginia is accurately reflected in intragroup transactions. If the consideration paid for fungible goods or services in an intragroup transaction is equivalent to the price charged in an arm's length transaction between unrelated parties, the intragroup transaction will be deemed to reflect accurately income from business done in Virginia.

C. Factors creating a rebuttable presumption that income from business done in Virginia is distorted include, but are not limited to:

1. Whether intragroup services are rendered or received without adequate consideration;

2. Whether a member of the group has a significant amount of capital gains, interest, dividend, or similar income, with only minimal capital, activity, or expenses because essential corporate functions are performed for the group member by other group members without an arm's length charge;

3. Whether there are significant intragroup lending transactions other than those described in subdivision E-3 of this section, especially where the lending party has no other significant activity, and the source of funds is either (i) dividends or capital contributions by other members of the group, if a substantial portion of the funds received is loaned to any member of the group within 24 months of the dividend or contribution and the loan provides working capital to the borrower; or (ii) borrowed funds guaranteed by, or secured by the property of, a group member other than the lending party;

4. Whether tangible or intangible property was contributed to or acquired from a group member in anticipation of a sale to an unrelated party;

5. Whether the accounting records of a group member adequately reflect the unconsolidated information required for the Virginia income tax returns of group members with Virginia nexus; or

6. Whether a corporate group engages in such a high level of transactions which are not made on an arm's length basis that separate or combined group return filing cannot accurately represent the group's income from business done in Virginia.

D. If any transaction between members of a corporate group and a noncorporate entity or entities distorts income from business done in Virginia, § 58.1-445 of the Code of Virginia may be invoked in order to accurately reflect the income from business done in Virginia of all participating entities.

E. Intragroup transactions listed below are examples of transactions deemed not to cause a distortion of the participants' income from business done in Virginia. The following transactions are not all inclusive, and are merely listed as safe harbors.

1. Patent or similar intangible asset.

a. If a patent or similar asset is transferred to or from an entity subject to Virginia income tax to another group member or noncorporate entity, two thirds of the taxable income to be derived from the patent must have been received by the transferor prior to the transfer.

b. If the taxable income to be derived from a patent or similar asset is undeterminable (in some instances, for example, a trademark), a transferor must receive a minimum payment equivalent to the asset's development cost, plus the transferor's stated internal rate of return requirement for similar assets created in the ordinary course of the transferor's business, plus a reasonable amount for anticipated future profits.

c. If a patent or similar asset is transferred between group members, with the transferor's compensation being future royalty payments, those payments must be at an arm's length price.

2. Stock representing corporation ownership or similar assets. If stock or a similar asset is transferred for less than its fair market value to or from a group member or noncorporate entity, then on any subsequent sale of the stock, the stock must have been held by the transferee for a minimum of five years before sale or transfer by the transferee. Otherwise, the provisions of subdivision C-4 of this section apply. See Example F.

3. Lending transactions. In an intragroup lending transaction, the lending party must be a discrete, separate business enterprise with its own employees, office space, and books and records. Funds must be loaned at a fair market value interest rate, with collateral, payments, and credit standing substantially similar to those which the borrower could obtain from an unrelated lending institution.

4. Transfer of receivables. Intragroup transfers of receivables must occur at arm's length, taking into account: the creditworthiness of the underlying debtor or debtors, the collectibility of the transferred receivables, and the rate of return required by the transferor corporation with regard to similar assets.



**23 VAC 10-120-362. Circumstances under which taxpayers may request that 23 VAC 10-120-360 through 23 VAC 10-20-364 be applied to intragroup transactions. (Repealed.)**

In extraordinary circumstances a taxpayer may request permission to allow an adjustment under § 58.1-446 of the Code of Virginia on the grounds that income from business done in Virginia is substantially distorted as a result of law or policies peculiar to Virginia. Before such an adjustment is claimed on a Virginia return or amended return, permission must be granted by the department. An adjustment will not be permitted under this section if the claimed distortion is attributable to allocation and apportionment provisions for which the taxpayer may request an alternate method of allocation and apportionment under § 58.1-421 of the Code of Virginia.

**23 VAC 10-120-363. Intragroup transactions; accurately reflecting the income from business done in Virginia. (Repealed.)**

The following remedies may be applied, either alone or in combination, if income from business done in Virginia is found to be distorted under 23 VAC 10-120-361. Other remedies not listed herein may be incorporated as necessary.

1. Income reattribution. Income may be imputed or reattributed from the group member originally reporting it to another group member, in order to accurately reflect the income from business done in Virginia of the reporting group member.
2. Expense reattribution. Expenses may be imputed or reattributed from the group member originally reporting them to another group member, in order to accurately reflect the income from business done in Virginia of the reporting group member.
3. Consolidated income. A group may be required to compute an apportioned tax on its consolidated income from business done in Virginia, including the income of all group members engaged in the intragroup transactions that distort income from business done in Virginia.
4. Lookback rule. If an asset is transferred in an intragroup transaction at other than fair market value, the department may examine the transferee's profits on the asset in order to ascertain that the consideration for the transfer accurately reflects income from business done in Virginia. If it can be determined that the transfer was for substantially less than fair market value, the department may adjust the original transfer price of the asset, reattribute the profit to the transferor, or may consolidate the Virginia returns of the transferor and transferee, depending upon the facts and circumstances. This rule will be utilized in conjunction with the safe harbor provision in 23 VAC 10-120-361 E 2.

**23 VAC 10-120-364. Intragroup transactions; examples. (Repealed.)**

A. A corporate group has the following members: a parent company (P) (not subject to Virginia income tax), a "financial corporation" (a subsidiary of the parent) not subject to Virginia income tax, or Delaware income taxation under Delaware Corporation Income Tax Code § 1902(b)(8) (D Corporation), a subsidiary (S) of the parent (files a Virginia income tax return on a separate basis), and other members unimportant to this example.

D borrows a sum of money from an unrelated third party, guaranteed by S, and then loans this money to S. S makes an annual interest payment to D equal to the interest rate charged to D by the third party, plus a percentage of the interest as a "management fee." D is not a "discrete business," because it has no employees, office space, and all decisions with regard to its activities are made by personnel of the parent company.

This transaction distorts income from business done in Virginia because employees of D rendered no services to S for which a management fee would accurately reflect income from business done in Virginia. Therefore, one appropriate remedy would be to disallow S's deduction for the management fee expense.

B. 1. Assume the same facts as in A, except that D is a subsidiary of S, that S personnel govern D's day to day activities, and that the majority of the numerous transactions conducted between S and D are not at arm's length.

In this instance, an appropriate remedy would be to require a Virginia consolidated return, comprised of S and D, in order to accurately reflect the income from business done in Virginia of the group as a whole.

2. Assume the same facts as in B 1, except S does not have adequate income or assets to guarantee the amount borrowed by the D, and that instead, the parent guarantees this loan. Assume further that the group originally filed a Virginia combined return, that the accounting records of the entire group do not support the separate company results of the group as shown in its Virginia income tax return, and that it is not possible to obtain the separate company operating results in a manner which may be verified through an audit.

In this instance, an appropriate remedy would be to require a Virginia consolidated return, comprised of the parent, S, and the D, in order to accurately reflect the income from business done in Virginia of the group as a whole.

C. Assume the same facts as in B, except that there is no intragroup loan activity. Instead, assume that S develops a patent, transfers the ownership to D for nominal consideration, and pays a royalty to D, which S deducts in determining income from business done in Virginia. The only function of D is the holding of patents.

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~~This transaction distorts income from business done in Virginia because the consideration for the transfer of the patent did not reflect its fair market value at the time of the transfer.~~

~~One remedy is a disallowance of the royalty expense in computing S's income from business done in Virginia. Another possible remedy in this situation would be to consolidate the income of S and D, in order to accurately compute income from business done in Virginia, if there is such a high level of interaction between the two companies that it is impractical to utilize any other reporting method of determining the group's income from business done in Virginia.~~

~~D. Assume that the following group exists: a parent (P) (subject to Virginia income tax), S3 (a corporation with no assets or employees, not subject to Virginia income tax), and S4 (a subsidiary of the parent, subject to Virginia income tax).~~

~~The parent transfers its ownership interest in S4 to S3, by transferring S4's stock for nominal consideration. A short time after the transfer, S3 sells the S4 stock, realizing a substantial gain, which would have been income from business done in Virginia to the parent had the parent sold the stock.~~

~~This transaction distorts P's income from business done in Virginia because the stock transfer appears to have been made in anticipation of a sale to an unrelated party.~~

~~Under these facts, it is a rebuttable presumption that an appropriate remedy is to reattribute the capital gains income to P. Another possible remedy is to require P and S4 to file a consolidated Virginia income tax return, if the accounting records are not sufficient to support any other filing method.~~

~~E. D Corporation, a wholly owned subsidiary of P, is a "financial corporation" not subject to Delaware income taxation under Delaware Corporation Income Tax Code § 1902(b)(8). P is subject to Virginia income tax. D leases an office for its exclusive use in Delaware where it has a staff adequate to conduct all of its business affairs. D has substantial intangible assets which are loaned or otherwise made available to other group members for a consideration determined pursuant to the safe harbor provision of subdivision E 3 of 23 VAC 10-120-361. All of D's assets are located in Delaware, and all of its business activities, including all day to day decision making, are conducted by its own officers and employees in Delaware. D received its intangible assets from P in a transaction under Internal Revenue Code § 351.~~

~~In this instance, the group's income from business done in Virginia is not distorted due to the intragroup lending transactions. This conclusion is not changed by the mere fact that one or more officers or directors of D may reside in~~

~~Virginia, or may be employed by an affiliate of D doing business in Virginia.~~

~~F. Same facts as in E, above, except that there are no intragroup lending transactions. Assume that P transfers its 100% stock ownership interest in subsidiary B to D, the financial corporation. Three years after the stock transfer, P decides that it needs to raise capital, and causes D to sell its B stock, at a substantial profit over P's original basis. In this instance, there is no distortion of the group's income from business done in Virginia, because the taxpayer can establish that the original stock transfer to D was not in anticipation of a subsequent sale.~~

~~G. P corporation is a pharmaceutical company subject to Virginia income tax. S corporation, a wholly owned subsidiary of P corporation, is incorporated in another state and not subject to Virginia income tax. S corporation is engaged solely in the business of developing marketable products utilizing patents developed by P corporation. P transfers all of its patents to S at their estimated fair market value at the date of transfer. S has its own officers, employees, accounting records, and regularly earns income from outside the group in the ordinary course of business. Further, the transfer of patents in this manner is consistent with the pharmaceutical industry's method of doing business.~~

~~After four years, S corporation sells one of the patents to an unrelated third party in the ordinary course of business for a substantial amount over the original purchase price paid to P, and in turn, for a substantial amount over P's basis.~~

~~Transactions of this nature do not cause a distortion of P's income from business done in Virginia, because P has established that the consideration for the transfer of its patents to S reflects fair market value, and that the transfer was not in anticipation of a subsequent sale by S to an unrelated party.~~

VA.R. Doc. No. R07-59; Filed November 29, 2006, 4:30 p.m.

## Fast-Track Regulation

**Title of Regulation:** 23 VAC 10-120. Corporation Income Tax (repealing 23 VAC 10-120-85, 23 VAC 10-120-87, 23 VAC 10-120-340, 23 VAC 10-120-370, and 23 VAC 10-120-450).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal five sections of the Corporation Income Tax regulations that address statutes that are clear and unambiguous.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation proposes to repeal 23 VAC 10-120-85, 23 VAC 10-120-87, 23 VAC 10-120-340, 23 VAC 10-120-364, 23 VAC 10-120-370, and 23 VAC 10-120-450 in the existing Corporation Income Tax regulations. These sections either provide no additional guidance to clear and unambiguous statutes (23 VAC 10-120-85, 23 VAC 10-120-340, 23 VAC 10-120-364, 23 VAC 10-120-370, and 23 VAC 10-120-450) or are no longer applicable (23 VAC 10-120-87).

Result of Analysis. The proposed repeal is not likely to have any significant impact.

Estimated Economic Impact. 23 VAC 10-120-85 (Telecommunications company income tax credit), 23 VAC 10-120-340 (Several liability of affiliated corporations), 23 VAC 10-120-364 (Intragroup transactions; examples), 23 VAC 10-120-370 (Foreign sales corporations), and 23 VAC 10-120-450 (Where declarations filed and how payments made) are essentially identical in meaning to § 58.1-434, § 58.1-400.1, § 58.1-444, § 58.1-446, § 58.1-446 and § 58.1-503 of the Code of Virginia, respectively. Repealing these sections therefore will have no impact.

23 VAC 10-120-87 (Telecommunications companies; transitional rule for initial fiscal year) addresses the

transitional rule for initial fiscal year. This section is proposed to be repealed because it is no longer applicable. Repeal of this section will have no impact.

Businesses and Entities Affected. The proposed repeal of these regulations will not significantly affect businesses and entities.

Localities Particularly Affected. No localities are particularly affected.

Projected Impact on Employment. The proposed repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not significantly affect small businesses.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The agency agrees with the Department of Planning and Budget's economic impact analysis.

# Regulations

## Summary:

As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.

### 23 VAC 10-120-85. Telecommunications company income tax credit. (Repealed.)

A. In general. If a telecommunications company is subject to the corporation income tax under § 58.1-400 of the Code of Virginia because its corporation income tax exceeds the minimum tax under § 58.1-400.1 of the Code of Virginia, the telecommunications company may be eligible for a credit against the corporation income tax. This credit is only applicable when the corporation income tax exceeds 1.3% of the gross receipts of the company. The amount of credit available against the corporation income tax will be phased out over a ten year period from 1989 through 1998.

B. Determination of gross receipt. For each taxable year, the telecommunications company income tax credit is computed on the gross receipts of such company for the calendar year which ends during the taxable year.

If a company files an income tax return for a period of less than 12 months, the telecommunications company income tax credit is computed with reference to the gross receipts for the calendar year which ends during the taxable period. If no calendar year ends during the taxable period, the telecommunications company income tax credit is computed with reference to the gross receipts of the most recent calendar year which ended before the taxable period.

For taxable years that begin before January 1, 1989, include January 1, 1989, and end before December 31, 1989, the credit is computed with reference to the gross receipts received during calendar year 1988 (prorated by the number of months in the taxable period divided by 12). The credit rate applicable to taxable year 1989 shall be used.

EXAMPLE 1: If Company A's taxable year begins on April 1, 1990, and ends March 30, 1991, the telecommunication company income tax credit for taxable year 1990 would be computed on the gross receipts for calendar year 1990.

EXAMPLE 2: Company B, a calendar year filer, goes out of business on April 30, 1992. For federal income tax purposes, its taxable year begins on January 1, 1992, and ends on April 30, 1992. Its telecommunications company income tax credit for taxable year 1992 would be computed on the gross receipts for calendar year 1991.

C. Credit amount. As set forth in § 58.1-434 of the Code of Virginia, the following credit is allowable to

telecommunications companies to offset the tax imposed under § 58.1-400 of the Code of Virginia:

Taxable Year:	Tax Credit
1989	80% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.
1990	70% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.
1991	60% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.
1992 and 1993	50% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.
1994	40% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.
1995 and 1996	30% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.
1997	20% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.
1998	10% of the amount by which the tax imposed by § 58.1-400 exceeds 1.3% of gross receipts.

EXAMPLE: For taxable year 1991, Telecommunications Company (TC) files its federal income tax return on a fiscal year basis for the year beginning July 1, 1991, and ending June 30, 1992. For calendar year 1991 TC has gross receipts of \$100,000. Its corporate income tax for taxable year 1991 is \$1,400 and its minimum tax is \$1,000 (\$100,000 X 1.0%). Since its corporate income tax exceeds its minimum tax, TC is subject to the corporate income tax. Because TC is subject to the corporate income tax, not the minimum tax, and because its corporate income tax exceeds 1.3% of its gross receipts, TC is eligible to claim a credit equal to 60% of the amount by which the corporate income tax exceeds 1.3% of gross receipts.

Corporate Income Tax	\$1,400
1.3% of Gross Receipts	1,300
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Credit Base	100
Credit Percentage for 1991	x 60%
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Corporate Income Tax Credit	\$60
Corporate Tax Before Credit	\$1,400
Less Credit	60
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Net Tax Due	\$1,340

D. Short taxable periods. If the income tax return is filed for a taxable period of less than 12 months, the gross receipts used

to compute the credit shall be prorated by the number of months in the taxable period divided by 12.

EXAMPLE: Telecommunications Company (TC) goes out of business on December 31, 1991, and files a short taxable period return for the period beginning July 1, 1991, and ending December 31, 1991. For calendar year 1991 TC has gross receipts of \$100,000. Its corporate income tax for taxable year 1991 is \$700 and its minimum is \$500 ( $\$100,000 \times 1.0\% \times 6/12$ ). Since its corporate tax exceeds its minimum tax, TC is subject to the corporate income tax. Because TC is subject to the corporate income tax, not the minimum tax, and because its corporate income tax exceeds 1.3% of its gross receipts, TC is eligible to claim a credit equal to 60% of the amount by which the corporate income tax exceeds 1.3% of gross receipts.

The credit and tax due are computed as follows:

Corporate Income Tax	\$700
1.3% of Gross Receipts*	650
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Credit Base	50
Credit Percentage for 1991	x 60%
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Allowable Credit	\$ 30
Corporate Tax Before Credit	\$700
Less Credit	30
<hr/>	
Net Tax Due	\$670
* $\$100,000 \times 6/12 \times 1.3\% =$	\$650

**E. Limitation of credit.**

1. If a company is subject to the minimum tax in a taxable year, it will not be eligible for a telecommunications company income tax credit in such year.
2. The amount of credit allowed in any taxable year may not exceed the actual income tax liability for such year. Any excess credit for a taxable year may not be carried over to another taxable year to be used to offset the tax liability in another year.
3. This credit shall be applied against the income tax liability prior to any other credits which may be applicable against the corporation income tax.

**23 VAC 10-120-87. Telecommunications companies; transitional rule for initial fiscal year. (Repealed.)**

The license tax administered by the SCC is computed on the gross receipts for a calendar year basis regardless of the taxable year used for filing federal income tax returns. Tax year 1989, which subjects the gross receipts earned during calendar year 1988 to the license tax, is the last tax year telecommunications companies are subject to the license tax. Therefore, any telecommunications company which has a taxable year for federal income tax purposes that begins

before January 1, 1989, includes January 1, 1989, and ends on a day other than December 31, 1989, must file a transitional short taxable year Virginia corporation income tax return to report the income earned after December 31, 1989, and before the first day of their fiscal year 1989 period.

To determine which tax the company must pay, the company must compute the corporate income tax on the company's income for the 12 month fiscal year and the minimum tax on the company's gross receipts for calendar year 1988. To compute the tax due on the transitional taxable year return, the tax (either the corporate income tax less any applicable credit or the minimum tax) may be prorated based upon the number of months of the 12 month fiscal year included in calendar year 1989.

**23 VAC 10-120-340. Several liability of affiliated corporations. (Repealed.)**

A. Each affiliated corporation included in a consolidated or combined return shall be jointly and severally liable for the entire tax and any assessments of additional tax, penalty and interest for the affiliated group. The Department of Taxation may assess and collect the tax for the consolidated or combined group against any one or more of the corporations included in a consolidated or combined return without regard for the tax such corporation might have owed had it filed a separate return or any other circumstances.

B. Corporations may agree among themselves as to the liability for taxes, but such agreements shall have no effect on the tax liability owed by the affiliated group or on the joint and several liability of each member of the affiliated group.

**23 VAC 10-120-370. Foreign sales corporations. (Repealed.)**

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

"DISC" means a corporation which elected to be treated as a Domestic International Sales Corporation under IRC §991 before January 1, 1985, and which, under the Tax Reform Act of 1984, is required to end its taxable year on December 31, 1984, and, if it wishes, make a new election to be taxed as an interest charge DISC.

"FSC" means a corporation which has elected to be treated as a Foreign Sales Corporation under IRC § 927 of the Code of Virginia.

"Interest charge DISC" means a corporation which has elected to be treated as a Domestic International Sales Corporation under IRC § 992 of the Code of Virginia.

"Small FSC" means a corporation which has elected to be treated as a Small Foreign Sales Corporation under IRC § 927 of the Code of Virginia.

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# Regulations

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~~B. DISC prior to January 1, 1985. All DISC's are required by federal law to end their taxable years on December 31, 1984. Distributions of DISC income accumulated prior to December 31, 1984 are deemed to be made from previously taxed income and are not included in the federal taxable income of the recipient.~~

~~The department has required a taxpayer owning a DISC to make an adjustment under § 58.1-446 of the Code of Virginia in each year, including the taxable year ended December 31, 1984, in which the taxpayer pursuant to federal law attributed some of its taxable income to its DISC in an amount unrelated to the business done by the DISC. Therefore, no adjustments are required with respect to distributions received by a taxpayer from accumulated DISC income and excluded from the taxpayer's federal taxable income.~~

~~C. Interest charge DISC of the Code of Virginia. For transactions occurring of the Code of Virginia, a taxpayer may attribute some of its income to an interest charge DISC by using certain administrative pricing rules which expressly exempt the DISC from complying with IRC § 482 (arms length pricing.) An adjustment under § 58.1-446 of the Code of Virginia is required when any of a taxpayer's income is attributed to an interest charge DISC in an amount unrelated to the business done by the interest charge DISC.~~

~~The adjustment is required with respect to any interest charge DISC which conducts no business or which does conduct business but such business activity is unrelated to the amount of the taxpayer's income attributed to the interest charge DISC.~~

~~When an adjustment under § 58.1-446 of the Code of Virginia is required, the adjustment will be based upon consolidation of the interest charge DISC with the taxpayer unless the taxpayer shows to the satisfaction of the Tax Commissioner that some other method of computing the adjustment is more equitable.~~

## ~~23 VAC 10-120-450. Where declarations filed and how payments made. (Repealed.)~~

~~The declaration of estimated tax and all installments shall be mailed to the Department of Taxation, P.O. Box 1500, Richmond, VA 23212.~~

VA.R. Doc. No. R07-69; Filed November 29, 2006, 4:03 p.m.

### Fast-Track Regulation

Title of Regulation: **23 VAC 10-130. Taxation of Partnerships Regulations (Repealed).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

Effective Date: March 10, 2007.

Agency Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law. As these regulations are obsolete, they are being repealed. As these regulations are obsolete, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

House Bill 5018 passed during the 2004 Special Session of the General Assembly rendered the existing partnership tax regulations obsolete and will be superseded by "Pass Through Entity" regulations the Department of Taxation will promulgate.

Rationale for Using Fast-Track Process: As the regulations being repealed are obsolete, their repeal is not expected to be controversial.

Substance: This regulatory action will repeal the Taxation of Partnerships Regulations.

Issues: This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating obsolete regulations that do not reflect the current law. As these regulations are obsolete their repeal will result in no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal numerous sections of these regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The department proposes to repeal 23 VAC 10-130-10 through 23 VAC 10-130-50. These sections have been rendered obsolete by House Bill 5018 passed during the 2004 General Assembly Special Session. When there is a difference between the Code of Virginia and regulations, the Code of Virginia applies. Thus,

the repeal will be beneficial since the current obsolete information in the regulations is misleading.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*House Bill 5018 passed during the 2004 Special Session of the General Assembly rendered the existing Taxation of Partnerships Regulations obsolete and will be superseded by "Pass Through Entity" regulations the Department of Taxation will promulgate.*

V.A.R. Doc. No. R07-61; Filed November 29, 2006, 4:28 p.m.

**Fast-Track Regulation**

**Title of Regulation:** **23 VAC 10-210. Retail Sales and Use Tax (repealing 23 VAC 10-210-60, 23 VAC 10-210-110, 23 VAC 10-210-150, 23 VAC 10-210-180, 23 VAC 10-210-200, 23 VAC 10-210-210, 23 VAC 10-210-240, 23 VAC 10-210-260, 23 VAC 10-210-270, 23 VAC 10-210-300, 23 VAC 10-210-330, 23 VAC 10-210-460, 23 VAC 10-210-510, 23 VAC 10-210-520, 23 VAC 10-210-540, 23 VAC 10-210-640, 23 VAC 10-210-710, 23 VAC 10-210-740, 23 VAC 10-210-890, 23 VAC 10-210-950, 23 VAC 10-210-1000, 23 VAC 10-210-1010, 23 VAC 10-210-1040, 23 VAC 10-210-1050, 23 VAC 10-210-2000, 23 VAC 10-210-2010, 23 VAC 10-210-2030, 23 VAC 10-210-2034, 23 VAC 10-210-2040, 23 VAC 10-210-4000, 23 VAC 10-210-4030, 23 VAC 10-210-4060, 23 VAC 10-210-4080 through 23 VAC 10-210-5050, and 23 VAC 10-210-5080).**

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

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# Regulations

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**Substance:** This regulatory action repeals selected sections of the Retail Sales and Use Tax chapter because they are unnecessary.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation.** The Department of Taxation (department) proposes to repeal numerous sections of these regulations.

**Result of Analysis.** The benefits likely exceed the costs for the proposed changes.

**Estimated Economic Impact.** The department proposes to repeal 23 VAC 10-210-60, 23 VAC 10-210-110, 23 VAC 10-210-150, 23 VAC 10-210-180, 23 VAC 10-210-200, 23 VAC 10-210-210, 23 VAC 10-210-240, 23 VAC 10-210-260, 23 VAC 10-210-270, 23 VAC 10-210-300, 23 VAC 10-210-330, 23 VAC 10-210-460, 23 VAC 10-210-510, 23 VAC 10-210-520, 23 VAC 10-210-540, 23 VAC 10-210-640, 23 VAC 10-210-710, 23 VAC 10-210-740, 23 VAC 10-210-890, 23 VAC 10-210-950, 23 VAC 10-210-1000, 23 VAC 10-210-1010, 23 VAC 10-210-1040, 23 VAC 10-210-1050, 23 VAC 10-210-2000, 23 VAC 10-210-2010, 23 VAC 10-210-2030, 23 VAC 10-210-2034, 23 VAC 10-210-2040, 23 VAC 10-210-4000, 23 VAC 10-210-4030, 23 VAC 10-210-4060, 23 VAC 10-210-4080, 23 VAC 10-210-4090, 23 VAC 10-210-5000, 23 VAC 10-210-5010, 23 VAC 10-210-5020, 23 VAC 10-210-5030, 23 VAC 10-210-5040, 23 VAC 10-210-5050, and 23 VAC 10-210-5080.

23 VAC 10-210-60, 23 VAC 10-210-180, 23 VAC 10-210-460, 23 VAC 10-210-510, 23 VAC 10-210-520, 23 VAC 10-210-540, 23 VAC 10-210-710, 23 VAC 10-210-1010, 23 VAC 10-210-1040, 23 VAC 10-210-1050, 23 VAC 10-210-2030, 23 VAC 10-210-2034, 23 VAC 10-210-4030, 23 VAC 10-210-4060, and 23 VAC 10-210-5050 pertain to §§ 58.1-609.2(2), 58.1-609.5(1), 58.1-612, 58.1-624, 58.1-612, 58.1-609, 58.1-609.10(9), 58.1-609.1(1), 58.1-607, 58.1-609.6(2), 58.1-635, 58.1-635, 58.1-609.2(1), 58.1-609.5(2), and 58.1-609.3(2) of the Code of Virginia, respectively. None of these regulation sections contain rules that either go beyond or contradict their respective related Code of Virginia sections. Repealing these regulation sections will therefore have no impact.

23 VAC 10-210-110, 23 VAC 10-210-150, 23 VAC 10-210-200, 23 VAC 10-210-210, 23 VAC 10-210-240, 23 VAC 10-210-260, 23 VAC 10-210-270, 23 VAC 10-210-300, 23 VAC 10-210-330, 23 VAC 10-210-640, 23 VAC 10-210-740, 23 VAC 10-210-890, 23 VAC 10-210-950, 23 VAC 10-210-1000, 23 VAC 10-210-2000, 23 VAC 10-210-2010, 23 VAC

10-210-2040, 23 VAC 10-210-4000, 23 VAC 10-210-4080, 23 VAC 10-210-4090, 23 VAC 10-210-5000, 23 VAC 10-210-5010, 23 VAC 10-210-5020, 23 VAC 10-210-5030, 23 VAC 10-210-5040, 23 VAC 10-210-5080 differ from those respectively corresponding §§ 58.1-602, 58.1-637, 58.1-602, 58.1-602, 58.1-602, 58.1-609.6(4), 58.1-602, 58.1-602, 58.1-602, 58.1-609.5(1), 58.1-602, 58.1-602, 58.1-609.5(1), 58.1-609.1(2), 58.1-609.5(1), 58.1-602, 58.1-623.1, 58.1-602, 58.1-609.5(1), 58.1-602, 58.1-602, 58.1-609.5(1), and 58.1-602 of the Code of Virginia. When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. The repeal will be beneficial since the current contradictory information is misleading.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected



small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-210-60. Agricultural and seafood processing. (Repealed.)**

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

"Agricultural commodity" means crops, horticultural products, poultry, livestock, livestock products, worms, and other farm products produced from an agricultural production process as determined in 23 VAC 10-210-50.

"Seafood commodity" means fish and other seafood.

B. The sale of an agricultural commodity or seafood commodity to any person for the purpose of preparing, finishing, or manufacturing such commodity for sale is exempt from the tax. The sale at retail of the prepared, finished, or manufactured agricultural or seafood commodity is taxable.

**23 VAC 10-210-110. Alcoholic beverages. (Repealed.)**

Alcoholic beverages sold by the Virginia Alcoholic Beverage Control Board through its government stores are subject to the Virginia Retail Sales and Use Tax Act. The sales and use tax applies to all retail sales of alcoholic beverages of every kind by every dealer. This includes sales of beer, wine, mixed beverages, etc. In each case the tax is computed on the total amount charged the customer by the dealer without deduction for excise or other taxes borne by the beverages.

**23 VAC 10-210-150. Bad checks. (Repealed.)**

Any person who tenders a bad check and fails to pay the amount due within five days after the Department of Taxation has given notice in person or written notice by registered or certified mail is guilty of larceny. Such person shall also be subject to a penalty of \$25 and the civil penalties set out in 23 VAC 10-210-2030.

A bond may be required of any person who has tendered a bad check.

**23 VAC 10-210-180. Barber and beauty shops. (Repealed.)**

Barber and beauty shop operators are engaged primarily in rendering personal services, and their gross receipts are not subject to sales tax. They are the consumers of the materials used in their businesses and are required to pay the tax on all their purchases. When barber and beauty shop operators go beyond the rendition of personal services and sell tangible personal property such as wigs, toupees, tonics, etc., they are required to register and collect and pay the tax on such sales. An operator holding a Certificate of Registration is not entitled to buy any item under a resale certificate of exemption unless it is bought by him for outright sale in the form of tangible personal property.

**23 VAC 10-210-200. Book rental libraries. (Repealed.)**

Book sales to a rental library for rental to its customers are sales for resale not subject to the tax. Any person engaged in the business of renting or selling books is required to register as a dealer and to collect and pay the tax on charges made for such rentals or sales.

**23 VAC 10-210-210. Bowling alleys. (Repealed.)**

Operators of bowling alleys are the consumers of the tangible personal property used in their businesses and are required to pay the tax on all their purchases. Rentals of equipment and supplies, including automatic pin spotters, used in the operation of the business are taxable. However, bowling balls, shoes and other equipment purchased for resale or rental may be purchased under a resale certificate of exemption. The tax applies to sales at retail and rentals of such property and must be collected and paid by the operator.

**23 VAC 10-210-240. "Business" defined. (Repealed.)**

As used in this chapter, the term "business" means any activity engaged in by any person with the object of direct or indirect gain, benefit or advantage. "Business" includes the leasing of property by an entity organized for such purpose, even if its only activity is the lease or rental of a single item or single group of items.

For occasional sale, see 23 VAC 10-210-1080.

**23 VAC 10-210-260. Catalogs and other printed materials. (Repealed.)**

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

"Administrative supplies" includes, but is not limited to, letterhead, envelopes and other stationery, invoices, billing forms, payroll forms, price lists, time cards, computer cards, certificates, business cards, diplomas, and awards. The term also includes supplies for internal use by the purchaser, such

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as menus, calendars, datebooks, desk reminders, appointment books, and employee newsletters.

"Other printed materials" means items which are similar to catalogs and which are used in advertising tangible personal property for sale. Brochures, leaflets, and similar items are examples of other printed materials, but price lists, merchandising displays, floor racks, and similar items are not.

"Similar printed materials" means printed materials used for promotional purposes, except administrative supplies.

B. The tax does not apply to catalogs and other printed materials or to paper furnished to a printer for fabrication into catalogs and other printed materials used in advertising tangible personal property for sale, and any envelopes, containers and labels used for packaging and mailing them, when stored for 12 months or less in the state and distributed for use outside this state.

The tax does apply to catalogs and other printed materials, and envelopes, containers and labels for mailing unless the materials meet all three of the following conditions:

1. The materials will be stored in Virginia for less than 12 months;
2. The materials will be distributed for use outside Virginia; and
3. The materials will be used for advertising the sale of tangible personal property.

As explained in detail in 23 VAC 10-210-3010 H, letters, brochures, reports, and similar printed materials, other than administrative supplies, are exempt from the tax from July 1, 1986, to June 30, 1990, provided such materials (i) will be stored in Virginia for less than 12 months and (ii) will be distributed for use outside Virginia. Examples of taxable and exempt printed materials are listed in 23 VAC 10-210-3010 H. It should be noted that some items not qualifying for exemption as catalogs and other printed materials may qualify for the exemption explained here and in 23 VAC 10-210-3010 H.

## **23 VAC 10-210-270. Cemeteries and crematoriums. (Repealed.)**

The tax applies to all sales of tangible personal property by cemeteries and crematoriums, including boxes, urns, markers, vases, flowers, vaults, and lawn crypts.

The tax does not apply to sales of lots, garden crypts and niches, mausoleums which are real property. Persons selling and installing crypts, niches and mausoleums are the consumers of all property sold and used and must pay the tax on such items at the time of purchase.

The tax applies to purchases of equipment and supplies for use and consumption by cemeteries and crematoriums. Such purchases include, but are not limited to, materials and

supplies used in construction, maintenance, improvement or alteration of buildings and grounds; also seeds, insecticides, plants and fertilizers.

## **23 VAC 10-210-300. Chemicals. (Repealed.)**

Retail sales of chemicals are taxable. Any person who buys chemicals for use or consumption in rendering services or performing repair work is required to pay the tax on such chemicals at the time of purchase. For example, a dry cleaner who purchases cleaning fluid for use in performing cleaning services must pay the tax on such fluid at the time of purchase.

Chemicals for use directly in manufacturing or processing (see 23 VAC 10-210-920), for direct and exclusive use in basic research or research and development in the experimental or laboratory sense (see 23 VAC 10-210-3070 through 23 VAC 10-210-3074), or for use in agricultural production for market (see 23 VAC 10-210-50) may be purchased exempt from the tax.

## **23 VAC 10-210-330. Coin dealers. (Repealed.)**

Sales of coins, gold and silver bars or other tangible personal property by coin dealers are subject to the tax. For sales of such items by banks, see 23 VAC 10-210-170.

## **23 VAC 10-210-460. Dealer defined. (Repealed.)**

The term "dealer" includes every person who:

- a. Manufactures or produces tangible personal property for sale at retail, for use, consumption or distribution, or for storage to be used or consumed in this state.
- b. Imports or causes to be imported into this state tangible personal property from any state or foreign country, for sale at retail, for use, consumption or distribution, or for storage to be used or consumed in this state.
- c. Sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption or distribution or for storage to be used or consumed in this state, tangible personal property.
- d. Has sold at retail, or used, consumed or distributed, or stored for use or consumption in this state, tangible personal property and who cannot prove that the tax has been paid on the sale at retail, the use, consumption, distribution or storage of the tangible personal property.
- e. Leases or rents tangible personal property for a consideration, permitting the use or possession of such property without transfer of title.
- f. Is the lessee or rentee of tangible personal property, and who pays to the owner of the property a consideration for the use or possession of the property without acquiring title.

~~g. As a representative, agent or solicitor of an out-of-state principal solicits, receives and accepts orders from persons in this state for future delivery and whose principal refuses to register as a dealer.~~

~~h. Shall become liable to and shall owe this state any amount of tax, whether he holds, or is required to hold, a certificate of registration or not.~~

~~Effective July 1, 1979, a dealer shall be deemed to have sufficient activity within the state to require registration if he:~~

~~a. Maintains or has within this state, directly or through an agent or subsidiary, an office, warehouse or place of business of any nature;~~

~~b. Solicits business in this state by employees, independent contractors, agents or other representatives;~~

~~c. Advertises in newspapers or other periodicals printed and published within this state, on billboards or posters located in this state, or through materials distributed in this state by means other than the United States mail; or~~

~~d. Makes regular deliveries of tangible personal property within this state by means other than common carrier. A person shall be deemed to be making regular deliveries if vehicles other than those operated by a common carrier enter this state more than 12 times during a calendar year to deliver goods sold by him.~~

~~Note: A wholesaler, as distinguished from a retailer, is a seller who sells for resale only. If he sells both at wholesale and at retail, he is a retailer as to his retail sales. For information on registering, see 23 VAC 10-210-290.~~

**23 VAC 10-210-510. Direct payment permits. (Repealed.)**

~~The Department of Taxation may issue direct payment permits to manufacturers, mine operators and public service corporations. A permit is issued conditioned upon an arrangement under which no county or city will suffer the loss of any local sales or use tax revenue because of the permit. In making sales to the holder of any such permit, dealers are not required to collect and pay the tax on such sales until notified in writing that the permit has been cancelled.~~

**23 VAC 10-210-520. Employee associations and organizations. (Repealed.)**

~~Employee associations and organizations regularly selling tangible personal property to members or others must register to collect and pay the tax. All employee organizations should contact the Department of Taxation to determine if they should register. For occasional sales, see 23 VAC 10-210-1080.~~

**23 VAC 10-210-540. Exemptions. (Repealed.)**

~~Under principles established by the courts, taxation is the rule and exemption is the exception. Therefore, exemptions from the sales and use tax are strictly construed, that is, when exemption language is susceptible of two constructions, one granting the exemption and the other not granting it, the construction denying the exemption will be followed. For the use of certificates of exemption, see 23 VAC 10-210-280.~~

**23 VAC 10-210-640. Funeral directors. (Repealed.)**

~~Effective October 1, 1979, funeral directors are required under § 54.1-2812 of the Code of Virginia to itemize charges for funeral expenses; therefore, tangible personal property listed on the itemized statement of funeral expenses is subject to the Virginia sales tax on the retail sales price of the property. Tangible personal property subject to sales tax includes, but is not limited to, caskets, vaults, crypts or boxes, air shipment trays, cremation rental caskets, urns, clothing, flowers, crucifixes, rosaries, registration books, and acknowledgement cards. These items may be purchased by the funeral director exempt from sales tax by issuing the supplier a resale certificate of exemption, Form ST-10.~~

~~Charges for professional services, administrative services, preparation of the remains, funeral home facilities, automotive equipment, and cash advances for services are not subject to sales tax.~~

~~Equipment and supplies, including embalming materials and other tangible personal property used in preparation of the remains, chapel furnishings, etc., are purchases for use or consumption by funeral directors and are taxable at the time of purchase.~~

~~If a Virginia director conducts a funeral in the state and furnishes tangible personal property that is delivered in Virginia, the tax applies even though interment may occur in another state.~~

**23 VAC 10-210-710. Homes for the care and maintenance of children or other persons. (Repealed.)**

~~The tax applies to purchases of tangible personal property by homes for the care and maintenance of children or other persons, whether conducted for profit or not. However, effective July 1, 1980, the tax does not apply to sales to homes for adults as defined by § 63.1-172 of the Code of Virginia conducted not for profit. The tax does not apply to receipts for the care and maintenance of such persons.~~

**23 VAC 10-210-740. Ice. (Repealed.)**

~~The tax applies to retail sales of ice, including ice used to cool or chill storage rooms, compartments, delivery trucks, etc., for keeping perishable items.~~

~~Ice is not taxable when it becomes a part of a beverage for resale; or if it constitutes a supply used directly in~~

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manufacturing, etc. under 23 VAC 10-210-920 C; or if it is used as a packaging material in a package containing perishable tangible personal property for sale.

Persons engaged in the manufacture of ice for sale or resale are classified as industrial manufacturers and qualify for the exemption set forth in 23 VAC 10-210-920.

**23 VAC 10-210-890. ~~Lost, damaged or unclaimed property. (Repealed.)~~**

The tax does not apply to compensation paid by a common carrier to a customer for tangible personal property lost or damaged while in the carrier's possession. If a common carrier sells damaged or unclaimed property, it must register as a dealer and collect and pay the applicable tax. For common carriers of property, see 23 VAC 10-210-370.

**23 VAC 10-210-950. ~~Miniature golf courses and driving ranges. (Repealed.)~~**

The tax applies to purchases of golf balls, golf clubs and all other tangible personal property for use and consumption by operators of miniature golf courses and driving ranges. Charges made to customers for playing golf or driving golf balls are not subject to tax.

**23 VAC 10-210-1000. ~~Motor vehicle dealers. (Repealed.)~~**

Retail sales of accessories, parts, air conditioners, tires, tubes, batteries, etc., are subject to the Virginia retail sales and use tax. However, the tax does not apply to attachments on or accessories to a motor vehicle at the time of sale that are included in the sales price for measuring the Virginia motor vehicle sales and use tax.

The tax does not apply to the exchange of parts under a warranty or guarantee if no charge is made. However, the tax applies to any difference charged for parts so exchanged. (For extended warranty plans, see 23 VAC 10-210-910).

The tax does not apply to purchases of parts and component materials for reconditioning dealer-owned motor vehicles for resale.

Parts used in repairing customers' motor vehicles are taxable. Charges for repair labor are not taxable when billed separately.

The tax does not apply to a handicapped person's purchase of special equipment that will be installed on a motor vehicle to enable him to operate the motor vehicle.

**23 VAC 10-210-1010. ~~Motor vehicle fuels. (Repealed.)~~**

The tax does not apply to motor vehicle fuels that are subject to the motor vehicle or special fuels taxes (imposed under §§ 58.1-2100 et seq. of the Code of Virginia and administered by the Department of Motor Vehicles), unless the motor vehicle or special fuels tax is refunded. If the tax is refunded the retail sales and use tax will apply to the cost price of the

fuel to which the refund is applicable. Fuel which is used in boats or for any other statutorily exempt purpose is not subject to sales or use tax.

(For application of the motor vehicle fuel sales tax in certain transportation districts, see Virginia Motor Vehicle Fuel Sales Tax Regulations.)

**23 VAC 10-210-1040. ~~Moving residence or business into Virginia; use tax. (Repealed.)~~**

The use tax does not apply to tangible personal property purchased outside this state for use outside this state by a nonresident person or a business entity not actually doing business within this state, who later brings such tangible personal property into this state in connection with his establishment of a permanent residence or business in this state, provided that such property was purchased more than six months prior to the date it was first brought into this state or prior to the establishment of such residence or business, whichever first occurs. This section does not apply to tangible personal property temporarily brought into this state for the performance of contracts for the construction, reconstruction, installation, repair or for any other service with respect to real estate or fixtures thereon. For use tax, see 23 VAC 10-210-6030.

**23 VAC 10-210-1050. ~~Music systems. (Repealed.)~~**

Persons who are engaged in transmitting music, including FM multiplex radio transmission of background music, to subscribers who receive such transmission via antennas and receiving equipment owned by the transmitter are providing a service, the charge for which is not subject to the tax. The person providing such service must pay the tax on the purchase of all tangible personal property which they use, including the antennas, transmitters, receivers, and music tapes. Persons providing music systems to subscribers only and not for dissemination to the general public are not "broadcasting" and are not entitled to the exemption set forth in 23 VAC 10-210-3030.

**23 VAC 10-210-2000. ~~Painters and paperhangers. (Repealed.)~~**

The tax does not apply to the charges for services performed by painters and paperhangers. They are consumers of all tangible personal property used by them and must pay the tax to their suppliers on purchases of paint, wallpaper, supplies, equipment, etc.

**23 VAC 10-210-2010. ~~Pawnbrokers. (Repealed.)~~**

The tax applies to retail sales of tangible personal property by pawnbrokers, lien holders, mortgagees, etc., regardless of how the property was acquired.

**23 VAC 10-210-2030. Penalties and interest; generally. (Repealed.)**

A. ~~Civil penalties. A dealer who fails to file a return and pay the full amount of tax by the required due date is subject to a penalty of 6.0% of the amount of the tax due and unpaid for each month or fraction thereof, until paid, not to exceed 30%. In no case will the penalty be less than \$10, even if no tax is due for the period.~~

~~However, in the case of filing a false or fraudulent return with intent to defraud the Commonwealth or of willful failure to file a return with intent to defraud the Commonwealth, a penalty of 50% of the amount of tax actually due will be assessed. Under reporting gross sales, gross proceeds or cost price by 50% or more is prima facie evidence of intent to defraud the Commonwealth.~~

~~At the discretion of the Tax Commissioner, the penalty may be abated or waived provided the taxpayer can demonstrate good cause for the failure to file or pay the full amount on time. Requests for waiver or abatement of penalty must be made in writing to the Department of Taxation and must include all pertinent facts to support the request.~~

**B. Criminal penalties.****1. Misdemeanors.**

a. ~~Collection of tax. Any dealer who neglects, fails, or refuses to pay or collect the tax, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor.~~

b. ~~Records. Every dealer required to pay or collect the sales and use tax shall keep a record of all sales, leases and purchases of tangible personal property. Records and supporting documents shall be retained for a period of three years from the required date for filing a return to which such records and documents pertain. Any dealer failing to keep such records shall be guilty of a Class 1 misdemeanor.~~

~~The Tax Commissioner is authorized to examine the books, records and other documents of all transportation companies, agencies, firms or persons that conduct business by truck, rail, water, airplane or otherwise to identify the dealers who ship tangible personal property into or out of Virginia which may be subject to the tax. Any transportation company, agency, firm or person who refuses to permit such examination shall be guilty of a Class 1 misdemeanor.~~

e. ~~Returns. Any dealer failing or refusing to file a return or failing or refusing to file a supplemental return or other data in response to a summons or other inquiry by the Tax Commissioner or who makes a false or fraudulent return with intent to evade the tax, or who gives or knowingly receives a false or fraudulent~~

~~exemption certificate shall be guilty of a Class 1 misdemeanor.~~

d. ~~Certificates of registration. Any dealer and each officer of any corporation who conducts business in the Commonwealth without obtaining a certificate of registration, or who conducts business in the Commonwealth after a certificate of registration has been suspended or revoked, shall be guilty of a Class 2 misdemeanor.~~

2. ~~Felonies. Any dealer engaged in business in the Commonwealth who, through two or more acts or omissions within a period of 90 days, collects, or is deemed to have collected or withheld, any state sales or use or withholding tax totaling \$1,000 or more and willfully fails to truthfully account for and remit to the department such tax shall be guilty of a Class 6 felony. For example, assume that a dealer collects \$5,000 in sales tax and withholds Virginia income tax of \$500 from his employees for the same period and willfully fails to remit such taxes, instead converting the funds to his own use. The failure to remit the sales and withholding taxes are separate acts for purposes of this section and could result in the dealer being charged with a Class 6 felony.~~

C. ~~Interest. Interest at the rate established in § 6621 of the Internal Revenue Code, as amended, plus 2.0% accrues on the tax until paid or until an assessment is issued. At the time the assessment is issued, a bill will be sent to the taxpayer for the tax, penalty and interest which must be paid within 30 days from the date of the bill. If the bill is not paid in full within the 30 day period, interest at the prescribed rate will accrue on the full amount of the assessment from the date of initial assessment until payment is made. Interest is mandatory and cannot be waived. (See Article 1 (§ 58.1-1 et seq.) of Title 58.1 of the Code of Virginia for the rate of interest.)~~

**23 VAC 10-210-2034. Penalties and exemption certificates. (Repealed.)**

~~The Tax Commissioner may impose penalties or suspend the use of an exemption certificate for one year for any person or entity found to have misused an exemption certificate. In lieu of suspension, the Tax Commissioner may assess a penalty of up to \$1,000 for the misuse of an exemption certificate by that person or entity or by any other person or entity who, with the consent or knowledge of the exemption holder, has misused the certificate. Any person who uses an exemption certificate after suspension is guilty of a Class 1 misdemeanor.~~

**Examples:**

1. ~~An officer of a corporation engaged in the manufacturing of products for sale or resale purchases furnishings for his home using a manufacturing exemption certificate, Form ST-11. Such purchases would be deemed as a misuse of the exemption certificate.~~

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2. A representative of a nonprofit organization, exempt under Chapter 6 (§ 58.1-600 et seq.) of Title 58.1 of the Code of Virginia, purchases groceries for his own use using a nonprofit exemption certificate, Form ST-13. Such purchases would also be deemed as a misuse of the exemption certificate.

## **23 VAC 10-210-2040. "Person" defined. (Repealed.)**

"Person" includes any individual, firm, partnership, cooperative, nonprofit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi-public.

## **23 VAC 10-210-4000. "Sales price" and "cost price." (Repealed.)**

A. "Sales price" means the total amount for which tangible personal property or taxable services are sold and includes any services in connection with such sale. Sales price includes any amount for which credit is given to the customer as well as federal manufacturers' excise taxes. No deduction in the computation of sales price is allowed for the cost of the property sold, the cost of materials used, labor or service costs, losses or any other items of expense. For example, charges for monogramming or gift wrapping an article sold are considered to be services in connection with the sale and are includible in "sales price."

"Sales price" does not include (a) cash discounts; (b) separately stated charges for repair installation, application or remodeling labor or services; (c) separately stated finance, carrying or service charges or interest directly attributable to credit extended on sales under conditional sales contracts or other conditional deferred payment contracts (such as installment sales); (d) separately stated charges for the delivery of the property sold by the seller to the purchaser (see 23 VAC 10-210-6000 for transportation charges); (e) separately stated federal retailers' excise taxes; (f) the state or local sales and use taxes; and (g) the local excise tax on meals and lodging.

B. "Cost price" means the actual cost of an item of tangible personal property and is computed in the same manner as "sales price" set forth in subsection A above.

For trade-ins, see 23 VAC 10-210-5070.

## **23 VAC 10-210-4030. Seeds and seedlings. (Repealed.)**

The tax does not apply to sales of seeds and seedlings to a person who plants them in soil for growing agricultural products for market.

The tax applies to purchases of seeds and seedlings for use on lawns, golf courses, or in residential, commercial or other beautification projects.

For agricultural production of trees, see 23 VAC 10-210-50.

## **23 VAC 10-210-4060. Shoe, leather, jewelry and like repairmen. (Repealed.)**

The tax does not apply to charges for repairs made by shoe, leather, jewelry and like repairmen. Purchases of equipment, tools, materials and supplies used in performing such repairs are taxable at the time of purchase.

When repairmen go beyond performing repairs and regularly engage in selling tangible personal property, they must register as dealers and collect and pay the tax on retail sales. For example, a shoe repair shop may also sell insoles, shoe polish, etc. and would be liable for collection and payment of the tax on the retail sales of the insoles and polish.

## **23 VAC 10-210-4080. Skating rinks and ski resorts. (Repealed.)**

Operators of skating rinks and ski resorts are the consumers of the tangible personal property used in their businesses and are required to pay the tax to their suppliers on all their purchases. However, any tangible personal property purchased for resale or rental can be purchased under resale certificates of exemption. The tax applies to sales at retail and rentals of such property and must be collected and paid by the operator. If the operator rents any equipment or supplies from others for use in the operation of his business, other than for specific taxable re-rental, the rentals are taxable.

## **23 VAC 10-210-4090. Social and fraternal organizations. (Repealed.)**

The tax applies to retail sales of tangible personal property to all social and fraternal organizations, including, but not limited to, fraternal societies, trade or professional associations, lodges, orders, their auxiliaries, sororities and fraternities.

If such an organization regularly engages in the business of selling tangible personal property, it must register as a dealer and collect and pay the applicable tax.

## **23 VAC 10-210-5000. Stamp dealers. (Repealed.)**

Sales of stamps or other tangible personal property by stamp dealers are subject to the tax.

## **23 VAC 10-210-5010. Stockbrokers. (Repealed.)**

A. Generally. Charges made by stockbrokers for providing consultation, trading stocks, securities and commodities and similar transactions are charges for professional services and are not subject to the tax.

B. Purchases. Stockbrokers are the consumers of all tangible personal property used in their operations and must pay the tax on all such property at the time of purchase.

C. Stock quotation services. Charges to stockbrokers for stock quotation services which provide the transfer of stock

information via electronic media are service transactions and are not subject to the tax. Persons providing such services are the consumers of all property used in providing such services and must pay the tax on all such property. Charges for standard printed reports, industrial reference manuals and updates, and similar items are retail sales of tangible personal property, the total charge for which is subject to the tax. Persons engaged in selling such items must register as dealers and collect the tax on all sales.

**23 VAC 10-210-5020. Summer camps. (Repealed.)**

Operators of summer camps, whether operated for profit or not, are consumers of all tangible personal property used in their operations. Their purchases are subject to the tax. Fees charged for attendance are not taxable. A summer camp operated by a school conducted not for profit or under its sponsorship on the school's property is still required to pay the appropriate sales or use tax.

**23 VAC 10-210-5030. "Tangible personal property" defined. (Repealed.)**

"Tangible personal property" means personal property that can be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. Stocks, bonds, notes, insurance and other obligations or securities are intangible personal property and are not subject to the tax.

**23 VAC 10-210-5040. Telecommunications systems. (Repealed.)**

A. Intercom, interconnect, public address and telephone systems. The tax applies to the total charge for the sale or lease of intercom, interconnect and telephone systems. Separately stated charges for the installation of such systems are not subject to the tax.

Persons engaged in the sale or lease of such systems must pay the tax on all equipment and supplies used in installation, including, but not limited to, equipment and tools and wiring and other similar items.

B. Paging systems. Charges for providing paging services are deemed to be charges for a service and are not subject to the tax. Persons providing such services are the consumers of the paging devices and all other property used in providing the paging service and must pay the tax on the purchase of such property. If any person engages in the sale of paging devices, he will be deemed to be a retailer with respect to such sales and will be liable for the collection and payment of the tax on the charge for such devices.

**23 VAC 10-210-5050. Tire recappers and retreaders. (Repealed.)**

Persons engaged in tire recapping or retreading are deemed to be industrial processors and are eligible for the exemption set forth in 23 VAC 10-210-920. Persons engaged in tire repair

are deemed to be repair operations and are subject to the provisions of 23 VAC 10-210-3050.

**23 VAC 10-210-5080. Trading stamp companies. (Repealed.)**

A. Generally. The tax does not apply to a trading stamp company's charges to a dealer entitling him to distribute to customers trading stamps that are redeemable by the trading stamp company in cash or premiums.

B. Purchases of stamps, catalogs and promotional materials. The trading stamp company is the consumer of and must pay the tax on the purchase of all trading stamps, stamp collection books, premium catalogs, advertising and promotional materials, etc., for which no specific charge is made to its dealers. If a trading stamp company makes a separate charge for trading stamp collection books, premium catalogs, promotional or advertising materials, or any other item of tangible personal property, in addition to any charges made under the first paragraph of this section, it must collect the appropriate tax from its customer. However, in filing a subsequent return, the trading stamp company is entitled to deduct from gross sales the cost price of the items so sold on which the tax was previously paid.

C. Redemption and purchase of premiums. When a trading stamp company accepts trading stamps or a combination of trading stamps and cash in exchange for premiums, the transaction is subject to the tax. The trading stamp company must collect the tax from the person surrendering the stamps, based on the total value of the stamp book and any cash paid. The trading stamp company is not required to pay the tax on the purchase of the premiums, but should furnish its suppliers certificates of exemption.

V.A.R. Doc. No. R07-62; Filed November 29, 2006, 4:33 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-210. Retail Sales and Use Tax (repealing 23 VAC 10-210-370, 23 VAC 10-210-3020, and 23 VAC 10-210-5090 through 23 VAC 10-210-5094).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of

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the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law. As these regulations are obsolete and conflict with current law, they are being repealed. As these regulations are obsolete, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are obsolete, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal selected sections of the Virginia Retail Sales and Use Tax regulations that conflict with current law and are thus obsolete.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating obsolete regulations that do not reflect the current law. As these regulations are obsolete their repeal will result in no disadvantages to the public or the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation.** The Department of Taxation (department) proposes to repeal 23 VAC 10-210-370 (Common carriers of property by motor vehicle), 23 VAC 10-210-3020 (Public utilities), 23 VAC 10-210-5090 (Transitional provisions; generally), 23 VAC 10-210-5091 (Transitional provisions; bona fide real estate construction contracts), 23 VAC 10-210-5092 (Transitional provisions; contracts for the sale of tangible personal property), 23 VAC 10-210-5093 (Transitional provisions; leases of tangible personal property), and 23 VAC 10-210-5094 (Transitional provisions; refunds on purchases or leases of tangible personal property under qualifying contracts).

**Result of Analysis.** The benefits likely exceed the costs for all proposed changes.

**Estimated Economic Impact.** Up until September 1, 2004, tangible personal property for use or consumption by a motor vehicle common carrier in the rendition of public service was exempt from Virginia's sales and use tax. Since September 1, 2004, tangible personal property for use or consumption by a motor vehicle common carrier in the rendition of public service has been subject to Virginia's sales and use tax due to the 2004 repeal of the public service corporation exemption.

23 VAC 10-210-370 describes details of the exemption for tangible personal property for use or consumption by a motor

vehicle common carrier in the rendition of public service. Since this exemption has not existed since 2004, 23 VAC 10-210-370 is obsolete. Thus, repeal of 23 VAC 10-210-370 will have no impact other than perhaps to prevent confusion for those who find and read the regulation and are misled into believing that the exemption may still apply.

Prior to September 1, 2004, tangible personal property purchased or leased by a public utility subject to a state franchise or license tax upon gross receipts for use or consumption directly in the rendition of its public service was exempt from Virginia's sales and use tax. The 2004 repeal of the public service corporation exemption also caused tangible personal property purchased or leased by a public utility subject to a state franchise or license tax upon gross receipts for use or consumption directly in the rendition of its public service to be subject to Virginia's sales and use tax.

23 VAC 10-210-3020 describes detail of the exemption for tangible personal property purchased or leased by a public utility subject to a state franchise or license tax upon gross receipts for use or consumption directly in the rendition of its public service. Since this exemption has not existed since 2004, 23 VAC 10-210-3020 is obsolete. Thus, repeal of 23 VAC 10-210-3020 will have no impact other than perhaps to prevent confusion for those who find and read the regulation and are misled into believing that the exemption may still apply.

23 VAC 10-210-5090, 23 VAC 10-210-5091, 23 VAC 10-210-5092, 23 VAC 10-210-5093, and 23 VAC 10-210-5094 all were adopted to implement transitional changes in the state sales and use tax in 1987. This transitional language is no longer relevant. Repealing these sections will have no impact other than save a small amount of time for people reading through the regulations.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.



Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that have been made obsolete by changes in state or federal law, such as the repeal of the public service corporation exemption effective September 1, 2004. Some of these regulations provided transitional provisions for the one-half percent retail sales and use tax increase effective January 1, 1987, and are deemed to be unnecessary. As these regulations are obsolete, they are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

*23 VAC 10-210-370. Common carriers of property by motor vehicles. The 1995 federal deregulation of the trucking industry and the state repeal of the public service corporation retail sales and use tax exemption as a result of Virginia's 2004 Tax Reform renders this regulation obsolete.*

*23 VAC 10-210-3020. Public utilities. The state repeal of the public service corporation exemption resulting from the 2004 Tax Reform renders this regulation obsolete.*

*23 VAC 10-210-5090 through 23 VAC 10-210-5094. Transitional provision. These regulations were adopted in 1987 to implement the state sales and use tax rate increase from 3.0% to 3.5% and are obsolete.*

**23 VAC 10-210-370. ~~Common carriers of property by motor vehicle. (Repealed.)~~**

~~A. Generally. Section 58.1-609.3(3) of the Code of Virginia extends an exemption from the sales and use tax to tangible personal property for use or consumption by a common carrier directly in the rendition of its public service. A common carrier must be authorized to operate under a certificate of convenience and necessity issued by the State Corporation Commission or the Interstate Commerce Commission in order to qualify for this exemption. This regulation applies only to common carriers of property by motor vehicle, including restricted common carriers, and has no application to contract or other carriers.~~

~~The term "tangible personal property . . . for use or consumption directly in the rendition of its public service" means only essential tangible personal property used immediately and principally by a common carrier of property to keep its motor vehicles operating on the road in the performance of its public service. Tangible personal property used as an integral part of this process is exempt.~~

~~The applicability of the sales and use tax exemption for tangible personal property purchased by a common carrier operation depends on the use rather than the type of property. The same item may be taxable in one instance and exempt in another, depending entirely upon its usage.~~

~~1. Leased property. The exemptions outlined in these guidelines are applicable regardless of whether the property is purchased or leased by the common carrier. Repair parts used by a lessor to repair or maintain property leased to a common carrier, including motor vehicles which are subject to the 3% motor vehicle sales and use tax on rentals, may be purchased by the lessor exempt from the tax under the resale exemption.~~

~~For sales and use tax purposes, a carrier who contracts to haul for a common carrier and in performance of that contract furnishes the motor vehicle, driver, and any other necessary tangible personal property is not a lessor of motor vehicles and is not entitled to a resale exemption on the purchase of tangible personal property, such as repair parts, used in the performance of the contract. This applies even though such carrier may operate under the ICC rights of the common carrier.~~

~~2. Common carrier functions defined. The bulk of the tangible personal property used by a common carrier of property can be grouped into four general areas of usage: administrative; maintenance and repair; transport of property; and, storage and temporary deposit. Following is a description of each type of activity.~~

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~~a. Administration. Administration functions include billing, collecting, soliciting, purchasing, record keeping and employee comfort, convenience or pleasure. All tangible personal property used in administrative functions is subject to the tax.~~

~~b. Repair and maintenance. Tangible personal property used in the repair or maintenance of vehicles, equipment and real property (including the shop, terminal and parking lot) is included in this category.~~

~~Machinery and tools and repair parts used to repair and maintain revenue producing vehicles and trucks used to service these vehicles (e.g. tow trucks) are not subject to the tax. Machinery and tools and repair parts for other vehicles (such as supervisor's cars) as well as for the parking lot or other real or tangible personal property are subject to the tax.~~

~~c. Transport. The transport function encompasses the actual performance of common carrier duties, i.e., the receipt, pickup, over the road transport, delivery and protection of property, and similar functions essential in the transport of property. This includes property used on the revenue vehicles as well as property used in loading, unloading and safeguarding cargo. Tangible personal property used in the transport function is used directly in the rendition of the public service and is not subject to the tax.~~

~~d. Storage and temporary deposit. The functions of storage and temporary deposit of tangible personal property are included in this category. Storage is the holding for safekeeping of tangible personal property. Temporary deposit is the temporary holding of tangible personal property prior to its subsequent transport by the carrier.~~

~~The distinction between storage and temporary deposit is determined by the customer's intention in seeking the service. If a customer is seeking to have his property held in safekeeping for a period of time, he is seeking storage. If he is seeking the transport of property, and incidental to this the property is temporarily stored by the transporter pursuant to subsequent delivery, the retention of property is temporary deposit. When a carrier makes a charge for retaining property he is providing storage rather than temporary deposit.~~

~~Tangible personal property used in the storage function is subject to the tax. Tangible personal property used in the temporary deposit function in conjunction with the common carrier function is not subject to the tax.~~

~~B. Examples of property used in common carrier operations. Following are examples of taxable and exempt tangible personal property used in the above referenced activities. These lists are exemplary and are not intended to be all inclusive.~~

## ~~1. Administration:~~

~~Taxable:~~

~~Office supplies~~

~~Office equipment~~

~~Billing supplies~~

~~Heating oil~~

~~Toilet supplies~~

~~Tariff rate schedules~~

~~Motor freight guides~~

~~Paper towels~~

~~Linens~~

~~Hand cleaner~~

~~Uniforms, lettering, shirts furnished to drivers or other employees~~

~~Payroll records~~

~~Space heaters, except used to preserve property being transported~~

## ~~2. Repair and maintenance:~~

~~Taxable:~~

~~Wrenches, saws and other tools used to repair vehicles, except revenue and service vehicles~~

~~Tires, tubes, batteries, except used in revenue and service vehicles~~

~~Motor oil, grease, gear oil, lubricants, brake fluid, transmission fluid, except used in revenue and service vehicles~~

~~Oil dri, except used in revenue and service vehicles~~

~~Hi dri, except used in revenue and service vehicles~~

~~Floor dri, except used in revenue and service vehicles~~

~~Fire extinguishers, used in terminal or repair shop~~

~~Lamps, lightbulbs, flashlights used in terminal or repair shop~~

~~Diesel fuel used to operate machinery and tools~~

~~Air compressors used to operate machinery and tools~~

~~Gloves~~

~~Snow removal equipment, snow melting chemicals~~

~~Paints, brushes, solvents, except used on revenue and service vehicles~~

~~Weed killer~~

Exempt:

~~Repair parts for revenue and service vehicles~~

~~Machinery and tools used in repairing revenue and service vehicles~~

~~Tires, tubes, batteries used in revenue and service vehicles~~

~~Motor oil, grease, gear oil, lubricants, brake fluid, transmission fluid used in revenue and service vehicles~~

~~Repair manuals for revenue and service vehicles~~

~~Tachographs~~

~~Cleaning supplies, including soaps, detergents and waxes, used on revenue or service vehicles~~

~~Testing equipment for revenue and service vehicles~~

3. Transport.

Exempt:

~~Forklifts, conveyor systems, racks, hand trucks, coasters and similar equipment used in receiving, sorting and loading and unloading revenue producing vehicles~~

~~Equipment used on revenue vehicles to maintain commodities at a constant temperature~~

~~Equipment for communication between offices and common carrier equipment~~

~~Indoor and outdoor scales for weighing cargo~~

~~Newsprint, sealing tape, cartons, barrels, wardrobes, straps, pallets, chains, ratchets, coupling and tying down equipment, chocks, seals and dock levelers~~

~~Waybills, freight bills, and bills of lading carried with the freight being transported~~

~~Driver log books~~

~~Reflectors, fire extinguishers, flares used on revenue and service vehicles~~

~~Decals and lettering used on revenue vehicles~~

4. Storage and temporary deposit.

a. Temporary deposit.

Exempt:

~~Forklifts~~

~~Hand trucks~~

~~Packing materials~~

~~Crates~~

~~Dollies~~

~~Heating and cooling equipment used to maintain commodity at a constant temperature~~

~~b. Storage.~~

~~Taxable:~~

~~Forklifts~~

~~Packing materials~~

~~Crates~~

~~Hand trucks~~

~~Dollies~~

~~C. Proration. It is possible for an item of tangible personal property to be used in both a taxable and exempt manner. For example, tools may be used to repair vehicles used in both contract and common carrier activities or a forklift may be used in both storage and temporary deposit. In such instances the tax due on the item is prorated between the percentage of time the property is used in a taxable manner and the percentage of time used in an exempt manner.~~

~~D. Lost, damaged or unclaimed property. The tax does not apply to compensation paid by a common carrier to a customer for tangible personal property lost or damaged while in the carrier's possession. If a common carrier sells damaged or unclaimed property, he must register as a dealer and collect and pay the applicable tax.~~

~~E. Applicability of this section. This section is intended to illustrate the application of the sales and use tax to common carriers of property by motor vehicle and is based upon the usual methods of doing business used in the industry generally. Persons whose method of operation differs or who have specific factual questions should contact this department for a ruling on their specific situation.~~

~~For the tax application to furniture and storage warehousemen, see 23 VAC 10-210-650.~~

**23 VAC 10-210-3020. Public utilities. (Repealed.)**

~~A. Generally. Tangible personal property purchased or leased by a public utility subject to a state franchise or license tax upon gross receipts for use or consumption directly in the rendition of its public service is exempt from the tax.~~

~~B. Public utility defined. The term "public utility" as used herein is synonymous with "public service company" or "public service corporation" and means all business entities deemed to be public utilities within the definitions set forth under Sections 56-232 and 56-265.1 of the Code of Virginia. Such entities have been issued certificates of convenience and necessity by the State Corporation Commission and include those engaged in the generation, transmission or distribution of electricity, natural or manufactured gas (except in enclosed portable containers), and geothermal resources and those engaged in furnishing telephone or telegraph service, sewerage facilities, and water.~~

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~~C. Public service described. The term "public service" is used here in its broadest and most inclusive sense and includes any product or commodity furnished by any public utility and the equipment, apparatus, appliances, and facilities devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public. Accordingly, the public service of a utility is to keep its production, generation, initiation, transmission or distribution facilities in operation and to keep open the lines of distribution through which electrical, gas, water, telephone and telegraph service is provided to the public.~~

~~Generally, property is not deemed to be used directly in the rendition of a public service unless it is used in activities the cost of which is recoverable by a utility through the rate making process. However, the fact that property is used in activities the cost of which is recoverable through the rate making process does not, of itself, mean that the property is used directly in the rendition of a public service. When tangible personal property is to be used in activities the cost of which is not recoverable through rates, such property is deemed to be subject to the tax when purchased or used by a utility.~~

~~D. Direct usage described. Direct usage refers to those activities that are an integral part of the rendition of a public utility service, including all steps of a utility's production, generation or initiation process as well as a utility's transmission or distribution process, but not including incidental public utility functions such as administration and management.~~

~~Items of tangible personal property that are used directly in the rendition of a public utility service are those which are both indispensable to the actual provision of a utility service and used or consumed immediately in the performance of such service. The fact that a particular item may be considered essential to the rendering of a public utility service because its use is required either by law or practical necessity does not, of itself, mean that the property is used directly in the rendition of a public utility service.~~

~~As described in subsections E, F, and G below, items of tangible personal property which are to be incorporated into and will become a part of a utility's production, transmission or distribution systems are deemed to be used directly in the rendition of a public service; however, tangible personal property used in administrative and managerial activities and activities other than those noted above are deemed not to be used directly in the rendition of a public service.~~

~~E. Administrative and managerial activities. Tangible personal property used by a public utility in performing administrative and managerial functions is deemed not to be used in the rendition of a utility's public service and therefore is subject to the tax.~~

~~F. Production activities and repairs to the production system. Tangible personal property, including equipment, machinery, apparatus, supplies and appliances, which are used immediately in production, generation or initiation activities is deemed to be used directly in the rendition of a utility's public service. Such exempt property also includes equipment, machinery, supplies, tools, and repair parts used to keep in operation exempt production devices and fuel or power used to operate such production devices.~~

~~For the purposes of this subsection, production activities shall commence from the intake, receipt or storage of raw materials (coal, uranium, oil, natural gas, water, etc.) at utility's production plant site or at the utility's source of supply.~~

~~G. Transmission and distribution system and repairs thereto. Tangible personal property, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires, mains, etc., which is used immediately in the transmission or distribution of gas, water, electricity, and telephone or telegraph communications to the public is used directly in the rendition of a utility's public service.~~

~~Additionally, equipment, machinery, tools, repair parts, and supplies and such vehicles and their equipment as are specially designed and equipped for such use are exempt from the tax when used to keep a utility's transmission or distribution system in operation or repair.~~

~~For the purposes of this subsection, transmission or distribution activities shall commence from the close of production at a utility plant when a product or communication is ready for transmission or distribution to the public and shall conclude at the point where the product or communication is received by the public.~~

~~H. Uniform System of Accounts. For purposes of administering the provisions of this regulation with respect to electric, gas, and telephone utilities, the Uniform System of Accounts shall be used. A listing of accounts for each type of utility, noted as either taxable or exempt, follows. Accounts to which the sales and use tax is unrelated, e.g., stock accounts, depreciation accounts, etc., are not included in this listing. In each instance, the notation of the account's status relates only to the tangible personal property included in the account and does not apply to separately stated labor charges or purchases of real or intangible personal property. If tangible personal property is charged to an account not listed below, a ruling should be obtained from the department to determine the taxable status of such property.~~

**EDITOR'S NOTE:** 23 VAC 10-210-3020 H 1, 2 and 3 are also stricken; however, the subdivisions are not set out due to formatting constraints.

**23 VAC 10-210-5090. Transitional provisions; generally. (Repealed.)**

Effective January 1, 1987, the state sales and use tax rate increased from 3.0% to 3.5%, while the local sales and use tax rate of 1.0% remained the same.

The increased rate applies to all tangible personal property delivered to a purchaser and paid for on or after January 1, 1987, even though the property may have been ordered prior to January 1, 1987. The increased rate will not apply to tangible personal property delivered prior to January 1, 1987, but paid for on or after January 1, 1987. The increased rate also will not apply when a taxable sale or lease payment is paid for in full prior to January 1, 1987, even though delivery may occur on or after January 1, 1987, or the lease payment may cover a period beginning on or after January 1, 1987.

Notwithstanding the January 1, 1987, increase in the sales and use tax rate, § 58.1-639 of the Code of Virginia provides for the refund of the additional 0.5% tax paid on tangible personal property purchased or leased under certain contracts and leases entered into before October 27, 1986 (the date the sales and use tax rate increase was enacted).

The contracts and leases subject to the transitional provisions are (i) bona fide real estate construction contracts (including highway construction contracts), (ii) contracts for the sale of tangible personal property, and (iii) leases of tangible personal property.

**23 VAC 10-210-5091. Transitional provisions; bona fide real estate construction contracts. (Repealed.)**

A. Generally. Refunds of the additional 0.5% sales and use tax paid on and after January 1, 1987, are available when tangible personal property is purchased or leased under a bona fide real estate construction contract or bona fide highway construction contract entered into before October 27, 1986. A "bona fide" contract is one that contained plans and specifications before October 27, 1986. Refunds will not be available, however, in the event that a bona fide contract is renegotiated or to the extent that a contract is expanded to include additional work or the furnishing of additional materials (also see subsection D of this section relating to extensions of a contractually stated completion date).

Refunds will be available only for the additional 0.5% tax paid on (i) materials permanently incorporated into real estate, and (ii) construction supplies, fixtures, equipment, etc., that enter into the construction of or become a part of a structure, highway, etc. Further, refunds will be limited to property purchased or leased in connection with a specific contract and used exclusively in such contract. Thus, refunds will not be available for the additional 0.5% tax paid on equipment, materials, supplies, tools, etc. that will be used in more than one contract.

As noted below, rules for obtaining refunds of the additional 0.5% tax paid on and after January 1, 1987, on purchases or leases under bona fide real estate construction contracts vary depending on whether or not the contract contains a specific and stated date of completion.

B. Contracts that do not contain a specific and stated date of completion. In the case of bona fide real estate construction contracts that do not contain a specific and stated date of completion, refunds of the additional 0.5% tax may be claimed only with respect to purchased or leased tangible personal property that is delivered to the contractor on or before March 30, 1987.

Example: Contractor A enters into a bona fide contract before October 27, 1986, for the erection of a home, but the contract does not contain a specific and stated date of completion. After January 1, 1987, Contractor A makes two orders of materials for use in the project and pays the full 4.5% sales tax on the materials. Because the contract did not contain a specific and stated date of completion, Contractor A must take delivery of goods purchased for use in the project on or before March 30, 1987, in order to receive a refund of the 0.5% tax. The first order is delivered to Contractor A on March 30, 1987, but the second order is delivered to Contractor A on April 1, 1987. Thus, Contractor A may receive a refund of the additional 0.5% tax paid on the first order, but will not be able to receive a similar refund on the second order because it was delivered after March 30, 1987.

C. Contracts that contain a specific and stated date of completion. In the case of bona fide real estate construction contracts that contain a specific and stated date of completion, refunds of the additional 0.5% tax paid on and after January 1, 1987, will be available for all property delivered to the contractor on or before the completion date specified in the contract.

Example: Contractor B enters into a bona fide contract before October 27, 1986, for the erection of a bridge. The contract contains a specific and stated completion date of June 30, 1989. On and after January 1, 1987, Contractor B pays the full 4.5% sales and use tax on his purchases of materials for use in the contract and all such materials, except one shipment, are delivered to the contractor by the June 30, 1989, date of completion. The last shipment of materials is delivered to Contractor B on July 1, 1989. Refunds of the additional 0.5% tax paid by Contractor B will be available for all materials delivered to him by the specified completion date stated in his contract, June 30, 1989. However, a refund will not be available for the additional tax paid on the last delivery because that delivery occurred after the specified and stated completion date for the project.

Both contracts containing a specific date for completion, e.g., July 1, 1988, and contracts containing a specific number of calendar days for completion, e.g., 150 calendar days, shall be

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considered as contracts with a specific and stated date of completion.

When a subcontractor performs work for a general contractor, the date of completion for purposes of this section is the date stated in the subcontract and not the completion date specified in the contract between the general contractor and the customer.

D. Extension of contractual completion date. The refund provisions of subsection C of this section, contracts that contain a specific and stated date of completion, do not apply when the completion date specified in a bona fide real estate construction contract is extended for any reason. In the event that the completion date specified in a bona fide real estate construction contract is extended, refunds of the additional 0.5% tax paid on and after January 1, 1987, will be available only for property delivered on or before the completion date specified in the original contract.

E. Nonbona fide real estate construction contracts. Refunds of the additional 0.5% tax paid by contractors on and after January 1, 1987, will not be available when purchases or leases are made pursuant to nonbona fide real estate construction contracts. A nonbona fide contract is one that did not contain plans or specifications before October 27, 1986. Contracts that are entered into on or before October 27, 1986, without plans or specifications but which are amended after October 27, 1986, to include plans or specifications are also not bona fide contracts.

## **23 VAC 10-210-5092. Transitional provisions; contracts for the sale of tangible personal property. (Repealed.)**

A. Generally. Refunds of the additional 0.5% tax paid on and after January 1, 1987, may be claimed for tangible personal property purchased under sale contracts entered into before October 27, 1986, provided the property is delivered to the purchaser on or before March 30, 1987. Refunds will not be available if a sale contract was entered into on or after October 27, 1986, or if the property purchased is delivered to the purchaser after March 30, 1987.

B. Layaway sales. The provisions for the refund of the additional 0.5% tax apply to all layaways made before October 27, 1986, and delivered to the purchaser on or before March 30, 1987.

### Examples:

1. Customer A makes a layaway of an item of merchandise on October 26, 1986, and takes delivery of the merchandise on March 30, 1987. Customer A will be required to pay the full 4.5% tax when he completes the layaway purchase, but he will be able to request a refund of the additional 0.5% tax he pays.
2. Customer B makes a layaway of an item of merchandise on October 26, 1986, but does not take delivery of the

merchandise until April 1, 1987. Customer A will be required to pay the full 4.5% sales tax on the purchase, but will not be able to request a refund of the additional 0.5% tax because he did not take delivery of the merchandise until after March 30, 1987.

C. Gift certificates. Pursuant to 23 VAC 10-210-670, the sales tax is not to be collected on the sale of gift certificates, but is to be collected when gift certificates are redeemed for merchandise. Because gift certificates are not taxable until redeemed, refunds of the additional 0.5% tax paid on purchases made with gift certificates on and after January 1, 1987, will not be available.

D. Installment sales. Pursuant to 23 VAC 10-210-450, the sales and use tax is due in full when an agreement for an installment sale is made. 23 VAC 10-210-450 does not permit the tax on an installment sale to be paid in installments. Therefore, all installment sales prior to January 1, 1987, will be subject to state and local sales and use tax at a rate of 4.0%, while sales on and after January 1, 1987, will be subject to tax at a 4.5% rate. Because the tax on installment sales is due as of the date the contract of sale is entered into, refunds of the additional 0.5% tax paid on an installment sale on and after January 1, 1987, will not be available.

E. Maintenance contracts. The sale of maintenance contracts which provide in whole or in part for the furnishing or replacement of parts is a taxable sale of tangible personal property pursuant to 23 VAC 10-210-910. As with other sales of tangible personal property, the sales and use tax becomes due in full when the contract is entered into. Therefore, all taxable maintenance contracts entered into before January 1, 1987, will be subject to the tax at a rate of 4.0%, while those taxable maintenance contracts entered into on or after January 1, 1987, will be subject to the tax at a rate of 4.5%. Because the tax on such contracts becomes due as of the date the contract is entered into, refunds of the additional 0.5% tax paid on and after January 1, 1987, will not be available.

## **23 VAC 10-210-5093. Transitional provisions; leases of tangible personal property. (Repealed.)**

Refunds of the additional 0.5% sales tax paid on leases on and after January 1, 1987, will be available, provided that (i) the lease is entered into before October 27, 1986, and (ii) the leased property is delivered to the lessee by March 30, 1987. However, refunds will not be available for the additional tax paid on leases entered into on or after October 27, 1986, or where leased property is delivered to the lessee after March 30, 1987.

So long as the above two conditions are met, refunds may be requested for the additional 0.5% tax paid over the course of a lease. For instance, a person who enters into a five year equipment lease on October 26, 1986, and who takes delivery of the equipment by March 30, 1987, would be able to seek

refunds of the extra 0.5% tax paid for periods through the end of the five year lease period.

However, if the lessee assigns the lease, or if the property is turned over to anyone else, refunds of the additional 0.5% tax will not be available for tax paid after the change. In addition, refunds of the additional 0.5% tax will not be available if there are replacements of the property leased (except for replacements due to defective goods), if additional property is added to the lease, or if the lease is renegotiated or renewed.

**23 VAC 10-210-5094. Transitional provisions; refunds on purchases or leases of tangible personal property under qualifying contracts. (Repealed.)**

~~A. Limited to purchaser or lessee only. Refunds of the additional 0.5% tax paid on purchases or leases of tangible personal property under bona fide real estate construction contracts, contracts for the sale of tangible personal property, or leases of tangible personal property will be limited only to the purchaser or lessee of the property.~~

~~B. Refunds to be requested from Department of Taxation only. The purchaser or lessee of tangible personal property under qualifying contracts or leases shall request refunds of the additional 0.5% tax directly from the Department of Taxation and not from the seller or lessor of the property. In seeking refunds, the purchaser or lessee shall furnish the Department of Taxation with copies of the contract or lease under which property is purchased or leased. In addition, the purchaser or lessee shall indicate the delivery date of all items for which refunds are claimed and shall be able to demonstrate that the 4.5% Virginia tax was actually paid to his suppliers or lessors. Copies of invoices will be required to verify that the 4.5% tax was paid on purchases or leases of tangible personal property for which refunds are requested.~~

~~C. Time limitation on seeking refunds. Pursuant to § 58.1-1823 of the Code of Virginia and 23 VAC 10-210-3040, requests for refunds of the additional 0.5% tax paid pursuant to qualified contracts or leases must be made within three years of the date tax became due. For instance, tax paid by a lessee in January 1987 does not become due to the department from the lessor until February 20, 1987; thus, the lessee would have until February 20, 1990, to seek a refund.~~

~~D. Interest on refunds. Interest on refunds will be computed in the manner set forth in § 58.1-1833 of the Code of Virginia. Under this statute, interest is computed from a date beginning 60 days after the due date of the tax and ending on a date not more than 30 days preceding the date of the refund check. For example, the tax paid by a purchaser in February 1987 does not become due to the department until March 20, 1987; thus, interest on the refund of the additional 0.5% tax would be computed starting on May 19, 1987, which is 60 days from the March 20 due date.~~

VA.R. Doc. No. R07-68; Filed November 29, 2006, 4:05 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-230. Watercraft Sales and Use Tax (repealing 23 VAC 10-230-10, 23 VAC 10-230-60, 23 VAC 10-230-70, 23 VAC 10-230-100, and 23 VAC 10-230-130).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal five sections of the Watercraft Sales and Use Tax regulations that address statutes that are clear and unambiguous.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal numerous sections of these regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

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# Regulations

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**Estimated Economic Impact.** The department proposes to repeal 23 VAC 10-230-10, 23 VAC 10-230-60, 23 VAC 10-230-70, 23 VAC 10-230-100, and 23 VAC 10-230-130.

23 VAC 10-230-10, 23 VAC 10-230-60, 23 VAC 10-230-70, 23 VAC 10-230-100, and 23 VAC 10-230-130 pertain to Code of Virginia §§ 58.1-12, 58.1-1406, 58.1-1403, and 58.1-1410, respectively. None of these regulation sections contain rules that go beyond their respective related Code of Virginia sections. Repealing these regulation sections will therefore have no significant impact.

However, penalties, fees, and tax rates differ from those listed in corresponding sections of the Code of Virginia. When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. Thus the repealing of these regulations will not change penalties, fees, and tax rates. The repeal will be beneficial nonetheless since the current contradictory information is misleading.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected

reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-230-10. ~~Bad checks. (Repealed.)~~**

~~If any check tendered for any amount due for state taxes imposed under this chapter be not paid by the bank on which it is drawn, the person by whom such check was tendered shall remain liable for the payment of such amount the same as if such check had not been tendered, and in addition to other penalties imposed by law, be subject to a penalty of \$10.~~

**23 VAC 10-230-60. ~~Dealer certificate of registration. (Repealed.)~~**

~~A. Generally. Any person determined by the Commissioner to be a dealer and who desires to transfer ownership in watercraft without first titling them, must apply with the Commissioner for a certificate of registration for each place of business in this state. An application must be accompanied by a fee of \$5.00 for each certificate to be issued.~~

~~Applications should be made and fees made payable to the Virginia Department of Taxation, Watercraft Tax, P.O. Box 2185, Richmond, Virginia 23217-2185.~~

~~B. Form of application. Application must be made on the forms prescribed and furnished by the Commissioner. Applicant must show the name under which he transacts or intends to transact business, the location of his place or places of business, and such other information as the Commissioner may require. The application must be signed by the owner if a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an officer or some other person specifically authorized by the corporation to sign the application.~~



C. Issuance. The Commissioner will issue a separate certificate of registration for each place of business in Virginia. A certificate is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The certificate must be at all times conspicuously displayed at the place of business.

D. Revocation or suspension. Whenever any person fails to comply with any provision of this chapter or any rule or regulation of the Commissioner relating thereto, the Commissioner may revoke or suspend any one or more of the certificates of registration held by such person. Revocation or suspension may occur only upon hearing after giving such person 10 days notice in writing, specifying the time and place of hearing and requiring him to show cause why his certificate of registration should not be revoked or suspended. The notice may be personally served or served by registered mail directed to the last known address of such person. A dealer whose certificate of registration has been previously suspended or revoked shall pay the Commissioner a fee of \$10 for the renewal or reissuance of a certificate of registration.

E. Authorization to transfer watercraft. Only dealers holding current certificates of registration under this section shall be authorized to transfer ownership of watercraft without first filing and paying tax on the watercraft.

F. Ceasing business; changing place of business. If the holder of a certificate ceases to conduct his business at the place specified in his certificate, the certificate will thereupon expire. The holder must inform the Commissioner in writing within thirty days after he has ceased to conduct business in his name at such place. If the holder of a certificate desires to change his place of business, he must inform the Commissioner in writing. The certificate will be revised without charge.

### **23 VAC 10-230-70. Dealer exclusion. (Repealed.)**

A. Gross receipts tax in lieu of titling. If a person is determined by the Commissioner to be a dealer in watercraft and is registered according to 23 VAC 10-230-60, he will be exempt from the titling requirement in § 62.1-186.2 of the Code of Virginia (Repealed) and from the watercraft sales and use tax as to all watercraft he purchases for resale or for lease, charter, or other use for compensation. However, a registered dealer is subject to a tax of two percent of the gross receipts from the lease, charter, or other use of, any watercraft so used. For purposes of this section, "gross receipts" includes hourly rental, maintenance, and all other charges for use of such watercraft. Also, unless separately stated on the invoice, "gross receipts" includes charges for piloting, crew, or other services in connection with the use of such watercraft.

For purposes of the dealer exclusion, the dealer is the user of the watercraft and is subject to tax on his gross receipts.

Therefore, gross receipts from rentals, leases or charters to the United States or any governmental agencies thereof, or to the Commonwealth of Virginia or any political subdivision thereof, are includible in the dealer's gross receipts and subject to the tax.

Gross receipts, however, will not include receipts received from lease or rental of any watercraft purchased by the dealer before January 1, 1982, provided the four percent retail sales or use tax was paid when the watercraft was purchased by the dealer.

B. Gross receipts monthly return and payment. Every registered dealer is required to file a gross receipts return on or before the twentieth day of the month following each reporting period, even if no tax is due. Returns are prescribed and furnished by the Department of Taxation. The law does not provide for quarterly, semi-annual or annual returns.

At the time of filing the return, the dealer must pay the amount of tax due. Failure to pay the tax will cause it to become delinquent.

A dealer who fails to file a gross receipts return and pay the full amount of tax by the due date is subject to a penalty of five percent of the tax due for each month or portion thereof that the failure continues, not to exceed twenty five percent. The penalty may be waived by the Commissioner if there is good cause for the failure to file and/or pay on time. Requests for waiver of penalty must be made in writing to the Department of Taxation and must include all pertinent facts to support the request.

Interest at a rate determined in accordance with Section 58.1-15 of the Code of Virginia will accrue on the unpaid amount of the tax from the due date until the time of payment. Interest will accrue whether or not any penalty is waived.

C. Fair price for rental or use. If the Commissioner finds that a dealer has made a charge for the rental or use of watercraft that is lower than the fair market value of such rental or use, he may estimate a fair price. An estimate of fair price as used here means in accordance with the cost of the watercraft, the cost of maintenance, the normal rental value as shown in similar transactions, or other relevant data. The amount by which the fair price estimated under this section exceeds the charge actually made by the dealer will be included in "gross receipts" as used in this section.

### **23 VAC 10-230-100. Value of watercraft and penalty for misrepresentation. (Repealed.)**

A. Basis of tax. The basis of the tax is the sale price, including any amount credited for trade in or any other transaction of like nature, except that if the watercraft is first used or stored for use in Virginia six months or more after its acquisition, the tax will be based on the current market value.

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# Regulations

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~~B. Invoice required. Any person who sells a watercraft in Virginia must supply the buyer with an invoice signed by the seller or his representative. The invoice must state the sale price of the watercraft. The buyer must present the invoice to the Commissioner with his return and payment of the tax. See 23 VAC 10-230-110 for other information required on the invoice.~~

~~C. Assessment by commissioner. Where the invoice is not available, or where the Commissioner has reason to believe the invoice does not reflect the true sale price, or the watercraft was purchased more than six months prior to its use or storage in Virginia, the Commissioner may assess the tax. Under these circumstances, the tax may be assessed in accordance with such publications or other data as are customarily employed in ascertaining the maximum sale price of watercraft.~~

~~D. Misrepresentation. Any person who knowingly misrepresents on an invoice between buyer and seller, on any return, or to the Commissioner the value of a watercraft or the amount of tax due shall be guilty of a misdemeanor.~~

## **23 VAC 10-230-130. Allocation of funds. (Repealed.)**

~~All funds collected under this chapter by the Commissioner will be paid forthwith into the general fund of the State Treasury.~~

VA.R. Doc. No. R07-60; Filed November 29, 2006, 4:27 p.m.

## **Fast-Track Regulation**

**Title of Regulation:** **23 VAC 10-250. Tire Tax Regulations (Repealed).**

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the department has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are

unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

Senate Bill 965 of the 2003 Virginia General Assembly repealed the tire tax and replaced it with a tire recycling fee for which the Department of Taxation will be required to promulgate separate regulations.

**Substance:** This regulatory action will repeal the Tire Tax Regulations.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating obsolete regulations that do not reflect the current law. As these regulations are obsolete, their repeal will result in no disadvantages to the public or the Commonwealth.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are obsolete, their repeal is not expected to be controversial.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation proposes to repeal the existing Tire Tax Regulations. The tire tax was replaced with the tire recycling fee by Chapter 101 of the 2003 Acts of the Assembly.

Result of Analysis. The proposed repeal is not likely to have any significant impact.

Estimated Economic Impact. The existing Tire Tax Regulations address taxes levied and imposed upon every retailer of tires in the Commonwealth, in addition to all other taxes and fees of every kind imposed by law. According to the Tire Tax Regulations, the tax shall be \$0.50 per tire for each new tire sold by a tire retailer, regardless of the selling price of the tire. The tax was applicable to new tires sold on or after January 1, 1990 through December 31, 1994.

Chapter 101 of the 2003 Acts of the Assembly replaced the "tire tax" with the "tire recycling fee" and increased the fee from \$0.50 per new tire sold to \$1.00 per new tire sold beginning July 1, 2003 and ending July 1, 2006. The tire recycling fee shall be levied and imposed at a rate of \$0.50 for each new tire sold after July 1, 2006.

The Department of Taxation proposes to repeal the Tire Tax Regulations because the regulations are no longer applicable.<sup>1</sup> Eliminating the regulations will have no impact.

Businesses and Entities Affected. The proposed repeal of these regulations will not significantly affect businesses and entities.

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<sup>1</sup> The Department of Taxation will promulgate separate regulations on tire recycling fee.

Localities Particularly Affected. No localities are particularly affected.

Projected Impact on Employment. The proposed repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not significantly affect small businesses.

Legal mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*This action repeals the Tire Tax Regulations because Senate Bill 965 of the 2003 Session of the General Assembly repealed the tire tax and replaced it with a tire recycling fee for which the Department of Taxation will be required to promulgate separate regulations.*

VA.R. Doc. No. R07-63; Filed November 29, 2006, 4:35 p.m.

## Fast-Track Regulation

Title of Regulation: **23 VAC 10-300. Estate Tax (repealing 23 VAC 10-300-10, 23 VAC 10-300-40, 23 VAC 10-300-60 and 23 VAC 10-300-70).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

Effective Date: March 10, 2007.

Agency Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: As the result of a comprehensive review of all of its regulations, the department has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

Rationale for Using Fast-Track Process: As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

Substance: This regulatory action will repeal selected Estate Tax regulations that provide no additional guidance to clear and unambiguous statutes.

Issues: This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal 23 VAC 10-300-10 (Title), 23 VAC 10-300-40 (Nonresident's tax), 23 VAC 10-300-60 (Filing returns and payment of tax), and 23 VAC 10-300-70 (Filing returns and payment of tax) of these regulations.

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# Regulations

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Result of Analysis. The benefits likely exceed the costs for one or more proposed changes.

Estimated Economic Impact. 23 VAC 10-300-10 (Title) describes the history of the estate tax. While interesting, it may be more appropriate on the department's website and guidance documents than part of law.

23 VAC 10-300-40 (Nonresident's tax) is essentially identical in meaning to Code Section § 58.1-903. Repealing 23 VAC 10-300-40 will therefore have no impact.

23 VAC 10-300-60 (Filing returns and payment of tax) contradicts Code Section § 58.1-905. The Code states that

If the personal representative has obtained an extension of time for filing the federal estate tax return or paying the federal estate tax or any portion thereof, the filing required by subsection A or payment required by subsection C shall be similarly extended until the end of the time period granted in the federal extension.

23 VAC 10-300-60 states that "There is no provision for extension of time for payment." When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. Thus, eliminating this regulation section will not change applicable tax rates.

The repeal will be beneficial nonetheless since the current contradictory information is misleading.

Businesses and Entities Affected. The proposed repeal of these regulations will not significantly affect businesses and entities.

Localities Particularly Affected. No localities are particularly affected.

Projected Impact on Employment. The proposed repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not significantly affect small businesses.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

## Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

## **23 VAC 10-300-10. Title. (Repealed.)**

### **A. Preface.**

~~1. Chapter 9 of Title 58.1 of the Code of Virginia, consisting of §§ 58.1-900 through 58.1-938, imposes the Virginia estate tax. An estate tax is a tax on the decedent's privilege of transferring his property upon his death, based on the value of the property transferred. The tax is applicable to transfers of the Virginia gross estate of decedents dying on or after January 1, 1980.~~

~~With respect to transfers in inheritance from decedents dying before January 1, 1980 and for transfers in gift made before January 1, 1980, Virginia imposed inheritance and gift taxes levied on the shares of the beneficiaries of the property of the decedent or donor. Virginia first enacted an inheritance tax in 1844 and the tax was continuous (except for the years 1884 to 1896) until terminated for decedents dying on and after January 1, 1980.~~

~~Chapter 838 of the 1978 Acts of Assembly replaced the inheritance and gift taxes with a Virginia estate tax in an amount equal to the amount of the state death tax credit allowable under § 2011 of the Internal Revenue Code.~~

However, Chapter 838 further provided that the inheritance and gift tax laws would remain in force upon estates of decedents dying prior to January 1, 1980 and for gifts made prior to January 1, 1980, and that all taxes due under those laws, such as on remainder interests, would be collected.

2. The Virginia estate tax statutes at §§ 58.1-900 through 58.1-938 should be referred to for provisions not regulated herein.

**B. In general:**

1. The statute imposes the estate tax in an amount equal to the maximum amount of the credit for state death taxes allowable under §2011 of the Internal Revenue Code. There is no credit against the Virginia estate tax for taxes paid on previous transfers by gift or inheritance of any property in the estate.

2. Waivers from the department are not required under Virginia law for the transfer of intangible property from the name of a resident or nonresident decedent.

3. A partner's interest in partnership property real, personal or mixed shall be considered an intangible asset.

**23 VAC 10-300-40. Nonresident's tax. (Repealed.)**

The nonresident's tax calculated in § 58.1-903 A is described by the formula:

$$\frac{\text{Value of property taxable in Virginia} - \text{Federal credit for State death taxes}}{\text{Value of gross estate}}$$

**23 VAC 10-300-60. Filing returns and payment of tax. (Repealed.)**

Section 58.1-905 provides for extension of time for filing of the Virginia estate tax return. There is no provision for extension of time for payment. The tax is due nine months after the death of the decedent. If not paid when due, interest will accrue from the expiration of nine months after the decedent's death. If the return is filed and the tax paid at the expiration of an extension of time for the filing of the return, interest will accrue upon the tax for the period between the date of expiration of nine months after the death of the decedent. If not paid when due, interest will accrue from the expiration of nine months after the decedent's death. If the return is filed and the tax paid at the expiration of an extension of time for the filing of the return, interest will accrue upon the tax for the period between the date of expiration of nine months after the decedent's death and the date of full payment.

**23 VAC 10-300-70. Amended returns. (Repealed.)**

"Written notice of such deficiency" of federal estate taxes required to be filed with the department according to § 58.1-906 B of the Code of Virginia shall be a copy of the federal adjustments.

Amended returns for refund of estate tax must be filed according to the provisions of § 58.1-1823 and regulations promulgated thereunder.

V.A.R. Doc. No. R07-58; Filed November 29, 2006, 4:26 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-330. Bank Franchise Tax (repealing 23 VAC 10-330-1 through 23 VAC 10-330-10 and 23 VAC 10-330-40 through 23 VAC 10-330-130).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal selected sections of the Bank Franchise Tax regulations that provide no additional guidance to clear and unambiguous statutes.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal numerous sections of these regulations.

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# Regulations

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**Result of Analysis.** The proposed repeal is not likely to have any significant impact.

**Estimated Economic Impact.** The department proposes to repeal 23 VAC 10-330-1, 23 VAC 10-330-2, 23 VAC 10-330-3, 23 VAC 10-330-4, 23 VAC 10-330-5, 23 VAC 10-330-6, 23 VAC 10-330-7, 23 VAC 10-330-8, 23 VAC 10-330-9, 23 VAC 10-330-10, 23 VAC 10-330-40, 23 VAC 10-330-50, 23 VAC 10-330-60, 23 VAC 10-330-70, 23 VAC 10-330-80, 23 VAC 10-330-90, 23 VAC 10-330-100, 23 VAC 10-330-110, 23 VAC 10-330-120, and 23 VAC 10-330-130. 23 VAC 10-330-4, 23 VAC 10-330-5, 23 VAC 10-330-6, 23 VAC 10-330-7, 23 VAC 10-330-8, and 23 VAC 10-330-9 were "reserved" and had no content. Thus repealing 23 VAC 10-330-4, 23 VAC 10-330-5, 23 VAC 10-330-6, 23 VAC 10-330-7, 23 VAC 10-330-8, and 23 VAC 10-330-9 will have no impact.

23 VAC 10-330-1, 23 VAC 10-330-2, 23 VAC 10-330-3, 23 VAC 10-330-10, 23 VAC 10-330-40, 23 VAC 10-330-50, 23 VAC 10-330-60, 23 VAC 10-330-70, 23 VAC 10-330-80, 23 VAC 10-330-90, 23 VAC 10-330-100, 23 VAC 10-330-110, 23 VAC 10-330-120, and 23 VAC 10-330-130 pertain to §§ 58.1-1201, 58.1-1202, 58.1-1203, 58.1-1204, 58.1-1207, 58.1-1208 & 58.1-1209, 58.1-1210, 58.1-1211, 58.1-1212, 58.1-1213, 58.1-1214, 58.1-1215, 58.1-1216, 58.1-1217 of the Code of Virginia, respectively. None of these regulation sections contain rules that either go beyond or contradict their respective related Code of Virginia sections. Repealing these regulation sections will therefore have no impact.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-330-1. Definitions. (Repealed.)**

~~The following words, terms and phrases are defined herein for the tax imposed by Title 58.1, Chapter 12 only:~~

~~1. **Bank.** "Bank" means any incorporated bank, banking association or trust company organized by or under the authority of the laws of this Commonwealth or any bank or banking association organized under the authority of the laws of the United States which (1) conducts a banking business in this Commonwealth or (2) maintains an office in this Commonwealth for the conduct of a banking business or (3) has a charter which designates any place within this Commonwealth as the place of its principal office regardless of whether or not the bank or banking association is authorized to transact business as a trust company. The term "bank" includes any joint stock land bank or any other bank organized by or under the authority of the laws of the United States which is conducting a banking business in the Commonwealth. Effective July 1, 1983, the Virginia General Assembly added Chapter 14, Title 6.1. to the Code of Virginia which authorizes bank~~

holding companies from outside Virginia to acquire and own "financial service center banks," upon certain conditions, for the purpose of conducting multi-state credit-card operations in Virginia. Such financial service center banks are required by Virginia law to be chartered as Virginia banks and are included in the term bank, subject to the Virginia bank franchise tax. The term "bank" does not include (1) corporations organized under the laws of other states, (2) corporations organized not as banks under the laws of this Commonwealth, and (3) natural persons and partnerships.

Example 1: Bank A, an out of state bank, has no office in Virginia, but makes loans to residents and businesses in Virginia secured by property located in Virginia.

The mere lending of money to residents or businesses in Virginia secured by property located in Virginia does not constitute the conduct of a banking business in this Commonwealth and since Bank A has no other activities in Virginia it is not considered a bank for franchise tax purposes.

Example 2: Bank B, an out of state bank, opens an office in Virginia which accepts loan applications. The operations of the loan origination office are limited to the acceptance of loan applications and offering limited assistance in completing the application. The applications are approved or rejected at its out of state banking office. Unless the activities are conducted by a bank organized and operated under the authority of the State Corporation Commission, Bureau of Financial Institutions, as a bank, such limited activities do not constitute the conduct of a banking business for purposes of bank franchise tax. However, income earned from sources within Virginia is subject to Virginia income tax if not derived from the conduct of a banking business.

Example 3: Corporation D is a stockbroker with offices in many states, including Virginia. Corporation D offers the following services to its customers: a money market mutual fund with check writing privileges, unsecured loans and loans secured by marketable securities. Corporation D is not a bank because it is not organized as a bank under the laws of Virginia or the United States.

2. Bank holding company. "Bank holding company" means any corporation organized under the laws of this State and doing business in this State which is a bank holding company under the provisions of the Federal Bank Holding Company Act of 1956, 12 U.S.C.A. §1841 et seq. as amended.

**23 VAC 10-330-2. Bank capital assessable. (Repealed.)**

A. Generally. Every bank or trust company shall pay an annual franchise tax. The tax shall be measured by the bank or trust company's net capital as defined in Regulation 630-15-1205.

B. Bank franchise tax in lieu of certain other taxes. The bank franchise tax shall be in lieu of all other taxes whatsoever for State, county or local purposes except: (1) real estate and tangible personal property taxes enumerated in § 58.1-1203 and 23 VAC 10-330-3, (2) retail sales and use taxes under Chapter 6 of Title 58.1, (3) recordation taxes under § 58.1-800 et seq., (4) motor vehicle sales and use taxes under Chapter 24 of Title 58.1, (5) watercraft sales and use taxes under Chapter 14 of Title 58.1, (6) aircraft sales and use taxes under Chapter 13 of Title 58.1, (7) utility taxes properly assessable upon users of such services, and (8) local license taxes in connection with the sale of tangible personal property sold by banks in connection with promotions or otherwise.

**23 VAC 10-330-3. Real and leased tangible personal property of banks to be assessed as other real and personal property. (Repealed.)**

A. Real estate. The real estate of banks shall be assessed on the land books with other real estate and taxed in the same manner as such other real estate.

B. Tangible personal property. The tangible personal property of banks which is leased for a consideration to customers or other lessees shall be assessed for local property taxation in the same manner as any other tangible personal property held for lease by any other lessor.

Example 1. Bank C is the lessor of a fleet of automobiles to Corporation B. The leased automobiles shall be assessed in the name of the bank for local property taxation as any other property held for lease by any other lessor.

Example 2. Bank D rents safe deposit boxes as part of its service to customers. The charges for safe deposit boxes are fees of the bank for security services provided by the bank and not rental of tangible personal property.

**23 VAC 10-330-4. [Reserved] (Repealed.)**

**23 VAC 10-330-5. [Reserved] (Repealed.)**

**23 VAC 10-330-6. [Reserved] (Repealed.)**

**23 VAC 10-330-7. [Reserved] (Repealed.)**

**23 VAC 10-330-8. [Reserved] (Repealed.)**

**23 VAC 10-330-9. [Reserved] (Repealed.)**

**23 VAC 10-330-10. Rate of tax. (Repealed.)**

The bank franchise tax is levied upon the net capital of each bank and no deduction is allowed for shares of a bank's stock which are owned by exempt institutions. The tax rate is \$1.00 per each \$100 of net capital.

**23 VAC 10-330-40. Filing of return and payment of tax. (Repealed.)**

A. Filing of return. On or before March 1 of each year, each bank is required to file a bank franchise tax return with the

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commissioner of the revenue, or comparable assessing officer, of the locality where the bank's principal office is located. The return must measure net capital of the bank as of January 1 of the current year. The return must be filed in duplicate. The commissioner of the revenue, or comparable assessing officer, will certify a copy of the bank's return with schedules and timely submit the certified copy to the Department of Taxation. In addition, each bank having branch banks in jurisdictions other than where the principal office is located must file with each locality schedules showing: (i) the tax on net capital attributable to each political subdivision where a branch bank is located; (ii) the real estate as assessed for the prior year.

~~B. Filing of real estate deduction schedule and local taxes apportionment schedule. The bank shall file a copy of the real estate deduction schedule and the local taxes apportionment schedule with the appropriate assessing officer of each political subdivision imposing a tax on the filing bank.~~

~~C. Payment of tax. On or before June 1 of each year, every bank will pay into the State Treasury the state taxes assessed under Chapter 12, Title 58.1 of the Code of Virginia. In addition, on or before June 1 of each year, every bank will pay into the office of the treasurer, or other official of the local political subdivisions, all taxes assessed by such political subdivision as local bank franchise taxes.~~

## **23 VAC 10-330-50. City or town tax. (Repealed.)**

~~A. Generally. Any Virginia city, or any incorporated town, which has a bank located therein, may, by ordinance, impose a bank franchise tax on the banks located in such locality. The tax shall not exceed 80% of the state bank franchise tax rate.~~

~~B. Apportionment of city or town tax. If a bank located in a city, or incorporated town, has offices located outside the corporate limits of such locality, the bank franchise tax shall be apportioned as provided in 23 VAC 10-330-70.~~

## **23 VAC 10-330-60. County tax. (Repealed.)**

~~A. Generally. Any Virginia county which has a bank located in the county and outside any incorporated town therein, may, by ordinance, impose a bank franchise tax on the banks located in such county. The tax shall not exceed 80% of the state bank franchise tax rate.~~

~~B. Apportionment of county tax. If a bank located in a county, has offices located outside such county or within the corporate limits of any town within such county, the bank franchise tax shall be apportioned as provided in 23 VAC 10-330-70.~~

## **23 VAC 10-330-70. Branch banks. (Repealed.)**

~~A. Generally. If any bank has offices located in two or more political subdivisions, including cities, towns and counties, the bank franchise tax which may be imposed by the political subdivision shall be imposed upon the proportion of the~~

~~taxable value of net capital deemed in such political subdivision.~~

~~B. Computation of the proportion of the taxable value of net capital. The proportion of net taxable capital shall be the proportion of total deposits of such branch or offices located inside the taxing subdivision to total deposits of the bank as of December 31 of the preceding year. This proportion shall be applied to the taxable value of net capital computed under 23 VAC 10-330-10.~~

~~C. Branch offices in towns and counties. For purposes of this regulation and computations related thereto, a branch bank located within an incorporated town shall not be deemed to be located within the county where such town is located.~~

## **23 VAC 10-330-80. Record of deposits through branches required. (Repealed.)**

~~A. Generally. Each bank, which as of January 1 of any tax year has branches located in any political subdivision other than the political subdivision where the bank's principal office is located, shall maintain a record of the deposits through each such branch as of the beginning of the tax year.~~

~~B. Reporting record of branch deposits. Each bank shall submit to the commissioner of the revenue, with the bank franchise tax return, a report of the branch deposits as required herein.~~

## **23 VAC 10-330-90. Credit against state tax for amounts paid cities, towns and counties. (Repealed.)**

~~Banks paying the Virginia city, town and county bank franchise tax shall credit such payment against the state tax assessed against it for the same year. The credit shall be allowed by the Department of Taxation upon the bank's presentation of the authenticated receipts of the treasurer or other collecting officer of the city, town or county where such taxes were paid or other evidence of payment. In no event shall the credit exceed the total city, town or county taxes paid.~~

## **23 VAC 10-330-100. Auditing of returns. (Repealed.)**

~~The Department of Taxation may audit the bank franchise tax returns. If the department makes any corrections or adjustments in the return, it shall notify the bank concerned. The department shall also notify every political subdivision imposing a tax upon the bank for which the bank claimed a credit against the state bank franchise tax.~~

## **23 VAC 10-330-110. Banks in liquidation. (Repealed.)**

~~A. Generally. Any bank winding up its affairs under §§ 6.1-100 and 6.1-102 of the Code of Virginia or the comparable sections of the National Banking Act, shall be required to file a bank franchise tax return annually during liquidation; however, no tax shall be paid except as provided in this regulation.~~



~~B. Filing of returns for banks in liquidation. Persons having custody or control of the assets of a bank winding up its affairs as provided in this regulation, must file a return of such bank's net capital as of January 1 of each year the bank is liquidating.~~

~~If any surplus remains after payment of all creditors and depositors, the liquidating officer shall pay the appropriate tax for each year prior to any distribution of such surplus.~~

~~C. Late filing penalty not applicable. If the tax required of liquidating banks is paid late, but in accordance with subsection B above, the tax on such bank shall not be subject to penalty.~~

~~**23 VAC 10-330-120. Penalty upon bank for failure to comply with chapter. (Repealed.)**~~

~~A. Generally. Any bank failing to file a return or pay the full amount of tax due thereon by its due date shall be subject to a penalty of 5.0% of the unpaid tax due.~~

~~B. Waiver of penalty; interest due. If the Tax Commissioner is satisfied that the bank's failure to file the bank franchise tax return or pay the state tax required, is due to providential or other good cause, the return and tax due will be accepted without penalty. The tax due and paid on such late return shall be subject to interest computed in accordance with § 58.1-15 of the Code of Virginia.~~

~~**23 VAC 10-330-130. State banks and national banks treated the same in matter of taxation. (Repealed.)**~~

~~For purposes of this chapter, state banks shall be treated the same as national banks and if any court of competent jurisdiction holds that national banks, as a class, are exempt from any Virginia state or local tax, then the same exemption will be applied to state banks.~~

**FORMS**

~~Bank Franchise Tax, Form 64.~~

~~Valuation Reserve for Marketable Securities, Form 64-Schedule A.~~

~~Other Liabilities, Form 64-Schedule B.~~

~~Assessed Value of Real Estate, Form 64-Schedule C.~~

~~Book Value of Tangible Personal Property Otherwise Taxed in this State, Form 64-Schedule D.~~

~~Computation of Capital Attributed to United States Obligations, Form 64-Schedule E.~~

~~Retained Earnings and Surplus of Subsidiaries, Form 64-Schedule F.~~

~~Reserve for Loan Losses, Form 64-Schedule G.~~

~~City, Town, or County Taxes, Form 64-Schedule H.~~

~~Notice of Assessment of Bank Franchise Tax, Form 65 (eff. 12/85).~~

VA.R. Doc. No. R07-72; Filed November 29, 2006, 4:16 p.m.

**Fast-Track Regulation**

**Title of Regulation:** **23 VAC 10-340. Intangible Personal Property Tax Regulations (repealing 23 VAC 10-340-10 and 23 VAC 10-340-50 through 23 VAC 10-340-190).**

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action repeals selected sections of the Intangible Personal Property Tax Regulations because they are unnecessary or have been reserved and the department does not intend to use the sections so reserved.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal numerous sections of these regulations.

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Result of Analysis. The proposed repeal is not likely to have any significant impact.

Estimated Economic Impact. The department proposes to repeal 23 VAC 10-340-10, 23 VAC 10-340-50, 23 VAC 10-340-60, 23 VAC 10-340-70, 23 VAC 10-340-80, 23 VAC 10-340-90, 23 VAC 10-340-100, 23 VAC 10-340-110, 23 VAC 10-340-120, 23 VAC 10-340-130, 23 VAC 10-340-140, 23 VAC 10-340-150, 23 VAC 10-340-160, 23 VAC 10-340-170, 23 VAC 10-340-180 and 23 VAC 10-340-190. 23 VAC 10-340-60, 23 VAC 10-340-130, 23 VAC 10-340-180 and 23 VAC 10-340-190 were “reserved” and had no content. Thus repealing 23 VAC 10-340-60, 23 VAC 10-340-130, 23 VAC 10-340-180 and 23 VAC 10-340-190 will have no impact.

23 VAC 10-340-10, 23 VAC 10-340-50, 23 VAC 10-340-70, 23 VAC 10-340-80, 23 VAC 10-340-90, 23 VAC 10-340-100, 23 VAC 10-340-110, 23 VAC 10-340-120, 23 VAC 10-340-140, 23 VAC 10-340-150, 23 VAC 10-340-160, and 23 VAC 10-340-170 pertain to Code of Virginia §§ 58.1-1100, 58.1-1104, 58.1-1106, 58.1-1107, 58.1-1108, 58.1-1109, 58.1-1110, 58.1-1111, 58.1-1113, 58.1-114, 58.1-1115, and 58.1-1116, respectively. None of these regulation sections contain rules that either go beyond or contradict their respective related Code of Virginia sections. Repealing these regulation sections will therefore have no impact.

Businesses and Entities Affected. The proposed repeal of these regulations will not significantly affect businesses and entities.

Localities Particularly Affected. No localities are particularly affected.

Projected Impact on Employment. The proposed repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not significantly affect small businesses.

Legal Mandate. 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget’s economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**~~23 VAC 10-340-10. Intangible—personal—property; segregated for state taxation. (Repealed.)~~**

~~Chapter 11 of Title 58.1 of the Code of Virginia defines intangible personal property. Prior to January 1, 1983, §§58-410 through 58-412 of Title 58 of the Code of Virginia defined the capital of a trade or business subject to state tax as intangible personal property and § 58-418 levied a tax on such capital at the rate of 30¢ per \$100 of its actual value.~~

~~The 1982 Session of the General Assembly enacted legislation effective January 1, 1983, which repealed these sections and amended § 58-405 to define as intangible personal property all property previously defined as capital but levied an intangible personal property tax on inventory, only, at the rate of 30¢ per \$100 of actual value.~~

**~~23 VAC 10-340-50. To what extent dairies taxable on intangible personal property. (Repealed.)~~**

~~A dairy business may or may not be classified as a manufacturing business, depending on its specific operations and its specific methods of operation. However, the capital as defined by §§58-411 and 58-412, prior to repeal thereof, relating to that part of a dairy business which consists of the purchase, pasteurization and sale of milk and cream and the~~

production of buttermilk, as well as that part of a dairy business which consists of the manufacture of butter, condensed milk, evaporated milk, ice cream mix, ice cream, milk powder and cheese is defined as intangible personal property and inventory attributable to such part of a dairy business is taxable as intangible personal property and not as merchants' capital under local ordinances.

**23 VAC 10-340-60. [Reserved] (Repealed.)**

**23 VAC 10-340-70. Situs; nonresidents, branches outside of state. (Repealed.)**

The taxable situs of property defined and taxed as intangible personal property (inventory) is in Virginia if the property is physically located in Virginia on January 1 of the taxable year. Property in transit in interstate or foreign commerce does not have Virginia situs.

**23 VAC 10-340-80. Date as of which intangible personal property must be returned. (Repealed.)**

A. Generally. A business is subject to intangible personal property tax from the time it is getting ready to do business, while doing an active business, and finally closing out business. Intangible personal property tax is assessed on the actual value of taxable property determined as of January 1 of every tax year. The taxpayer may elect to make a return based on the average actual value of taxable property on January 1 of the tax year and August 1 of the preceding tax year.

B. Election to average intangible personal property. The election to make return based on the average actual value of taxable property must be made for each tax year and is binding only for the year for which the election is made.

The election is made by filing Form 761, Return of Intangible Personal Property Tax, on the basis of the average value of inventory on January 1 of the tax year and August 1 of the preceding tax year. The return must include a schedule disclosing inventory on the respective dates and the inventory average thereof.

The election to average is applicable only if taxpayer was doing business subject to tax on both January 1 of the tax year and on August 1 of the preceding year.

**23 VAC 10-340-90. Time for filing returns; payment of tax. (Repealed.)**

A. Generally. Every person, firm or corporation with inventory subject to intangible personal property tax is required to file annually Form 761, Return of Intangible Personal Property. Returns are due on or before May 1 of each tax year regardless of taxpayer's fiscal accounting period.

B. Limitations. If a taxpayer is engaged in dual businesses where a portion of the inventory is subject to state intangible personal property tax, the taxpayer is required to keep

accurate book accounts segregating the items which constitute taxable inventory. In cases where no accounting segregation is made and where it is impractical to segregate all specific items of inventory employed in the several segments of a business, an apportionment of total inventory may be made based on a percentage. The numerator is the gross receipts derived from the part of the business which is subject to intangible personal property tax and the denominator is total gross receipts. A schedule reflecting the details of total inventory, computation of the apportionment percentage, and the application of the apportionment percentage shall be attached to and filed with the return.

1. Return of dual businesses. Taxpayers engaged in dual businesses wherein a portion of total inventory is subject to intangible personal property tax, shall submit with Form 761 a schedule reflecting the details of total inventory and the portion subject to taxation.

2. Consolidated returns. Consolidated returns are not allowed. Every person, firm or corporation subject to tax is required to file a separate return regardless of relation, affiliation or common ownership. When any person, firm or corporation conducts business from two or more locations in Virginia, the inventory of the several locations may be combined and reported in one return.

C. Payment of tax. The full amount of tax as shown on the face of the return is due at the time of filing the return and is required to be paid to the Treasurer of the county or city with whose Commissioner of the Revenue the taxpayer files his return. (If filed in Albemarle, Fairfax, Henrico, or Prince William County, or the City of Alexandria or Richmond, check or money order should be made payable to "Director of Finance of the County (City) of . . .")

**23 VAC 10-340-100. Extension of time for filing returns. (Repealed.)**

The department may grant a reasonable extension of filing time when in its judgment good cause exists. No extension may be granted for more than six months except in the case of a taxpayer who is absent from the continental United States on the day the return is due and who requests an extension prior to the due date. Whenever an extension is granted, interest will be charged and collected at a rate equal to the rate of interest established pursuant to § 58.1-15 of the Code of Virginia. Such interest rate is applied from the original due date to the time of payment. If any taxpayer who has been granted an extension fails to file his return within the extended time and to pay the full amount of tax as shown on the face of the return at the time of filing and the accrued interest, the case shall be treated as if no extension had been granted. For penalty provisions, see 23 VAC 10-340-140 and 23 VAC 10-340-170.

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Note: No extension granted for any other tax, whether federal, state or local, will be construed as representing an extension for filing Form 761, Return of Intangible Personal Property.

Requests for extension should be addressed to Virginia Department of Taxation, P.O. Box 405, Richmond, Virginia 23203-0405.

**23 VAC 10-340-110. Where to file return; duty of the commissioner of revenue, audit and assessment. (Repealed.)**

~~A. Where individual to file. A resident individual must file with the commissioner of the revenue for the county or city in which taxpayer is a resident for tax purposes. A nonresident individual must file with the commissioner of the revenue for the county or city in which his business, or a major part thereof, is conducted.~~

~~B. Where unincorporated companies to file. Partnerships, joint ventures and unincorporated companies must file with the commissioner of the revenue for the county or city in which the business, or a major part thereof, is conducted.~~

~~C. Where corporations to file. Virginia corporations must file with the commissioner of the revenue for the county or city in which the taxpayer's principal office is located by charter or in which the registered office is located. Foreign corporations must file with the commissioner of the revenue for the county or city in which is located the place designated as the office in Virginia at which all claims against the corporation may be paid or in which the registered office is located.~~

~~D. Schedule A of Form 761. Separate Schedule A of Form 761 should be filed with Form 761 by qualifying manufacturers who hold inventory of agricultural products requiring storage for more than one year in order to age or condition. The schedule may be obtained from the Department.~~

**23 VAC 10-340-120. Application to fiduciaries generally. (Repealed.)**

~~Fiduciaries must file with the commissioner of the revenue for the county or city in which the fiduciary is qualified, or if there has been no qualification in this state, in the county or city in which the beneficiaries or any of them may reside.~~

**23 VAC 10-340-130. [Reserved] (Repealed.)**

**23 VAC 10-340-140. Penalty for failure to file return of intangible personal property in time; delinquents; assessments on estimates. (Repealed.)**

~~A. Penalty for failure to file. A taxpayer who fails to file a return by the required due date is subject to a penalty of 10% of taxes assessable, for delinquent filing. In no case will the penalty be less than \$10. The assessed penalty becomes a part of the tax, subject to interest and other possible penalties.~~

~~B. Assessments on estimates. If a delinquent taxpayer fails or refuses to file a return, and such delinquency continues for fifteen days after notice of delinquency, the department may estimate the value of taxable inventory on the basis of the best information available to it and assess and collect taxes, penalties and interest on the basis of the estimates.~~

**23 VAC 10-340-150. Assessment and payment of deficiency; penalties; application for correction. (Repealed.)**

~~A. Assessment. Audit deficiencies, if any, will be assessed by the department and Notices of Assessment will be mailed to taxpayers. The tax deficiency and interest at a rate equal to the rate of interest established pursuant to § 58.1-15 of the Code of Virginia, is payable to the Department of Taxation within thirty days after the Notice of Assessment is mailed to taxpayer.~~

~~B. Penalty on audit deficiency. If the return was made in good faith and the understatement of the amount in the return was not due to any fault of the taxpayer, no penalty will be added to the additional tax because of the understatement.~~

~~If the return is false or fraudulent with intent to evade the tax, a penalty of 100% of the unpaid tax will be added.~~

~~C. Limitation on assessment. State intangible personal property taxes may be assessed within three years from the date on which such taxes became due and payable, except that in the case of a false or fraudulent return with intent to evade payment of the taxes, or a failure to file a return, the taxes may be assessed at any time within six years from the date on which such taxes became due and payable.~~

**23 VAC 10-340-160. Refund of overpayment. (Repealed.)**

~~If the amount of tax computed in audit or otherwise determined, is less than the amount previously paid, the excess will be refunded together with interest at a rate equal to the rate of interest established pursuant to § 58.1-15 of the Code of Virginia.~~

**23 VAC 10-340-170. Failure to pay tax when due; civil penalties. (Repealed.)**

~~A. If payment is not made in full when due, the unpaid balance including penalty for late filing, if applicable, is subject to a penalty of 5.0%. In the case of additional tax assessed, the penalty will not apply if return was made in good faith and the understatement was not due to any fault of taxpayer.~~

~~B. Example of application of penalties and interest.~~

~~Example:~~

<del>Tax on delinquent return filed on July 1</del>	<del>\$1,000.00</del>
<del>10% penalty for late filing (becomes part of tax)</del>	<del>\$100.00</del>

<i>Total tax</i>	<i>\$1,100.00</i>
<i>5% penalty for failure to pay</i>	<i>55.00</i>
<i>Total tax and penalty</i>	<i>\$1,155.00</i>
<i>Interest on (\$1,155.00) total tax and penalty from June 1 until July 1, date paid (1 month at 20% per annum)</i>	<i>18.99</i>
<i>Total assessment</i>	<i>\$1,173.99</i>

**23 VAC 10-340-180. [Reserved] (Repealed.)**

**23 VAC 10-340-190. [Reserved] (Repealed.)**

VA.R. Doc. No. R07-64; Filed November 29, 2006, 4:36 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-350. Forest Products Tax Regulations (repealing 23 VAC 10-350-10 through 23 VAC 10-350-40, 23 VAC 10-350-70, 23 VAC 10-350-80, and 23 VAC 10-350-110 through 23 VAC 10-350-190).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these

regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal numerous sections of these regulations.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes.

Estimated Economic Impact. The department proposes to repeal 23 VAC 10-350-10, 23 VAC 10-350-20, 23 VAC 10-350-30, 23 VAC 10-350-40, 23 VAC 10-350-70, 23 VAC 10-350-80, 23 VAC 10-350-110, 23 VAC 10-350-120, 23 VAC 10-350-130, 23 VAC 10-350-140, 23 VAC 10-350-150, 23 VAC 10-350-160, 23 VAC 10-350-170, 23 VAC 10-350-180, and 23 VAC 10-350-190. 23 VAC 10-350-150 was "reserved" and had no content. Thus repealing 23 VAC 10-350-150 will have no impact.

23 VAC 10-350-10, 23 VAC 10-350-20, 23 VAC 10-350-30, 23 VAC 10-350-40, 23 VAC 10-350-70, 23 VAC 10-350-80, 23 VAC 10-350-110, 23 VAC 10-350-120, 23 VAC 10-350-140, 23 VAC 10-350-160, 23 VAC 10-350-180, and 23 VAC 10-350-190 pertain to Code of Virginia §§ 58.1-1600, 58.1-1601, 58.1-1602, 58.1-1603, 58.1-1606 & 58.1-1607, 58.1-1608, 58.1-1611, 58.1-1613, 58.1-1615, 58.1-1617, 58.1-1619, and 58.1-1620, respectively. None of these regulation sections contain rules that either go beyond or contradict their respective related Code of Virginia sections. Repealing these regulation sections will therefore have no impact.

23 VAC 10-350-130 and 23 VAC 10-350-170 address penalties for failing to make reports and for failing to make returns, keep records, or permit examination of records. The penalties differ from those listed in §§ 58.1-1614 and 58.1-1618 of the Code of Virginia. When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. Thus the repealing of these regulations will not change penalties. The repeal will be beneficial nonetheless since the current contradictory information is misleading.

Businesses and Entities Affected. The proposed repeal of these regulations will not significantly affect businesses and entities.

Localities Particularly Affected. No localities are particularly affected.

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**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

**Agency's Response to the Department of Planning and Budget's Economic Impact Analysis:** The agency agrees with the Department of Planning and Budget's economic impact analysis.

**Summary:**

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-350-10. Short title. (Repealed.)**

~~The tax shall be known as the forest products tax which is levied, in addition to all other taxes, as a special fund tax for the purpose of protection and reforestation of Virginia forest lands.~~

**23 VAC 10-350-20. Definitions. (Repealed.)**

~~The following words, terms and phrases are defined herein for purposes of the tax imposed by Chapter 16 of Title 58.1 of the Code of Virginia only:~~

~~"F.o.b. loading out point" means the point at which product is loaded on a railroad car or barge, boat or other public transportation for shipment or the point of delivery by taxpayer's vehicles. The invoice value f.o.b. loading out point includes cost of manufacture and cost of delivery by taxpayer, but does not include costs of shipping by public transportation.~~

~~The term "forest product" includes logs; timber; pulpwood; excelsior wood; chemical wood, except dead chestnut wood; wood chips; bolts; billets; crossties; switch ties; poles; piles; fuel wood; posts; all cooperage products; mine ties; mine props; and any and all other types of forest products.~~

~~"Manufacturer" means any person in Virginia (1) who operates a sawmill for the conversion of logs into lumber in its various sizes and forms; or (2) who manufactures or processes forest products into products other than lumber, including operation of cooperage mills; veneer mills; excelsior mills; paper mills; chipmills; chemical plants or any other facilities for manufacturing or processing forest products into products other than lumber; or (3) who purchases from the person who severs (a) crossties; (b) switch ties; (c) mine ties, mine props, and other forest products used in connection with mining; (d) piles; (e) poles, except fish net poles; or (4) who severs posts, fuel wood, fish net poles, and similar products.~~

~~"Shipper" means any person in Virginia who sells, ships or otherwise disposes of outside the Commonwealth by whatever means of transportation any forest product in an unmanufactured condition which was severed from the forests of Virginia. The term "shipper" includes, but is not limited to, an owner, lessee, wood yard operator, concessionaire, agent or contractor who sells, ships or disposes of outside the Commonwealth any unmanufactured forest products severed from Virginia forests.~~

~~"Severer" means any person who fells, cuts or otherwise separates timber or any other forest product from the soil.~~

**23 VAC 10-350-30. Levy of tax for forest conservation. (Repealed.)**

~~The forest products tax is levied upon and collectible from every manufacturer or shipper as defined in 23 VAC 10-350-20, for the purpose of furthering the conservation of the~~

natural resources of Virginia by protecting and developing the forest resources and by the reforestation of the forest lands. The tax is applicable to any forest products severed from land located in Virginia whether owned privately, by the Commonwealth, or the United States.

The forest products tax is not applicable to any forest products severed from land located outside of Virginia nor to forest products manufactured in Virginia from timber severed from land located outside of Virginia.

**23 VAC 10-350-40. Lien. (Repealed.)**

Until the forest products tax and any applicable interest and penalties are paid, such tax, penalties and interest shall be a lien upon: (a) the severed forest products, (b) the forest products assembled for shipment or (c) any products manufactured therefrom and shall remain a lien upon all such products until the applicable tax, together with interest and penalties, if any, has been paid or until such forest products or products manufactured therefrom has been sold by the manufacturer, shipper, or severer.

**23 VAC 10-350-70. Optional rates for certain manufacturers and severers. (Repealed.)**

A. Generally. Any manufacturer of rough lumber who manufactures less than 500,000 board feet, or any person who severs for sale 100 or less cords of fuel wood, or any person who severs 500 or less posts for fish net poles, during any one calendar year, may elect to file an annual forest products tax return.

a. Manufacturers of rough lumber who annually manufacture between 300,000 and 500,000 board feet may pay an annual flat tax of \$460.

b. Manufacturers of rough lumber who annually manufacture less than 300,000 board feet may pay an annual flat tax of \$230.

c. Any person who severs for sale 100 or less cords of fuel wood, or any person who severs 500 or less posts for fish net poles, during any one calendar year may elect to file an annual forest products tax return in lieu of quarterly returns and pay the tax rates as set out in 23 VAC 10-350-50.

B. Limitation on tax for certain manufacturers. In the event the General Assembly fails to appropriate from the State's general fund an amount which at least equals the revenue estimated to be collected from the pine reforestation program, the alternative annual rate shall apply upon manufacturers taxed pursuant to the provisions of 23 VAC 10-350-60.

a. Manufacturers of rough lumber who annually manufacture between 300,000 and 500,000 board feet are required to pay an annual flat tax of \$60.

b. Manufacturers of rough lumber who annually manufacture less than 300,000 board feet are required to pay an annual flat tax of \$30.

Note: The above alternative annual rates in subsection B are applicable only in the event that the General Assembly fails to appropriate Forest Products Tax revenue for reforestation of pine timberland activity. In such event, notification of applicable rates will be provided by the Department of Taxation.

**23 VAC 10-350-80. Exemptions. (Repealed.)**

Forest products severed or cut by an individual owner from his own premises for his own use are exempt from forest products tax. For purposes of this exemption, the phrase "for his own use" means and is limited to the utilization of forest products by individual owners of timber in (1) construction or repair of their structures, buildings or improvements; (2) for their home consumption; or (3) for use by them in processing their farm products.

The tax does not apply to forest products severed and used by state educational institutions for experimentation in and teaching of forestry if such products are severed from land owned by the Commonwealth.

**23 VAC 10-350-110. Allocation of tax to localities. (Repealed.)**

At least 50% of the forest products tax collected from any county or city shall be allocated and subsequently expended in such county or city for carrying out the purposes of the forest products tax. Any allocated county or city forest products funds, unexpended within a two year period, shall be credited at the end of each fiscal year, as special revenues for expenditure on a statewide basis for reforestation purposes.

**23 VAC 10-350-120. Returns to be filed by manufacturer or shipper; time of payment of tax. (Repealed.)**

A. Generally. Every manufacturer or shipper of forest products as defined by 23 VAC 10-350-20 shall file a forest products tax return with the Department of Taxation.

B. Return due date. The forest products tax return must be filed with the Department of Taxation no later than April 30, July 30, October 30, and January 30.

Any manufacturer of rough lumber who manufactures less than 500,000 board feet, or any person who severs for sale 100 or less cords of fuel wood, or any person who severs 500 or less posts for fish net poles, during any one calendar year, may elect to file an annual forest products tax return as regulated in 23 VAC 10-350-70.

Any manufacturer, or person who qualifies and elects to file annually with the Department of Taxation, must file such annual return within thirty days after December 31 of each

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year and certify that the quantity of forest products is true and correct and meets applicable quantity and rate limitations, if any.

~~C. Return information. Each return filed by the manufacturer or shipper must be on forms prescribed by the Department of Taxation. Each return must disclose the kinds of forest products and the gross quantity of each product (a) manufactured or (b) severed in this state and shipped or sold for shipment outside of this state in an unmanufactured condition during the preceding quarter; the cities or counties in which such products were severed from the soil, and the gross quantity of each product; the amount of tax due on each type of forest product; and any other reasonable and necessary information requested by the Department of Taxation for enforcing the tax on forest products.~~

~~D. Payment of tax. At the time of filing the return, the manufacturer, severer, or shipper must pay the amount of tax due.~~

- ~~1. For forest products piece rates, see 23 VAC 10-350-50.~~
- ~~2. For forest products annual return rates, see 23 VAC 10-350-50 or 23 VAC 10-350-70.~~

## **23 VAC 10-350-130. Reports to be made by transporters of forest products; penalty. (Repealed.)**

~~A. Generally. The Tax Commissioner may request transporters of forest products to report information relative to the transportation of forest products which may include shipments of forest products out of, within, or across Virginia, the name of the shipper, date of shipment, quantity and type or character of such forest products, applicable units or measurements of the forest products, the point of receipt or shipment, the point of destination, and such other information as the Commissioner deems necessary.~~

~~B. Exception. Common carriers using bills of lading or way bills prescribed or approved by the Interstate Commerce Commission shall not be required to report all information relative to the transportation of forest products to the Tax Commissioner. Such common carriers shall be required to keep the usual records required for bills of lading and way bills at their offices in Virginia where such records are usually maintained.~~

~~C. Failure to file transporter's report. Any transporter who fails to file the report requested on forest products transported shall, upon conviction, be guilty of a Class 3 misdemeanor.~~

## **23 VAC 10-350-140. When department may make return for delinquent taxpayer; penalty. (Repealed.)**

~~A. Generally. If any taxpayer, subject to forest products tax, fails to file any required forest products return, the Department may request by registered mail that the taxpayer file such delinquent return. If the taxpayer fails to file the required forest products return within 30 days after receiving~~

~~written notice from the Department, the Department may make the return for the delinquent taxpayer upon the basis of available information and assess the taxes due upon such return.~~

~~B. Penalty. If the taxpayer fails to file the return which is due and the Department assesses the tax, it shall add a penalty to the tax for failure to file the return and pay the applicable tax. The penalty shall be 25% of the assessed tax due and shall be collected as a part of the tax.~~

~~The Department may waive all or a part of the 25% penalty if, in its discretion, good cause is shown by the taxpayer.~~

~~C. Interest. The total assessment of tax and penalty shall bear interest at the rate determined in accordance with § 58.1-15 of the Code of Virginia from the date such taxes were due.~~

## **23 VAC 10-350-150. [Reserved] (Repealed.)**

## **23 VAC 10-350-160. Records to be kept. (Repealed.)**

~~A. Generally. Every manufacturer in this state and every shipper of forest products who ships out of this state such products in an unmanufactured condition, must keep and preserve adequate books and records on the forest products for at least three years following the date the tax is reported on such products.~~

~~1. "Adequate books and records" means records which separate the forest products into the various categories on which tax rates are computed and such other books and accounts as may be necessary to determine the amount of applicable tax.~~

~~2. Exception. Manufacturers of rough lumber who manufacture less than 500,000 board feet, or any person who severs for sale 100 or less cords of fuel wood, or 500 or less posts for fish net poles, during any one calendar year, are excepted from the requirements to keep and preserve records which separate forest products into the various tax categories.~~

~~B. Examination by Commissioner. The Commissioner may examine during the usual business hours of the day records, books, papers, or other documents of the forest products manufacturer or shipper relating to the quantity and type of forest products, the cities or counties in which such products were severed and the amount of tax due on each type of forest product and to verify the truth and accuracy of any statement or any other relevant information.~~

## **23 VAC 10-350-170. Penalty for failure to make return, keep records, or permit examination of records. (Repealed.)**

~~Any person who fails to file a forest products tax return, refuses to permit examination of records, or fails to keep the required records shall be guilty, upon conviction, of a Class 4 misdemeanor.~~



Each month's failure to make the required return or keep the required records and each refusal of a written demand of the Department to examine, inspect, or audit forest products records will constitute a separate offense.

**23 VAC 10-350-180. Penalty and interest for failure to pay the tax when due. (Repealed.)**

Any person who fails to pay the forest products tax when due shall pay in addition to the tax, a penalty of five percent of the amount of unpaid tax.

The total assessment of tax and penalty shall bear interest beginning six months from the date the tax became due and payable. Interest will be at the rate determined in accordance with § 58.1-15 of the Code of Virginia. The penalty and interest will be assessed and collected as if a part of the tax.

**23 VAC 10-350-190. Audit of returns; tax underpaid; amended returns; and taxpayer appeals. (Repealed.)**

A. Generally. After the taxpayer files the required returns, the Department of Taxation may examine or audit the forest products tax returns and records and other information of the taxpayer within three years after the returns were filed and determine the correctness of such returns.

B. Tax overpaid. If the Department determines that the tax is overpaid on the forest products tax return, the Department of Taxation will refund to the taxpayer any tax which was overpaid.

All refunds of forest products tax shall be paid out of the Reforestation of Timberlands State Fund or the Protection and Development of Forest Revenues State Fund, whichever account is applicable.

C. Tax underpaid. If the Department determines within three years after the forest products tax return is due that the tax is underpaid, the Department of Taxation shall assess the taxpayer for any tax due together with applicable penalties and interest as regulated in 23 VAC 10-350-180.

Any taxpayer who disagrees with a forest products tax audit assessment may file an application for relief to the Tax Commissioner. Such application must be made within ninety days from the date of assessment.

D. Amended return. If a taxpayer overpays the forest products tax, an amended return requesting refund of the overpaid tax must be filed with the Department within one year from the date such tax was due.

1. The taxpayer must file amended forest products tax returns for each period showing the correct amount of tax due and attach an explanation to the corrected returns.
2. The Department shall review the taxpayer's explanations and amended returns and shall make a determination upon such tax refund request.

3. All refunds of forest products tax shall be paid out of the Reforestation of Timberlands State Fund or the Protection and Development of Forest Revenues State Fund, whichever account is applicable.

Note: The return of a Taxpayer filed with the Department is treated, for forest products tax purposes, as a self-assessment. Section 58.1-1622 of the Code of Virginia limits the taxpayer to one year from December 31 of the year the assessment was made to apply to the Department for refund or appeal to the Commissioner or appeal to the courts. Protective claim for refund rights under § 58.1-1824 of the Code of Virginia are not applicable to the taxpayers subject to forest products tax because of the one year appeal limitation under § 58.1-1622 of the Code of Virginia.

E. Penalties. In addition to assessing the tax, the Department shall assess a penalty on the unpaid tax.

1. If the taxpayer files the forest products tax return and underpays or fails to pay the tax when due, the Department shall assess a penalty of five percent of the amount of unpaid tax.
2. If the Department in audit finds a tax deficiency the taxpayer shall be notified of the tax and interest due. If the taxpayer fails to pay the tax and interest due within thirty days from the date notified, the Department shall assess a penalty of 1/2 of 1% per month from the date such taxes were due.
3. If the Department finds willful or fraudulent intent by the taxpayer to evade the tax due, it may assess an underpayment penalty of 25% of the tax due.
4. The Department may waive all or part of the penalties if, in its discretion, good cause is shown by the taxpayer.

F. Interest. The total assessment of tax and penalty shall bear interest at the rate determined in accordance with § 58.1-15 of the Code of Virginia. The penalty and interest shall be assessed and collected as if a part of the tax.

G. Taxpayer appeals. Any taxpayer who is aggrieved by a forest products tax assessment must apply to the Department for correction or apply to court for correction within one year from December 31 of the year in which the assessment was made. (See Note to D above)

V.A.R. Doc. No. R07-73; Filed November 29, 2006, 4:17 p.m.

**Fast-Track Regulation**

Title of Regulation: **23 VAC 10-370. Cigarette Tax Regulations (repealing 23 VAC 10-370-10, 23 VAC 10-370-30, 23 VAC 10-370-130, 23 VAC 10-370-140, 23 VAC 10-370-160, 23 VAC 10-370-170, 23 VAC 10-370-190 through 23 VAC 10-370-230).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

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# Regulations

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**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the department has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal 11 sections of the Cigarette Tax Regulations that address statutes that are clear and unambiguous.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal numerous sections of these regulations.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. The department proposes to repeal 23 VAC 10-370-10, 23 VAC 10-370-30, 23 VAC 10-370-130, 23 VAC 10-370-140, 23 VAC 10-370-160, 23 VAC 10-370-170, 23 VAC 10-370-190, 23 VAC 10-370-200, 23 VAC 10-370-210, 23 VAC 10-370-220, and 23 VAC 10-370-230.

23 VAC 10-370-10, 23 VAC 10-370-30, 23 VAC 10-370-130, 23 VAC 10-370-170, 23 VAC 10-370-190, 23 VAC 10-

370-200, 23 VAC 10-370-210, 23 VAC 10-370-220, and 23 VAC 10-370-230 pertain to Code of Virginia §§ 58.1-1000, 58.1-1002, 58.1-1012, 58.1-1016, 58.1-1018, 58.1-1019, 58.1-1020, 58.1-1021, 58.1-1022, respectively. None of these sections contain rules that either go beyond or contradict their respective related Code of Virginia sections. Repealing these regulation sections will therefore have no impact.

23 VAC 10-370-140 and 23 VAC 10-370-160 address the penalties for failing to affix cigarette tax stamps and for removal, reuse, unauthorized sale, and counterfeit stamps, respectively. The penalties differ from those listed in Code of Virginia §§ 58.1-1013 and 58.1-1015 corresponding to the two regulation sections, respectively. When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. Thus the repealing of these regulations will not change penalties. The repeal will be beneficial nonetheless since the current contradictory information is misleading.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small

businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, The Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23 VAC 10-370-10. Definitions. (Repealed.)**

The following words, terms and phrases are defined herein for the cigarette tax imposed by Chapter 10 of Title 58.1 of the Code of Virginia only:

~~"Carton" means ten packs of cigarettes, each containing 20 cigarettes or nine packs of cigarettes, each containing 25 cigarettes.~~

~~"Retail dealer" means every person, other than a wholesale dealer, as defined herein, who sells or offers for sale any cigarettes.~~

~~"Retail sale" means all sales except sales by wholesalers to retail dealers or other wholesalers for resale.~~

~~"Sale at retail" means all sales except sales by wholesalers to retail dealers or other wholesalers for resale.~~

~~"Stamps" means the stamp or stamps used to show the Virginia cigarette excise tax paid and shall be officially designated as Virginia revenue stamps. The Department of Taxation is authorized to provide for the use of any type of stamp or indicia which will accomplish the purpose of displaying evidence on each pack of cigarettes that the applicable tax has been paid. The stamps include, but are not limited to hand applied stamps, fusion type stamps and impressions of metering devices. The term stamp also includes "certificate of payment of tax" authenticated and signed by an authorized agent of the Department of Taxation. Such certificate may be issued in special enforcement cases.~~

~~"Storage" means any keeping or retention in this state of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside this state.~~

~~"Use" means the exercise of any right or power over cigarettes incident to the ownership thereof or any transaction where possession is given, except that the term "use" shall not include the sale of cigarettes in the regular course of business.~~

~~"Wholesale dealer" means any person who sells cigarettes to retail dealers for the purpose of resale, or who sells to institutional, commercial or industrial users. The term "wholesale dealer" includes chain store distribution centers or houses which distribute cigarettes to their stores for sale at retail.~~

**23 VAC 10-370-30. Exemptions. (Repealed.)**

~~The Virginia cigarette excise tax shall not apply to: (1) sample cigarettes distributed free in packages containing five or fewer cigarettes or, (2) any package of cigarettes donated free of charge by cigarette manufacturers to employees in factories where cigarettes are manufactured in Virginia if such packages of cigarettes are not taxed by the federal government.~~

~~Example 1: Cigarette manufacturer ABC is participating in a marketing campaign and distributes promotional cigarette packs, each containing 20 cigarettes. The Virginia cigarette excise tax is applicable to the promotional cigarettes distributed since each pack contains more than five cigarettes.~~

**23 VAC 10-370-130. Duties of wholesale dealer on shipping, delivering or sending out cigarettes. (Repealed.)**

~~A. Generally. Every wholesale dealer who ships or delivers any cigarettes must make a duplicate invoice on such cigarettes showing the date, amount, and value of each class of cigarettes shipped or delivered. Such wholesaler shall retain the duplicate invoices.~~

~~B. Shipments to military reservations. Wholesale dealers in this State who ship, deliver, or send any cigarettes to the United States government for sale or distribution to any military, naval or marine reservation owned by the United States and located within the Commonwealth, shall be required to comply with the provisions in 23 VAC 10-370-110 on such shipments or deliveries.~~

**23 VAC 10-370-140. Penalty for failing to affix stamps; subsequent violations of article. (Repealed.)**

~~A. Generally. Any person who sells, stores or receives cigarettes subject to the tax for distribution within Virginia and fails to affix the proper cigarette stamp as required under 23 VAC 10-370-40.~~

~~B. Penalty for failing to affix Virginia revenue stamps. Any person failing to affix the proper Virginia revenue stamp to cigarettes distributed in Virginia is subject to a penalty of~~

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~~§25. Such penalty is assessed and collected by the Department as other taxes are collected. Each pack of cigarettes not having the proper stamps affixed shall be deemed a separate offense.~~

~~1. The penalty for willful intent to defraud the State of the cigarette excise tax is \$250. Each pack of cigarettes not properly stamped shall be deemed a separate offense.~~

~~2. Possession of more than 30 packs of unstamped cigarettes is prima facie evidence of intent to defraud.~~

~~3. Any unstamped cigarettes, except as provided in regulation 23 VAC 10-370-110, located in the place of business of a person required to affix tobacco revenue stamps is prima facie evidence that the cigarettes are intended for sale.~~

~~C. Subsequent violations of failing to affix Virginia revenue stamps. Any person who has been found guilty of failing to properly affix Virginia revenue stamps and has received punishment on the first offense and is guilty of a subsequent violation of failing to affix such stamps, shall be subject to revocation of his permit to buy and stamp as a qualified wholesale dealer.~~

~~After revocation of such stamping permit, no new permit may be issued to the offender for 1 year from the date such permit was revoked.~~

## ~~23 VAC 10-370-160. Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps; penalty. (Repealed.)~~

~~A. Generally. It is unlawful to remove or reuse any Virginia revenue stamp or buy, sell, offer for sale, give away, or possess any such washed, removed, or restored Virginia revenue stamp. It is also unlawful to manufacture, buy, sell, offer for sale, or possess any reproduction or counterfeit Virginia revenue stamps. Any person possessing merchandise with stamps which are reused, restored, reproduced or counterfeit may be guilty of violating the provisions of the cigarette tax statutes. It is unlawful for anyone other than the Department of Taxation to sell any Virginia revenue stamps which are not affixed to the taxable cigarettes.~~

~~B. Penalty. Any person performing any of the unlawful acts as set out above shall be, upon conviction, guilty of a Class 5 felony.~~

## ~~23 VAC 10-370-170. Administration and enforcement of tax. (Repealed.)~~

~~A. Generally. The Department of Taxation shall administer and enforce the Virginia cigarette tax.~~

~~B. Examination of records. The Department shall have the power to enter the premises of any person to examine the books, records, invoices, etc. which relate to the cigarette tax. In addition, the Department may secure other information~~

~~directly or indirectly concerning the enforcement of the cigarette tax provisions.~~

## ~~23 VAC 10-370-190. Tax imposed on storage, use or consumption of cigarettes; exemption of products on which sales tax has been paid. (Repealed.)~~

~~A. Generally. An excise tax, equal to the cigarette excise tax as regulated in 23 VAC 10-370-20, is imposed upon the storage, use or consumption in Virginia of cigarettes purchased at retail in or outside of Virginia not bearing Virginia revenue stamps.~~

~~B. Tax liability. Every person who stores, uses or otherwise consumes cigarettes in this State is liable for the cigarette tax. Liability for such cigarette use tax is relieved if the cigarette excise tax has been paid. The tax applies to the storage, use or consumption of cigarettes purchased at retail.~~

## ~~23 VAC 10-370-200. Monthly returns and payment of tax. (Repealed.)~~

~~A. Generally. Every person owning, possessing or having custody of cigarettes subject to the cigarette use tax must file a monthly report with the Department of Taxation. Such report shall be filed by the tenth of the month and must report the number and types of cigarettes purchased during the preceding month and which were subject to the cigarette use tax. The report must also disclose the name and address of the purchaser of such cigarettes and the name and address of the seller. The Department may require additional information deemed necessary in administration of the cigarette use tax.~~

~~B. Payment of tax. The tax due reported on the return must be paid when the return is filed.~~

## ~~23 VAC 10-370-210. Assessment of tax by department. (Repealed.)~~

~~A. Generally. If any person stores, uses or otherwise consumes cigarettes subject to the cigarette use tax and fails to file a return or files an incorrect return, the Department shall assess the cigarette use tax due from the best information available. Notice of such assessment shall be mailed to the taxpayer.~~

~~B. Collection of assessment. The Department of Taxation shall collect such assessment by legal process if necessary.~~

## ~~23 VAC 10-370-220. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection. (Repealed.)~~

~~A. Generally. Every person, who stores, uses or otherwise consumes cigarettes subject to the cigarette use tax, must keep and preserve all invoices, books, cancelled checks or other memoranda dealing with the purchase, sale, exchange, receipt, ownership, storage, use or consumption of such cigarettes. The records must be maintained for three years.~~

~~B. Records subject to audit and inspection. All records pertaining to cigarettes subject to the cigarette use tax shall be subject to audit and inspection by the Department of Taxation.~~

~~C. Penalty for failure to maintain records or permit inspection. If any person fails or refuses to keep and preserve the required records, or fails or refuses to allow an audit or inspection of the records, such person shall be, upon conviction, guilty of a Class 2 misdemeanor.~~

**23 VAC 10-370-230. Correction of erroneous assessments. (Repealed.)**

~~Erroneous assessments for the cigarette excise tax or the cigarette use tax may be corrected and refunds ordered under the provisions in 23 VAC 10-370-210 et seq.~~

VA.R. Doc. No. R07-57; Filed November 29, 2006, 4:25 p.m.

**Fast-Track Regulation**

**Title of Regulation:** 23 VAC 10-380. Set-Off Debt Collection Act Regulations (Repealed).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Date:** N/A -- Public comments may be submitted until 5 p.m. on February 23, 2007.

(See Calendar of Events section for additional information)

**Effective Date:** March 10, 2007.

**Agency Contact:** Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**Basis:** Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

**Purpose:** As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

**Rationale for Using Fast-Track Process:** As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

**Substance:** This regulatory action will repeal the Set-Off Debt Collection Act Regulations.

**Issues:** This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Department of Taxation (department) proposes to repeal these regulations in their entirety.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes.

Estimated Economic Impact. The Setoff Debt Collection Act Regulations address the Setoff Debt Collection Act (§ 58.1-520 et seq. of the Code of Virginia). 23 VAC 10-380-10 (Purpose), as described by its title, describes the purpose of the Setoff Debt Collection Act (Act). In doing so it enlightens the reader concerning the meaning of set-off debt collection. The Act does not define set-off debt collection. Thus, 23 VAC 10-380-10 is illuminating. Nevertheless, similar information can be obtained from the department's "Set-Off Program Information Guide," which is available on the department's website.<sup>1</sup> Therefore, repealing 23 VAC 10-380-50 will most likely not have a significant impact.

23 VAC 10-380-20 (Definitions) provides definitions for terms within these regulations. Since the department proposes to repeal these regulations in their entirety, there would be no value in retaining definitions. Thus, repealing 23 VAC 10-380-20 will have no impact.

23 VAC 10-380-30 (Confirmation of participation), 23 VAC 10-380-60 (Transmission of debt file and priority of claims), and 23 VAC 10-380-120 (Final determination; set-off) repeat information included in Code § 58.1-521, § 58.1-530, and § 58.1-528, respectively, plus include text concerning what information other governmental agencies should provide to the department and when. The department states that it provides such text in instructions it sends to other agencies concerning the set-off debt collection process. To the extent that the department is consistent with such information, the proposal to repeal 23 VAC 10-380-30, 23 VAC 10-380-60, and 23 VAC 10-380-120 should not have a significant effect.

23 VAC 10-380-40 (Pertinent law sections) merely states that staff of participating agencies should be familiar with the Act and the State Compliance Assurance Manual. Repealing this language will have no significant impact.

23 VAC 10-380-50 (Administrative costs) is repetitive of Code § 58.1-531 and includes some language that adds no

<sup>1</sup> URL for the "Set-Off Program Information Guide:"  
[http://www.tax.virginia.gov/web\\_pdfs/SetoffProgramGuide.pdf](http://www.tax.virginia.gov/web_pdfs/SetoffProgramGuide.pdf)

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requirement that does not exist elsewhere. Thus, repealing Section 50 would have no significant impact.

23 VAC 10-380-70 (Error list), 23 VAC 10-380-80 (Refund match to claimant's), 23 VAC 10-380-90 (Requirements for claimants) and 23 VAC 10-380-140 (Summary of forms and printouts) all provide text concerning what information other governmental agencies should provide to the department and when. The department states that it provides such text in instructions it sends to other agencies concerning the set-off debt collection process. To the extent that the department is consistent with such information, the proposal to repeal 23 VAC 10-380-70, 23 VAC 10-380-80, 23 VAC 10-380-90, and 23 VAC 10-380-140 should not have a significant effect.

23 VAC 10-380-100 (Hearing procedures) repeats information in Code § 58.1-526, while 23 VAC 10-380-130 (Critical dates to remember) repeats information already stated in Code § 58.1-525 and § 58.1-528. Repealing these sections will not have a significant impact.

23 VAC 10-380-110 (Appeals from hearings) is for the most part identical to Code § 58.1-527. In one aspect 23 VAC 10-380-110 conflicts with the Code. The Code states that debtors may secure judicial review of a hearing result if they act within thirty days of the hearing decision becoming final. In contrast, 23 VAC 10-380-110 states that the debtors only have ten days within which to act. When there is a conflict between the Code of Virginia and regulations, the Code of Virginia applies. Thus, eliminating this regulation section will not change the amount of time within which debtors can act to secure judicial review of hearing decisions. The repeal will be beneficial nonetheless since the current contradictory information is misleading.

23 VAC 10-380-150 (Department of Taxation procedures) lists the department's internal procedures concerning set-off debt collection process. Repealing this text will not likely have a significant impact.

**Businesses and Entities Affected.** The proposed repeal of these regulations will not significantly affect businesses and entities.

**Localities Particularly Affected.** No localities are particularly affected.

**Projected Impact on Employment.** The proposed repeal of these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** The proposed repeal of these regulations will not significantly affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed repeal of these regulations will not significantly affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed repeal of these regulations will not significantly affect small businesses.

**Legal Mandate.** 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. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*As the result of a comprehensive review of all of its regulations, the Department of Taxation has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. Repeal of these regulations does not reflect a change in existing departmental policy.*

VA.R. Doc. No. R07-67; Filed November 29, 2006, 4:07 p.m.



## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### COMMONWEALTH TRANSPORTATION BOARD

#### Final Regulation

**REGISTRAR'S NOTICE:** The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

**Title of Regulation:** 24 VAC 30-280. Revenue Sharing Guide (amending 24 VAC 30-280-20 through 24 VAC 30-280-70; adding 24 VAC 30-280-25 and 24 VAC 30-280-65; repealing 24 VAC 30-280-10).

**Statutory Authority:** §§ 33.1-12 and 33.1-72.1 of the Code of Virginia.

**Effective Date:** December 1, 2006.

**Agency Contact:** Penny K. Forrest, Program Administration Specialist III, Local Assistance Division, Department of Transportation, 1401 East Broad Street, 4th Floor Annex, Richmond, VA 23219, telephone (804) 786-9810, FAX (804) 786-2603 or email penny.forrest@vdot.virginia.gov.

**Summary:**

*The regulation establishes the policies and procedures VDOT will follow in providing funding under the Revenue Sharing Program, as established by the Code of Virginia and administered by the Commonwealth Transportation Board (CTB). Chapter 827 of the 2006 Acts of Assembly made substantial revisions to the scope funding levels and other provisions establishing the Revenue Sharing Program. These revisions include (i) expansion of the present program for counties to include cities and towns; (ii) an increase in the annual match limit to \$1 million per locality, and the total limit on state funds to \$50 million; (iii) allowing up to half of local contributions to take the form of proffers; and (iv) relocating the provisions for the program to Chapter 1 of Title 33.1 dealing with the overall allocation of highway improvement funds.*

*In addition to revisions related to statutory changes, VDOT also removed procedural and example information from the existing regulation and compiled it into a Guide for Local Administration of VDOT Projects to facilitate clarity of understanding for affected entities by providing a comprehensive guidance resource for all locally administered projects.*

### CHAPTER 280. GUIDE TO THE REVENUE SHARING PROGRAM.

#### 24 VAC 30-280-10. Purpose. (Repealed.)

~~A. The "Revenue Sharing Program" provides additional funding for the maintenance or improvement of the primary and secondary highway systems and eligible additions in the counties of the Commonwealth, including the former Nansemond County portion of the City of Suffolk.~~

~~B. The program is administered by the Department of Transportation, in cooperation with the participating localities, under the authority of § 33.1-75.1 of the Code of Virginia. An annual allocation of funds for this program is designated by the Commonwealth Transportation Board, with statutory limitations on the amount authorized per locality.~~

~~C. Application for program funding must be made by resolution of the governing body of the jurisdiction in which the road is located. Project funding is allocated by resolution of the Commonwealth Transportation Board. Construction may be accomplished by the Department of Transportation or, where appropriate, by the locality under an agreement with the department.~~

#### 24 VAC 30-280-20. Definitions.

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

~~"Budget item number" means a multi digit code that identifies work to be completed; it is used for minor activities that are usually done in one year. (See term "incidental improvements"). The usual format for a budget item number is rrrr-ccc-RS,yy, where rrrr is the four digit route code, ccc is the three digit locality code, and yy represents the last two digits of the fiscal year in which an allocation to the improvement is made.~~

~~"Construction improvements" means operations which usually require more than one fiscal year to complete, and which change or add to the characteristics of a road, facility, or structure.~~

~~"County Primary and Secondary Road Fund" means the designation given to the fund used to finance the specially funded program developed by the county government and the Department of Transportation subject to approval by the Commonwealth Transportation Board. This is more commonly referred to as the Revenue Sharing Program.~~

~~"Incidental improvements" means any operation, usually constructed within one year, which changes the type, width, length, location, or gradient of a road, facility, or structure; or the addition of features not originally provided for such road, facility, or structure.~~

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"Construction projects" means projects that usually require more than one fiscal year to complete and that change or add to the characteristics of a road, facility, or structure.

"Eligible project" means work including construction, improvement, maintenance, and eligible street additions costs to which revenue sharing funds are available.

"Maintenance" means activities involved in preserving or restoring the roadway, facility, or structure to its original condition, as nearly as possible.

"Matching funds" means funds provided by the Commonwealth ~~which that~~ are allocated to eligible items of work in participating ~~counties and the City of Suffolk~~ localities to supplement, on a dollar-for-dollar basis, the locality's contribution for eligible projects.

~~"New hardsurfacing (paving)" means the first time paving of a previously unpaved roadway; usually composed of a multiple course asphalt surface treatment. In order for a road to be eligible for paving, it must meet the minimum traffic volume criteria of 50 vehicles per day (VPD).~~

~~"New roadway" means the establishment of a new facility to be a part of the primary or secondary system of state highways. In order for a new roadway to be eligible for Revenue Sharing funding, it must be a part of a locally adopted plan such as the County Comprehensive Plan or must be expected to divert sufficient traffic from existing public roads so that those roads will not need to be improved in the foreseeable future.~~

~~"Plant mix" means an asphalt based compound used in highway construction and maintenance. For a road to be eligible for plant mix, it should:~~

- ~~1. Have an Average Daily Traffic (ADT) of 500 or greater;~~
- ~~2. Be a major secondary and serve as a major transportation facility in the locality; and~~
- ~~3. Be classified as "tolerable" in accordance with established standards for such determination.~~

~~"Project (eligible)" means work including construction, improvement, maintenance, and additions costs.~~

"Project number" means a multi-digit alphanumeric code which identifies work to be completed; it is used in conjunction with construction. The usual format for a project number is rrrr-ccc-sss, Jnnn, where rrrr is the four-digit route code, ccc is the three-digit locality code, sss is a three-digit section code, J is a phase identifier, and nnn is the job number.

"Revenue Sharing Program Fund" means the designation given to the fund used to finance the specially funded program developed by the local government and the Department of Transportation subject to approval by the Commonwealth Transportation Board.

"Rural addition" means any street eligible for addition into the secondary system of state highways under § 33.1-72.1 of the Code of Virginia.

"Six-Year Plan" means either the Six-Year Improvement Program for Interstate, Primary, and Urban Systems developed by VDOT and the Commonwealth Transportation Board, or the Secondary Six-Year Plan, the official listing of improvements to be constructed on the secondary system, which is developed jointly by the Virginia Department of Transportation (VDOT) and the county governments (§ 33.1-70.01 of the Code of Virginia), ~~or the Six Year Program, formerly known as the Six Year Improvement Program for Interstate, Primary, Urban, and Secondary Highway Systems, developed by VDOT and the Commonwealth Transportation Board.~~

"System of state highways" means the primary or secondary roads under the ownership, control or jurisdiction of VDOT. "VDOT manager" means the department employee responsible for the administration of the revenue sharing program for that locality. For counties, the VDOT manager is usually the local residency administrator unless otherwise indicated. For cities and towns maintaining their own streets, the VDOT manager is the urban program manager for that locality.

## **24 VAC 30-280-25. Purpose.**

A. The Revenue Sharing Program provides additional funding for use by a county, city, or town to construct, maintain, or improve the highway systems within such county, city, or town and eligible additions in certain counties of the Commonwealth. Locality funds are matched with state funds, with statutory limitations on the amount of state funds authorized per locality.

B. The program is administered by the Department of Transportation, in cooperation with the participating localities under the authority of § 33.1-23.05 of the Code of Virginia. An annual allocation of funds for this program is designated by the Commonwealth Transportation Board.

C. Application for program funding must be made by resolution of the governing body of the jurisdiction in which the road is located. If a locality is requesting funds for a road outside its jurisdiction, concurrence from the affected jurisdiction must be provided. Towns not maintaining their own streets are not eligible to receive Revenue Sharing Program funds directly; their requests must be included in the application of the county in which they are located. Project funding is allocated by resolution of the Commonwealth Transportation Board. Construction may be accomplished by the Department of Transportation or by the locality under an agreement with the department.



**24 VAC 30-280-30. Eligible work.**

A. The Revenue Sharing Program may be used to finance eligible work on a ~~county's primary or secondary system~~ highway systems within a locality. The Revenue Sharing Program is intended to provide funding for relatively small, immediately needed new improvements or to supplement funding for existing projects and their funding needs for the fiscal year. Larger new projects may also be considered provided the locality identifies any additional funding needed to implement the project. Revenue Sharing Program funds are generally expected to be used to finance project costs in the same fiscal year and projects should be in active development that is leading to their completion within the near term.

B. Below is a list of types of work that could be considered eligible for revenue sharing financing, and examples of each.

1. Deficits on ~~completed construction or improvements~~ completed VDOT-administered construction or improvement projects. When the ~~appropriate resident engineer or local preliminary engineering manager~~ appropriate resident engineer or local preliminary engineering manager has a completed project is completed with a deficit, the county locality may request that the deficit be financed by the Revenue Sharing Program ~~provided the county is willing to contribute one half of the deficit as its portion.~~

Example:

Actual Cost	=	\$120,000
Available project funding	=	\$100,000
		<hr style="width: 100%;"/>
Actual Deficit	=	\$ 20,000
County participation	=	\$ 10,000
State match	=	\$ 10,000
		<hr style="width: 100%;"/>
Revenue Sharing Funding	=	\$ 20,000

2. Supplemental funding for ~~ongoing construction or improvements~~ projects listed in the adopted Six-Year Plan and Ongoing Construction or Improvement Projects.

a. When the appropriate ~~resident engineer or local preliminary engineering~~ resident engineer or local preliminary engineering VDOT manager or locality anticipates the cost to complete a project will exceed the financing currently committed to this work, the county locality may request that the anticipated deficit be financed by the Revenue Sharing Program ~~provided the county is willing to contribute one half of the anticipated deficit as its portion.~~

Example:

Available project funding	=	\$100,000
Estimated cost	=	\$150,000
		<hr style="width: 100%;"/>
Estimated Deficit	=	\$ 50,000
County participation	=	25,000
State match	=	\$ 25,000
		<hr style="width: 100%;"/>
Revenue Sharing Funding	=	\$ 50,000

~~3. Supplemental funding for future construction or improvements listed in the adopted Six Year Plan.~~ b. When the appropriate ~~resident engineer or local preliminary engineering~~ resident engineer or local preliminary engineering VDOT manager anticipates allocations (in addition to those proposed in the adopted Six-Year Plan) will be required to completely finance a project, the county locality may request permission to provide one half of such additional financing with the remaining one half provided by state matching funds. This includes, but is not limited to, such things as signalization, additional preliminary engineering, or acquisition of additional right-of-way. This procedure may be utilized to accelerate the funding of a project and thereby ~~permit~~ permits its completion earlier than otherwise would have been possible.

~~4. 3. Construction or improvements projects not included in the adopted Six-Year Plan.~~ When the appropriate ~~resident engineer or local preliminary engineering~~ resident engineer or local preliminary engineering VDOT manager ~~believes concurs~~ believes concurs that the proposed work may be eligible for program funding, the county locality may request one half the funds to construct a project not currently in the Six-Year Plan. However, in such cases, the county locality funds, together with the state matching funds, should finance the entire estimated cost of the project within the fiscal year involved. ~~The Revenue Sharing Program was initially intended to provide funding for relatively small, immediately needed improvements. Over time, use of the funding from the program has grown to include larger improvements that require funding over several years. When the department is administering a project, no improvement receiving funding over several years and not included in the Six Year Plan should be advertised until the final expected year of funding because of the discretionary nature of county participation in the program. A PE only project can be established provided it is fully funded.~~

4. Improvements (incidental). Any operation, usually constructed within one year, that changes the type, width, length, location, or gradient of a road, facility, or structure; or the addition of features not originally provided for such road, facility, or structure may be funded by the program. Incidental improvements are not generally included in the Six-Year Plan. This includes, but is not limited to

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sidewalks, trails, curb and gutter installation, plant mix placement on an existing hard surfaced road, or traffic signal installation.

5. Improvements necessary for the acceptance of specific subdivision streets otherwise eligible for acceptance into the system for maintenance. The improvements (widening, surface treating, etc.) necessary for the acceptance of certain subdivision streets otherwise eligible under § 33.1-72.1 of the Code of Virginia, known as rural additions, for acceptance into the secondary system of state highways may be funded by the Revenue Sharing Program. Roads in cities and towns are not eligible as additions to the urban system under § 33.1-72.1 of the Code of Virginia.

6. Unprogrammed maintenance whose accomplishment is consistent with the department's operating policies. Examples of this type of work include normal maintenance replacement activities such as guardrail replacement, plant mix overlays, sidewalks and curb and gutter repair.

7. New hardsurfacing (paving). The first-time paving of a previously unpaved roadway; usually composed of a multiple course asphalt surface treatment may be funded by the Revenue Sharing Program. Only roads in the state secondary system are eligible to use Revenue Sharing Program funds for new hardsurfacing. Urban system roads in cities and towns are not eligible.

8. New roadway. Revenue Sharing Program funds may be used to establish a new facility to be part of the system of state highways or part of the road system in the locality for which VDOT provides maintenance payments. In order for a new roadway to be eligible for Revenue Sharing Program funding, it must be a part of a locally adopted plan such as the locality's comprehensive plan and must be expected to divert sufficient traffic from existing public roads so that those roads will not need to be improved in the foreseeable future. Projects may also need to be included in the regional constrained long-range plan in air quality nonattainment areas.

## 24 VAC 30-280-40. Application process.

~~Application for revenue sharing funding may be made only by the governing body of the county or the City of Suffolk in which the road is located. The following process describes the steps which occur in determining the funding available for each participating locality to finance eligible projects.~~

- ~~1. VDOT's director of local assistance sends a letter inviting all county governments to participate in the Revenue Sharing Program for the coming fiscal year.~~
- ~~2. The county government determines its intent to participate in the program, and the amount of county funds to be provided. The county government and appropriate resident engineer or local preliminary engineering manager jointly prepare a prioritized plan to recommend assignment~~

~~of requested funds to eligible projects. This prioritized plan should:~~

- ~~a. List what is to be included for each project (example: length of road, width of road, estimated cost, etc.);~~
- ~~b. Identify who will administer each phase of each project (see § 33.1-75.1 B of the Code of Virginia, regarding when a project may be administered by a county).~~

~~While there is no limit on the amount of funds the county may contribute, the amount of funds eligible for state matching funds may not exceed the statutory limitation.~~

~~3. The appropriate resident engineer or local preliminary engineering manager submits the detailed prioritized plan developed in Step 2 of the process with recommendations to the Local Assistance Division, with a copy to the appropriate District Administrator. This prioritized plan must be received by the date specified in the invitation letter.~~

~~4. VDOT's Local Assistance Division reviews the submitted prioritized plans and notifies the appropriate resident engineer or local preliminary engineering manager of the amount of state matching funds available for use in their counties, subject to the approval of the Commonwealth Transportation Board. If the total requests exceed the amount available according to statute, each participating county will receive state matching funds on a pro rata basis, and the prioritized plan will be adjusted accordingly.~~

Requests for Revenue Sharing Program funding within a locality must be made by resolution of the governing body of the locality in which the road is located. The application package must include the resolution, the detailed designation of funds form and the summary designation of funds form. Localities requesting funds for a road in another locality must provide a letter of concurrence from the locality where the road is located. Towns not maintaining their own streets may not directly apply for Revenue Sharing Program funds but may include their requests as part of the package submitted by the county in which they are located. See Guidance Document (Revenue Sharing Guide) for additional information and forms.

## 24 VAC 30-280-50. Approval process.

~~The following process describes the steps that occur in securing approval of the Statewide Revenue Sharing Program from the Commonwealth Transportation Board.~~

- ~~1. VDOT's Local Assistance Division reviews the individual plans, and if found to be acceptable, develops the statewide plan and recommends it be submitted to the Commonwealth Transportation Board for approval. The~~

~~Local Assistance Division will review with other divisions as necessary and appropriate.~~

~~2. The Commonwealth Transportation Board approves the statewide program, including allocations to specific projects in each county's plan. Upon approval of the plan, it constitutes the "county primary and secondary road fund." Any modification of the approved program must be agreed upon by the county government and VDOT and approved by the Commonwealth Transportation Board.~~

A. Upon receipt of the requests, VDOT's Local Assistance Division reviews the application from each locality for eligibility. Once the localities' requests are found to be acceptable, the Local Assistance Division will prioritize the requests as delineated in § 33.1-23.05 B of the Code of Virginia. Priorities for funding are divided into four tiers. The following rules apply to administration and funding of projects under each tier:

1. Tier one will be fully funded before any funds are available for tier two, tier two will be fully funded before funding is available for tier three, etc. If funds are depleted in the first tiers, no further funds will be available.

2. Tier one provides funding when the governing body commits more than \$1 million in general funds for a \$1 million match for revenue sharing projects. The total amount of the locality's requests is the basis for considering tier one funding. If locality requests in tier one exceed available revenue sharing funds for the year, localities' requests will be prioritized based on the amount of local funds committed above the matching funds. In the case of a tie, funds for those localities will be prorated. For example, if four localities commit \$1.1 million but only \$3 million remains in the Revenue Sharing Program Fund, each of the four localities will receive \$750,000.

3. For tiers two through four, projects will be prioritized individually. For tiers two through four, if requests within a tier exceed available revenue sharing funds, all projects within that tier will be prorated based on the total requests for that tier and funds remaining.

4. Tier two provides funding when the project is administered by the city, county, or town. Local administration must include all remaining phases of the project. If the project is changed to VDOT administration, the project will be reevaluated for tier assignment and fund availability may be affected.

5. Tier three projects may receive funds when the allocation will accelerate an existing project in the Six-Year Improvement Program or the locality's capital plans. To qualify for tier three, unscheduled projects must move into the 24-month advertisement schedule. For projects in the locality's capital plan, the locality must provide documentation of an established advertisement date and show that Revenue Sharing Program funding will be able to

advance the advertisement date. A project will also qualify for tier three if the addition of Revenue Sharing Program funds will keep the project advertisement date on schedule.

6. From any funds remaining, any other requests that have a matching allocation from the governing body are considered tier four projects.

B. Based on the project priorities, the Local Assistance Division develops the statewide program for submission to the Commonwealth Transportation Board for approval. The Local Assistance Division will review with other divisions as necessary and appropriate.

The Commonwealth Transportation Board approves the Statewide Revenue Sharing Program, including allocations to specific projects in each locality's request. The Commonwealth Transportation Commissioner may approve transactions, such as locality/state agreements, for revenue sharing projects prior to Commonwealth Transportation Board approval; however, no state funds may be expended on such projects until approval by the board and no project work should be conducted, prior to approval by the board, for which reimbursement from the Revenue Sharing Program is expected.

## **24 VAC 30-280-60. Implementation process.**

~~A. VDOT administered work. The following process describes the steps which occur in the implementation of the Revenue Sharing Program, beginning with the approval by the Commonwealth Transportation Board and ending with the payment by the county and subsequent state match.~~

~~1. VDOT's Local Assistance Division authorizes the Fiscal Division to reserve the State Matching funds for the approved specific projects. These monies are placed in a special VDOT account for this purpose.~~

~~2. If applicable, the Local Assistance Division prepares county/state agreements that govern the performance of work administered by VDOT. The agreement must be executed prior to incurring any cost to be financed from the Revenue Sharing Program.~~

~~3. Either the Fiscal Division bills the county or the appropriate resident engineer or local preliminary engineering manager requests payment from the county for its share of the estimated cost of work to be performed; the money is collected prior to the beginning of work in accordance with current billing procedures.~~

~~4. After the project is completed, the Fiscal Division makes final billing to the county for its share of the actual costs incurred, in excess of those provided in Step 3. If the county's share of the actual cost is less than the estimated cost, the difference may, if desired by the county, be refunded to the county or reassigned to another Revenue Sharing project.~~

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# Regulations

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If a county government wishes to cancel a project begun under the Revenue Sharing Program during Preliminary Engineering (PE) or Right of Way (R/W) phases but prior to the Construction phase, it may do so by Board of Supervisors' resolution. The department retains the sole option to require reimbursement by the county of all state matching funds spent from the time the project was begun until it is canceled.

If construction does not begin before the end of the fiscal year involved, the county must pay the department its share, or certify that the money is held in a special fund account specifically earmarked for the project or projects. This must occur by June 30 of the fiscal year or it may result in loss of state matching funds.

Upon Commonwealth Transportation Board approval of the statewide program, development of the individual projects begins. The state matching funds for the approved projects are reserved and placed in a special account. Projects may be developed and constructed by VDOT or the locality.

## 1. VDOT administered work.

a. VDOT will request payment from the locality for its share of the estimated cost of work to be performed; the money is collected prior to the beginning of work. After the project is completed, VDOT will make final billing to the locality for its share of the actual costs incurred, in excess of those provided at the beginning of the project. If the locality's share of the actual cost is less than the estimated cost, the difference will be refunded to the locality or the locality may transfer the remaining funds to another existing project as noted in the section describing Transfer of Funds (24 VAC 30-280-65). See Guidance Document (Revenue Sharing Guide) for additional information.

b. If a local government wishes to cancel a project begun under the Revenue Sharing Program during the Preliminary Engineering (PE) or Right of Way (RW) phases but prior to the Construction (CN) phase, it may do so by resolution of the local governing body. The department retains the sole option to require reimbursement by the locality of all state matching funds spent from the time the project was begun until it is canceled.

c. If the project does not begin before the end of the fiscal year involved, the locality must pay its share to the department, or certify that the money is held in a special fund account specifically earmarked for the project or projects. This must occur by April 1 of the fiscal year or moneys will be returned to the Revenue Sharing Program Fund and made available for supplemental funding.

B. County administered work. The following process describes the steps which occur in the implementation of the Revenue Sharing Program, beginning with the approval by

the Commonwealth Transportation Board and ending with the payment by the county and subsequent state match.

1. VDOT's Local Assistance Division authorizes the Fiscal Division to reserve the state matching funds for the approved specific projects. These monies are placed in a special VDOT account for this purpose.

2. The Local Assistance Division prepares county/state agreements that govern the performance of work administered by the county. The agreement must be executed prior to incurring any cost to be financed from the Revenue Sharing Program.

3. After all work is completed the county makes a final billing to VDOT for its share of the actual costs incurred. If actual cost is less than that provided by the agreement, the difference may be reassigned to another Revenue Sharing project in the county, or, if the county desires, refunded to the VDOT Revenue Sharing account.

If a county government wishes to cancel a project begun under the Revenue Sharing Program before it is completed, it may do so by Board of Supervisors' resolution. The department retains the sole option to require reimbursement by the county of all state matching funds spent from the time the project was begun until it is canceled.

## 2. Locally administered work.

a. VDOT has published a Guide for Local Administration of VDOT Projects that provides general guidance for locally administered projects. This guide is available on the Local Assistance Division webpage on the VDOT website (<http://www.virginiadot.org/business/local-assistance-locally%20administered.asp>). The Local Assistance Division, working with the appropriate project coordinator will prepare locality/state agreements that govern the performance of work administered by the locality. The agreement must be executed by both the locality and VDOT prior to incurring any cost to be financed from the Revenue Sharing Program. Locality/state agreements must be executed or VDOT must receive a certification that the funds are in a special account by April 1; otherwise moneys will be returned to the Revenue Sharing Program Fund and made available for supplemental funding.

b. Once the project begins, the locality may submit monthly invoices to VDOT for eligible costs incurred. For tier one, when a locality has committed local funds in addition to the required matching funds for their total application, those additional local funds must be spent prior to any Revenue Sharing Program matching funds. After all work is completed, the locality makes a final billing to VDOT for its share of the actual eligible costs incurred. If the actual cost is less than that provided by the agreement, the remaining VDOT difference may be transferred to another existing project as noted in the

section describing Transfer of Funds (24 VAC 30-280-65), or, if the locality desires, refunded to the VDOT Revenue Sharing Program Fund.

c. If a local government wishes to cancel a locally administered project begun under the Revenue Sharing Program before it is completed, it may do so by resolution of the local governing body. The department retains the sole option to require reimbursement by the locality of all state matching funds spent from the time the project was begun until it is canceled.

**24 VAC 30-280-65. Transfer of funds.**

To implement a transfer of funds to an existing project, the county administrator or city/town manager may request funds be moved from one revenue sharing project to another existing revenue sharing project in order to provide additional funds. Revenue Sharing Program funds may also be transferred to an existing project in the Six-Year Improvement Program or Secondary Six-Year Plan if needed to meet the approved federal obligation schedule or to ensure a scheduled ad date can be met if approved by the Commonwealth Transportation Board. Included in the request must be the detailed reasons for the request and status of both projects.

**24 VAC 30-280-70. Additional allocations.**

~~One month prior to the end of any fiscal year in which less than the total provided appropriation has been allocated from state funds under § 33.1-75.1 D of the Code of Virginia, those counties requesting \$500,000 may be allowed an additional allocation. The difference between the amount allocated and the amount appropriated shall be allocated at the discretion of the Commonwealth Transportation Board among the counties receiving the maximum allocation.~~

No more than three months prior to the end of any fiscal year in which less than the total provided appropriation has been allocated, those localities committing more than \$1 million may be allowed an additional allocation. The funds available for redistribution shall be allocated at the discretion of the Commonwealth Transportation Board among the localities receiving the maximum allocation.

<p>NOTICE: The forms used in administering 24 VAC 30-280, Revenue Sharing Guide, are listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>
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**FORMS**

Project Detail - Designation of Funds Form (Rev. 4/06).

Summary - Designation of Funds Form (Rev. 4/06).

DETAILED PROJECT INFO

Rev. 4/10/2006

Page of

PROJECT DETAIL – Designation of Funds Form  
FY06/07 Revenue Sharing Program

Insert Locality Name Select One

District Select One Residency Insert Residency Name

PROJECT INFORMATION

Rev Sh Priority #: Locality's priority # to receive revenue sharing funding Route # & Road Name: Please give both

State Project Number: If already assigned UPC #: If already assigned

Description of Work/Scope:

Does this project enhance accommodations for pedestrians and bicyclists? Select One

From:

To:

Length: (miles) Planned Construction Ad/Start Date:

Is this project in another locality? Select One

If yes, please identify locality and reason for request?

PROJECT ESTIMATES

\* Estimated Eligible VDOT Project Expenses: \*\* Estimated Eligible LOCALITY Project Expenses: \*\*\* TOTAL Estimated Project Expenses:

PE	PE	PE
RW	RW	RW
CN	CN	CN
Total	Total	Total

\* Estimated Eligible VDOT Project Expenses – Even if project is administered by locality, VDOT will have costs on every project for SERP, inspection, plan review and other type services. Please coordinate with our Residency Administrator or Urban Program Manager to determine these costs. These costs should be included in the Total Estimated Project Costs.

\*\* Estimated Eligible LOCALITY Project Expenses – Please include estimate for work even if locality does not want reimbursement for the particular phase.

\*\*\* Total Estimated Project Costs – These estimates should include all work even if locality is not requesting reimbursement for phase. Should also include all VDOT costs.

LOCALLY ADMINISTERED – Please complete if project will be locally administered

Locally Administered?	Requesting to be reimbursed?
PE Select One	PE Select One
RW Select One	RW Select One
CN Select One	CN Select One

PROJECT FINANCIAL INFORMATION

Revenue Sharing Funds Requested (State) for FY 07

Matching Revenue Sharing Funds Provided (Locality) FY 07

Unmatched Funds from Locality for FY07

Other State / Federal Funds (list amount and type of funds – CMAQ,

Urban, Secondary, etc.)

Has this project received Revenue Sharing Funds before? Select One

PROGRAM EVALUATION CRITERIA (Tiers)

First Priority – is locality giving more than \$1. million for a \$1 million request? Select One

Second Priority – is this project locally administered? Select One Only yes if all phases will be locally administered

Third Priority – is this an existing project with an established advertisement date that will be advanced?

Select One

Current ad date New ad date

Fourth Priority – this project does not meet any of the above priorities? Select One

COMMENTS

Submitted by:  
Please sign here & date  
Locality Official / Date

Reviewed by:  
Please sign here & date  
Residency Admin / Urban Program Manager / Date

**DESIGNATION OF FUNDS**

Rev. 4/10/2006

**SUMMARY – Designation of Funds Form**

**FY06/07**    Insert Locality Name    Select One

**District**    Select One    **Residency**    Insert Residency Name

<b>Rev Sh Priority #</b>	<b>Route # / Road Name</b>	<b>Requested State Rev Sh Match (\$)</b>	<b>Locality Rev Sh Match (\$)</b>	<b>Locality Unmatched Funds (\$)</b>	<b>TOTAL FUNDS (\$)</b>
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**TOTAL OF ALL FUNDS**

VA.R. Doc. No. R07-77; Filed December 1, 2006, 1:11 p.m.

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# GENERAL NOTICES/ERRATA

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## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

### Updating the Codes to the Newest Editions of the Model Codes and Standards

The Board of Housing and Community Development will hold a public hearing on the Uniform Statewide Building Code, Statewide Fire Prevention Code, Amusement Device Regulation, Industrialized Building Safety Code, Manufactured Home Safety Regulations, and the Virginia Certification Standards.

The purpose of this public hearing is to consider updating the codes to the newest editions of the model codes and standards. Specific code change proposals will be considered later, following the publication of a proposed regulation.

The public hearing will be held at the Richmond Convention Center Lecture Hall in Richmond, Virginia beginning at 10 a.m. on January 22, 2007. For more information, contact Steve Calhoun at (804) 371-7015 or email [steve.calhoun@dhcd.virginia.gov](mailto:steve.calhoun@dhcd.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order - Bath County Service Authority (Hot Springs Regional Sewage Treatment Plant)

Purpose of notice: To invite citizens to comment on a proposed consent order for a facility in Bath County, Virginia.

Public comment period: December 22, 2006, through January 26, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to the Bath County Service Authority, re: the Hot Springs Regional Sewage Treatment Plant, to address alleged violations of regulations. The location of the facility where the alleged violations occurred is in Bath County, Virginia. The consent order describes a civil charge settlement to resolve these violations.

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](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Ricard J. Dunay, Valley Regional Office, Department of Environmental Quality, Post Office Box 3000, Harrisonburg, VA 22801-9519, telephone (540) 574-7833, FAX (540) 574-7878, or email [rjdunay@deq.virginia.gov](mailto:rjdunay@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

## ERRATA

### MARINE RESOURCES COMMISSION

**Title of Regulation:** 4 VAC 20-910. Pertaining to Scup (Porgy).

**Publication:** 23:6 VA.R. 865-866 November 27, 2006.

### Correction to Final Regulation:

Page 865, 4 VAC 20-910-45 C, line 3, after "more" insert "than"

VA.R. Doc. No. R07-30



STATE BOARD OF HEALTH

Title of Regulation: 12 VAC 5-31. Virginia Emergency Medical Services Regulations.

Publication: 23:6 VA.R. 870-888 November 27, 2006.

Corrections to Final Regulation:

Page 870, in Title of Regulation, line 5, change "12 VAC 5-31-200" to "12 VAC 5-31-2000"

Page 882, insert the following repealed section:

**12 VAC 5-31-2060. ~~Wheelchair interfacility transport vehicle specifications. (Repealed.)~~**

~~A. Capabilities. The wheelchair interfacility transport vehicles is intended for the transportation of a person in a wheelchair who requires transportation for nonemergency purposes between medical care facilities.~~

- ~~1. A passenger who requires emergency medical services, transport on a stretcher or transport in a supine position must not be transported in a wheelchair interfacility transport vehicle.~~
- ~~2. A wheelchair interfacility transport vehicle must not be used for emergency transportation.~~

~~B. Dimensions and construction. All wheelchair interfacility transport vehicles must be constructed to provide sufficient space for safe storage of all required equipment and supplies. All wheelchair interfacility transport vehicles must have a state motor vehicle safety inspection performed following completion of conversion and before the application for a wheelchair interfacility transport permit.~~

- ~~1. A wheelchair interfacility transport vehicle must comply with the following:
 
  - ~~a. Adequate height for safe passenger loading and transport in an upright position for the size and style of wheelchair in use.~~
  - ~~b. A minimum width of 48 inches as measured from a distance 15 inches above floor level where the wheelchair is to be secured.~~
  - ~~c. A minimum length of 60 inches as measured from the rear of the driver's seat to the rear door.~~
  - ~~d. Interior surfaces must be designed for passenger safety. Protruding sharp edges and corners shall be padded.~~
  - ~~e. All interior surfaces must be of a material easily cleaned and nonstainable. All aisles, steps, floor areas where people walk and floors in securement locations must have slip resistant surfaces.~~
  - ~~f. The door openings must include a passenger door for the loading or unloading of an occupied wheelchair on the right side or rear of the vehicle. This door opening~~~~

~~must be a minimum of 56 inches measured from the top of the door opening and the raised lift platform or the highest point of a ramp to permit the loading and unloading of a person occupying any size or style of wheelchair.~~

~~g. A loading device, consisting of a mechanized lift or a ramp, must be provided to load and unload an occupied wheelchair. If a mechanized lift is used, the lift must be equipped with a barrier, 1.5 inches tall, to prevent any of the wheels of the wheelchair from rolling off the lift's platform during operation. The barrier must be in place and secure the passenger at all times that the platform is more than three inches above the ground. If a ramp is used, it must have raised edges and be securely fastened to the vehicle while in use.~~

~~h. Safety and security restraints adequate to stabilize and secure any size or style of wheelchair transported must be provided. Safety and security devices must conform to the standards established by 49 CFR § 571.222, S5.4.1 to S5.4.4 (Rev. October 1, 1999), as amended.~~

~~i. Safety belts must be provided for all passengers including those transported in wheelchairs.~~

~~j. A climate environmental system must supply and maintain clean air conditions and a controlled temperature inside the passenger compartment.~~

~~2. Warning lights and devices. Wheelchair interfacility transport vehicles are prohibited from having any emergency warning lights or audible devices not approved by the Superintendent of Virginia State Police for a general passenger vehicle.~~

~~C. Vehicle markings general requirements.~~

~~Lettering. On a wheelchair interfacility transport vehicle the following must appear in permanently affixed lettering that is a minimum of three inches in height and of a color that contrasts with its surrounding background:~~

~~1. The name of the wheelchair interfacility transport service that the vehicle is permitted to must appear on both sides of the vehicle body.~~

~~a. This lettering may appear as part of an organization's logo or emblem as long as the service name appears in letters of the required height.~~

~~b. If the wheelchair interfacility transport service is also licensed by the Office of EMS as an EMS agency, the terms "Ambulance" or "Emergency Medical Service" or any combination of similar terms may appear on the vehicle only as a part of the service's name.~~

~~2. Any additional lettering, logos or emblems may appear on the vehicle at the discretion of the wheelchair interfacility transport service. The height of any additional~~

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## General Notices/Errata

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~~lettering must be less than the lettering used for the service's name.~~

~~a. All additional lettering, logos or emblems may not advertise or imply the capability to provide emergency medical services (EMS).~~

~~b. The Star of Life emblem may not appear on any wheelchair interfacility transport vehicle.~~

VA.R. Doc. No. R07-29

### STATE BOARD OF SOCIAL SERVICES

Title of Regulation: **22 VAC 40-72. Standards for Licensed Assisted Living Facilities.**

Publication: 23:6 VA.R. 892-952 November 27, 2006.

Corrections to Final Regulation:

Page 913, in 22 VAC 40-72-320 B, strike "The direct care staffing plan shall:"

Page 926, in 22 VAC 40-72-470 E, line 1, after "physician's" insert "[ or other prescriber's ]"

VA.R. Doc. No. R05-134; Filed December 4, 2006, 11:32 a.m.

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# CALENDAR OF EVENTS

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## Symbol Key

- † Indicates entries since last publication of the *Virginia Register*  
♿ Location accessible to persons with disabilities  
☎ Teletype (TTY)/Voice Designation

### NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the *Virginia Register* deadline may preclude a notice of such cancellation. If you are unable to find a meeting notice for an organization in which you are interested, please check the Commonwealth Calendar at [www.virginia.gov](http://www.virginia.gov) 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 website's Legislative Information System (<http://leg1.state.va.us/lis.htm>) and select "Meetings."

VIRGINIA CODE COMMISSION

## EXECUTIVE

### BOARD OF ACCOUNTANCY

† **January 5, 2007 - 9 a.m.** -- Open Meeting  
Board of Accountancy, 3600 West Broad Street, Suite 378,  
Richmond Virginia.♿

A meeting of the Enforcement Committee to review open complaint cases in closed session.

**Contact:** Jean Grant, Enforcement Manager, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230-4923, telephone (804) 367-0725, FAX (804) 367-2174, (804) 367-9753/TTY☎, email [jean.grant@boa.virginia.gov](mailto:jean.grant@boa.virginia.gov).

† **January 5, 2007 - 10 a.m.** -- Open Meeting  
† **January 26, 2007 - 9 a.m.** -- Open Meeting  
Board of Accountancy, 3600 West Broad Street, Suite 378,  
Richmond Virginia.♿

An informal fact-finding conference to gather facts during a public hearing regarding disciplinary cases.

**Contact:** Jean Grant, Enforcement Manager, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230-4923, telephone (804) 367-0725, FAX (804) 367-2174, (804) 367-9753/TTY☎, email [jean.grant@boa.virginia.gov](mailto:jean.grant@boa.virginia.gov).

† **January 8, 2007 - 10 a.m.** -- Open Meeting  
Board of Accountancy, 3600 West Broad Street, Room 395,  
Richmond Virginia.♿

A meeting to discuss general business matters and conduct regulatory review. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the

department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark D'Amato, Board Administrator, Board of Accountancy, 3600 W. Broad St., Suite 378, Richmond, VA 23230-4923, telephone (804) 367-0502, FAX (804) 367-2174, (804) 367-9753/TTY☎, email [mark.damato@boa.virginia.gov](mailto:mark.damato@boa.virginia.gov).

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Virginia Horse Industry Board

**February 2, 2007 - 10 a.m.** -- Open Meeting  
Department of Forestry, 900 Natural Resources Drive, 2nd Floor, Meeting Room, Charlottesville, Virginia.♿

A meeting to (i) discuss marketing and promotional projects for the coming year; (ii) review the financial status, as well as the status of the Equine Survey currently underway; and (iii) present and approve the minutes of the previous board meeting. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Andrea Heid at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Andrea Heid, Equine Marketing Specialist/Program Manager, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., Room 318, 3rd Floor, Richmond, VA 23219, telephone (804) 786-5842, FAX (804) 371-7786, email [andrea.heid@vdacs.virginia.gov](mailto:andrea.heid@vdacs.virginia.gov).

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# Calendar of Events

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## STATE AIR POLLUTION CONTROL BOARD

† **January 16, 2007 - 9:30 a.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4010 West Broad Street, Board Room, Richmond, Virginia. ♿

A regular meeting. An agenda will be posted at least seven days before the meeting.

**Contact:** Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, email [cmberndt@deq.virginia.gov](mailto:cmberndt@deq.virginia.gov).

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

**January 31, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, 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 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 email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

**February 6, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, 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 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 email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

**February 8, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, 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 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 email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

**February 13, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, 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 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 email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

**February 15, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, 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 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 email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).

† **March 15, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 5th Floor, 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 interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8514, FAX (804) 367-2475 or email [apelscidla@dpor.virginia.gov](mailto:apelscidla@dpor.virginia.gov).


## VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

**February 1, 2007 - 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. A portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, FAX (804) 367-2475, (804) 367-9753/TTY , email [alhi@dpor.virginia.gov](mailto:alhi@dpor.virginia.gov).

## AUCTIONEERS BOARD

**January 18, 2007 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A meeting to conduct board business. A portion of the board's business may be discussed in closed session. Public comment will be heard at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** Marian H. Brooks, Regulatory Board Administrator, Auctioneers Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, (804) 367-9753/TTY , email [auctioneers@dpor.virginia.gov](mailto:auctioneers@dpor.virginia.gov).

## BOARD FOR BARBERS AND COSMETOLOGY


**December 29, 2006** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board for Barbers and Cosmetology intends to adopt regulations entitled **18 VAC 41-70, Esthetics Regulations**. The purpose of the proposed action is to promulgate regulations governing the licensure and practice of esthetics as directed by Chapter 829 of the 2005 Acts of Assembly. In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the regulation on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation. Anyone wishing to submit written comments may do so by mail, email or fax to William H. Ferguson II, Executive Director, Board for Barbers and Cosmetology, 3600 West Broad St., Richmond, VA 23230, telephone (804) 367-8590, FAX (804) 367-6295, [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov). In order to be considered, comments must be received by the last date of the public comment period.


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, telephone (804) 367-8590, FAX (804) 367-2474, (804) 367-9753/TTY , email [barbercosmo@dpor.virginia.gov](mailto:barbercosmo@dpor.virginia.gov).

## BOARD FOR BRANCH PILOTS

**February 1, 2007 - 8:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia. 


A meeting to conduct examinations.

**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 , email [branchpilots@dpor.virginia.gov](mailto:branchpilots@dpor.virginia.gov).


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# Calendar of Events

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**February 2, 2007 - 9:30 a.m.** -- Open Meeting  
Virginia Port Authority, 600 World Trade Center, Norfolk, 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. 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 Branch Pilots, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, (804) 367-9753/TTY , email branchpilots@dpor.virginia.gov.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **February 13, 2007 - 10 a.m.** -- Open Meeting  
Division of Chesapeake Bay Local Assistance, 101 North 14th Street, 17th Floor, Richmond, Virginia.

A meeting of the Northern Area Review Committee to review local programs.


**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, email david.dowling@dcr.virginia.gov.

† **February 13, 2007 - 2 p.m.** -- Open Meeting  
Division of Chesapeake Bay Local Assistance, 101 North 14th Street, 17th Floor, Richmond, Virginia.

A meeting of the Southern Area Review Committee to review local programs.

**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, email david.dowling@dcr.virginia.gov.


## STATE BOARD FOR COMMUNITY COLLEGES

**January 17, 2007 - 1:30 p.m.** -- Open Meeting  
Virginia Community College System, James Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

Meetings of the Academic Committee, Student Affairs and Workforce Development Committee, Budget and Finance Committee, Facilities Committee, Audit Committee, and Personnel Committee.


**Contact:** D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 101 N. 14th St.,

Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 


**January 18, 2007 - 9 a.m.** -- Open Meeting  
Godwin-Hamel Board Room, James Monroe Building, 101 North 14th Street, 15th Floor, James Monroe Building, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

† **March 22, 2007 - 9 a.m.** -- Open Meeting  
Lord Fairfax Community College, Middletown Campus, 173 Skirmisher Lane, Middletown, Virginia.

A meeting of the full board. Public comment may be received upon written notification at least five working days prior to the meeting.

**Contact:** D. Susan Hayden, Director of Public Affairs, Virginia Community College System, 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 819-4961, FAX (804) 819-4768, (804) 371-8504/TTY 


## COMPENSATION BOARD

† **January 9, 2007 - 1 p.m.** -- Open Meeting  
102 Governor Street, Lower Level, Room LL22, Richmond, Virginia. 

A regular monthly meeting. A meeting with Constitutional Officer Association presidents will follow at 2 p.m. regarding upcoming legislation. No official board action will be taken at the 2 p.m. meeting.

**Contact:** Cindy Waddell, Compensation Board, P.O. Box 710, Richmond, VA 23218, telephone (804) 225-3308, FAX (804) 371-0235, email cindy.waddell@scb.virginia.gov.


## COMMONWEALTH COMPETITION COUNCIL

† **January 3, 2007 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 3rd Floor East Conference Room, Richmond, Virginia.  (Interpreter for the deaf provided upon request)

A 2007 strategy session.

**Contact:** Peggy Robertson, Staff, Commonwealth Competition Council, 1111 E. Broad St., Room 5040, Richmond 23219, telephone (804) 786-3812, FAX (804) 225-3291, email peggy.robertson@dpb.virginia.gov.

## BOARD FOR CONTRACTORS

† **January 9, 2007 - 9 a.m.** -- Open Meeting  
† **January 18, 2007 - 9 a.m.** -- Open Meeting  
† **January 25, 2007 - 9 a.m.** -- Open Meeting  
† **January 30, 2007 - 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:** 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 ☎, email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

† **January 23, 2007 - 9 a.m.** -- Open Meeting

† **February 27, 2007 - 9 a.m.** -- Open Meeting

Department of Professional and Occupational Regulations, 3600 West Broad Street, 4th Floor Richmond, Virginia. ♿

A meeting to address policy and procedural issues and review and render decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. 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:** 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 ☎, email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

† **February 27, 2007 - 1 p.m.** -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A quarterly meeting of the Board for Contractors Committee. The meeting starts after the Board for Contractors meeting ends.

**Contact:** Kevin Hoeft, Regulatory Boards Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-2474, (804) 367-9753/TTY ☎, email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

## BOARD OF CORRECTIONS

**January 16, 2007 - 10 a.m.** -- Open Meeting

† **March 20, 2007 - 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, email [barbara.woodhouse@vadoc.virginia.gov](mailto:barbara.woodhouse@vadoc.virginia.gov).

**January 16, 2007 - 11 a.m.** -- Open Meeting

† **March 20, 2007 - 11 a.m.** -- Open Meeting

Department of Corrections, 6900 Atmore Drive, 3rd Floor, Board Room, Richmond, Virginia. ♿

A meeting of the Correctional Services/Policy and Regulations Committee to discuss correctional services and policy/regulation matters to be considered by the board.

**Contact:** Barbara Woodhouse, Administrative Staff Assistant, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3124, FAX (804) 674-3236, email [barbara.woodhouse@vadoc.virginia.gov](mailto:barbara.woodhouse@vadoc.virginia.gov).

**January 17, 2007 - 9:30 a.m.** -- Open Meeting

† **March 21, 2007 - 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, email [barbara.woodhouse@vadoc.virginia.gov](mailto:barbara.woodhouse@vadoc.virginia.gov).

**January 17, 2007 - 10 a.m.** -- Open Meeting

† **March 21, 2007 - 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 presentation to and 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, email [barbara.woodhouse@vadoc.virginia.gov](mailto:barbara.woodhouse@vadoc.virginia.gov).

## BOARD OF COUNSELING

**December 29, 2006 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

Informal conferences held pursuant to § 2.2-4019 of the Code of Virginia.

**Contact:** Evelyn B. Brown, Executive Director, Board of Counseling, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9912, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

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# Calendar of Events

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## CRIMINAL JUSTICE SERVICES BOARD

**March 8, 2007 - 9 a.m.** -- Public Hearing  
General Assembly Building, 9th and Broad Street, House Room D, Richmond, Virginia. ♿

**January 12, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Criminal Justice Services Board intends to adopt regulations entitled **6 VAC 20-250, Regulations Relating to Property and Surety Bail Bondsmen**. The purpose of the proposed action is promulgate regulations for property and surety bail bondsmen. The regulation establishes a licensure process, training standards, fee schedule, and the administration of the regulatory system.

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

**Contact:** Leon D. Baker, Jr., Division Director, Department of Criminal Justice Services, Eighth Street Office Bldg., 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, or email lbaker@dcjs.virginia.gov.

**† March 8, 2007 - 11 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia.

A general business meeting.

**Contact:** Leon D. Baker, Jr., Division Director, Criminal Justice Services Board, 9th Street Office Bldg., 202 N. 9th St., 5th Floor, Richmond, VA 23219, telephone (804) 225-4086, FAX (804) 786-0588, email leon.baker@dcjs.virginia.gov.

## BOARD OF DENTISTRY

**January 5, 2007 - 9 a.m.** -- Open Meeting  
**February 23, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

Informal conferences of Special Conference Committee B.  
There will not be a public comment period.

**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 ♿, email sandra.reen@dhp.virginia.gov.

**January 19, 2007 - 9 a.m.** -- Open Meeting  
**† March 23, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

Informal conferences of Special Conference Committee C.  
There will not be a public comment period.

**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 ♿, email sandra.reen@dhp.virginia.gov.

**February 2, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Special Conference Committee A to hold informal conferences. There will not be a public comment period.

**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 ♿, email sandra.reen@dhp.virginia.gov.

**February 9, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting of the Credentials Committee to hold informal conferences. There will not be a public comment period.

**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 ♿, email sandra.reen@dhp.virginia.gov.

**March 8, 2007 - 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:** 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 ♿, email sandra.reen@dhp.virginia.gov.

**March 9, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A meeting to discuss board business. There will be a 15-minute public comment period at the beginning 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 ☎, email [sandra.reen@dhp.virginia.gov](mailto:sandra.reen@dhp.virginia.gov).

## BOARD OF EDUCATION

**January 10, 2007 - 9 a.m.** -- Open Meeting

**January 11, 2007 - 9 a.m.** -- Open Meeting

**January 12, 2007 - 9 a.m.** -- Open Meeting

Comfort Inn Conference Center, 3200 West Broad Street, Richmond, Virginia.

A meeting of the State Special Education Advisory Committee. For more information on times and agendas go to <http://www.doe.virginia.gov/VDOE/Instruction/Sped/sseac.html> or call the Department of Education Special Education and Student Services office at 804-225-3252 or (TTY) 800-422-1098.

**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, email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

**January 10, 2007 - 9 a.m.** -- Open Meeting

**February 28, 2007 - 9 a.m.** -- Open Meeting

James Monroe Building, 101 North 14th Street, 22nd Floor, Jefferson Conference Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular business meeting of the board. Public comment will be received. The agenda and the supporting materials will be posted on the Friday prior to the meeting on the following web site: [http://www.doe.virginia.gov/VDOE/VA\\_Board/bd-sched.html](http://www.doe.virginia.gov/VDOE/VA_Board/bd-sched.html)

**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, email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

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**January 10, 2007 - 11 a.m.** -- Public Hearing

James Monroe Building, 101 North 14th Street, 22nd Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

**February 12, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Education intends to amend regulations entitled **8 VAC 20-160, Regulations Governing Secondary School Transcripts**. The purpose

of the proposed action is to remove the 1988-89 effective date provision, revise the definitions as necessary to comport with those in other Board of Education regulations, and revise the format options for the transcript and profile data sheets to reflect both Board of Education regulations and state and federal law. The sections concerning class rankings, AP courses and the elements of weighting of advanced, accelerated, advanced placement, and honors level courses are also revised to comport with best instructional practices, as well as other state requirements.

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

**Contact:** Dr. Margaret N. Roberts, Office of Policy and Public Affairs, Department of Education, P.O. Box 2120, James Monroe Bldg., 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

**January 22, 2007 - 9 a.m.** -- Open Meeting

† **March 19, 2007 - 9 a.m.** -- Open Meeting

Location to be announced.

A meeting of the Advisory Board on Teacher Education and Licensure. For additional information, contact Patty Pitts, Director of Teacher Licensure at the Department of Education, (804) 371-2471, email [patty.pitts@doe.virginia.gov](mailto:patty.pitts@doe.virginia.gov).

**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, email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

† **March 20, 2007 - 9 a.m.** -- Open Meeting

Department of Environmental Quality, 629 East Main Street, Richmond, Virginia. ♿

A regular meeting of the Ground Water Protection Steering Committee.

**Contact:** Mary Ann Massie, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4042, email [mamassie@deq.virginia.gov](mailto:mamassie@deq.virginia.gov).

## BOARD FOR GEOLOGY

**January 3, 2007 - 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 conducted in closed session. Persons desiring to participate in the meeting and requiring

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# Calendar of Events

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special accommodations or interpretive services should contact the department at least 10 days prior to this meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** David E. Dick, Executive Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8507, (804) 367-9753/TTY 📞, email [geology@dpor.virginia.gov](mailto:geology@dpor.virginia.gov).

## GEORGE MASON UNIVERSITY

**January 31, 2007 - 9 a.m.** -- Open Meeting  
Fairfax Campus, Mason Hall, Fairfax, Virginia. 🗿

A meeting of the Board of Visitors. Agenda items will be posted 10 days prior to the meeting.

**Contact:** Mary Roper, Secretary Pro Tem, George Mason University, 4400 University Dr., Fairfax, VA 22030, telephone (703) 993-8703, toll-free (703) 993-8707, email [mroper@gmu.edu](mailto:mroper@gmu.edu).

## GOVERNOR'S HEALTH REFORM COMMISSION

**January 5, 2007 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, Board Room 1, Richmond, Virginia. 🗿

**March 2, 2007 - 10 a.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Room 7 B, Richmond, Virginia.

A Long-Term Care Workgroup meeting of the Governor's Health Reform Commission.

**Contact:** Heidi Dix, Assistant Secretary of Health and Human Resources, Office of Governor, 1111 E. Broad St, 4th Floor, Richmond, VA 23219, telephone (804) 786-7765, email [heidi.dix@governor.virginia.gov](mailto:heidi.dix@governor.virginia.gov).

† **February 26, 2007 - 1 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, 7th Floor, Conference Room 7B, Richmond, Virginia. 🗿 (Interpreter for the deaf provided upon request)

A meeting of the Quality, Transparency, and Prevention Workgroup to focus on quality, specifically pay for performance (P4P) initiatives in Medicaid and nursing homes. The goal of the meeting will be to develop ideas and solutions for how the Commonwealth can best implement P4P in Medicaid.

**Contact:** Aryana Khalid, Assistant Secretary of Health and Human Resources, Office of Governor, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 692-2575, email [aryana.khalid@governor.virginia.gov](mailto:aryana.khalid@governor.virginia.gov).

† **February 27, 2007 - 1 p.m.** -- Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, 7th Floor, Conference Room 7B, Richmond, Virginia. 🗿 (Interpreter for the deaf provided upon request)

A meeting of the Workforce Workgroup to focus on workforce issues for nurses and nurse aides. The goal of the meeting will be to develop ideas and solutions for how the Commonwealth can increase the workforce from both supply and demand perspectives as well as how to retain and reengage the existing workforce in the Commonwealth.

**Contact:** Aryana Khalid, Assistant Secretary of Health and Human Resources, Office of Governor, 1111 E. Broad St., Richmond, VA 23219, telephone (804) 692-2575, email [aryana.khalid@governor.virginia.gov](mailto:aryana.khalid@governor.virginia.gov).

## STATE BOARD OF HEALTH

**February 9, 2007** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Health intends to repeal regulations entitled **12 VAC 5-190, State Plan for the Provision of Children's Specialty Services**, and adopt regulations entitled **12 VAC 5-191, State Plan for the Children with Special Health Care Needs Program**. The purpose of the proposed action is to repeal the current regulation, 12 VAC 5-190, State Plan for the Provision of Children's Specialty Services, because this regulation does not adequately address the existing model for providing services, and promulgate 12 VAC 5-191, State Plan for the Children with Special Health Care Needs Program, to provide a State Plan for the administration, eligibility, and scope of services provided through the Department of Health for residents of the Commonwealth with special health care needs. The Children with Special Health Care Needs Program encompasses various initiatives to serve individuals with special health care needs including the Care Connection for Children network, Child Development Services program, and the Virginia Bleeding Disorders Program. Following a federally mandated comprehensive needs assessment in 1999, the previous Children's Specialty Services program was phased out and replaced with the Care Connection for Children network. The current program operates very differently, and therefore needs new regulations.

Other state-mandated initiatives, such as the Virginia Newborn Screening System, Virginia Congenital Anomalies Reporting and Education System, Virginia Sickle Cell Awareness Program, and Pediatric Comprehensive Sickle Cell Clinic Network also identify and serve children with special health care needs. These programs, several of which have separate regulations, are now referenced in this regulation as well.

The proposed regulation is designed to ensure that program services are made available to eligible residents within available appropriations, are able to respond to changing needs of the population, and can qualify for federal Title V and other available funds for plan administration. It is intended to support consistent program administration statewide, and assure that resources are expended and distributed fairly across the Commonwealth.

Statutory Authority: §§ 32.1-12 and 32.1-77 of the Code of Virginia.

**Contact:** Nancy Bullock, Director, Children with Special Health Care Needs Program, Division of Child and Adolescent Health, Department of Health, 109 Governor St., 8th Floor, Richmond, VA 23219, telephone (804) 864-7706, FAX (804) 864-7722 or email [nancy.bullock@vdh.virginia.gov](mailto:nancy.bullock@vdh.virginia.gov).

## DEPARTMENT OF HEALTH

### State Emergency Medical Services Advisory Board

† **January 5, 2007 - 9:30 a.m.** -- Open Meeting  
Marriott Richmond West, 4240 Dominion Boulevard, Glen Allen, Virginia. ☎

A retreat to allow the members of the advisory board to have the opportunity to openly discuss as a body the most beneficial location of the Office of Emergency Medical Services within state government.

**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, toll-free (800) 523-6019, email [gary.brown@vdh.virginia.gov](mailto:gary.brown@vdh.virginia.gov).

## BOARD OF HEALTH PROFESSIONS

† **January 18, 2007 - 10 a.m.** -- Open Meeting  
Alcoa Building, 6603 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ☎

A meeting to review the budget and workplan for 2007, which includes a new study on emerging professions and scope of practice issues. The board will be briefed by representatives from the American Association of Retired Persons on their national effort to address continuing competency in health care practitioners. Other items include a review of the latest progress on the Sanctions Reference Study, Criminal Background Review, and agency performance and educational efforts. Additionally, the board will be briefed on the status of relevant regulations and legislative proposals. At the conclusion of the meeting, a brief educational DVD on mandatory reporting of abuse will be shown as part of board member training. This DVD was developed for health care practitioner education by the Department of Social

Services. Brief public comment will be received at the beginning of the full board meeting. Comment will not be received during the educational session.

**Contact:** Elizabeth A. Carter, Ph.D., Executive Director, Board of Health Professions, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7013, FAX (804) 662-7098, (804) 662-7197/TTY ☎, email [elizabeth.carter@dhp.virginia.gov](mailto:elizabeth.carter@dhp.virginia.gov).

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **January 8, 2007 - 4 p.m.** -- Open Meeting  
State Council of Higher Education for Virginia, 101 North 14th Street, Richmond, Virginia.

The Strategic Planning Committee and Executive Committee will meet. Agenda materials will be available on the website approximately one week prior to the meeting at [www.schev.edu](http://www.schev.edu).

**Contact:** Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, email [leeannrung@schev.edu](mailto:leeannrung@schev.edu).

† **January 9, 2007 - 9:30 a.m.** -- Open Meeting  
State Council of Higher Education for Virginia, 101 North 14th Street, Richmond, Virginia.

Committee meetings begin at 8:30 a.m. Agenda materials will be available on the website approximately one week prior to the meeting at [www.schev.edu](http://www.schev.edu). A public comment period will be allocated on the meeting agenda. To be scheduled, those interested in making public comment should contact the person listed below no later than 5 p.m. three business days prior to the meeting date. At the time of the request, the speaker's name, address and topic must be provided. Each speaker will be given up to three minutes to address SCHEV. Speakers are asked to submit a written copy of their remarks at the time of comment.

**Contact:** Lee Ann Rung, State Council of Higher Education for Virginia, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2602, FAX (804) 371-7911, email [leeannrung@schev.edu](mailto:leeannrung@schev.edu).

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **January 17, 2007 - 11 a.m.** -- Open Meeting  
601 South Belvidere Street, Richmond, Virginia. ☎

A regular meeting of the Board of Commissioners to review and, if appropriate, approve the minutes from the prior meeting; consider for approval and ratification mortgage loan commitments under its various programs; review the authority's operations for the prior months; and consider such other matters and take such other actions as it deems appropriate. Various committees of the Board of

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## Calendar of Events

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Commissioners, including the Programs Committee, Audit Committee, Operations Committee, Executive Committee, and Committee of the Whole, may also meet during the day preceding the meeting and before and after the meeting and may consider matters within their purview. The committees and the board may also meet during meals on the day before the meeting and on the day of the meeting. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, toll-free (800) 968-7837, (804) 783-6705/TTY ☎, email judson.mckellar@vhda.com.

### STATEWIDE INDEPENDENT LIVING COUNCIL

† **January 17, 2007 - 7 p.m.** -- Open Meeting  
ENDpendence Center of Northern Virginia, Inc., 3100 Clarendon Boulevard, Arlington, Virginia. (Interpreter for the deaf provided upon request)

A public comment forum to receive comments on the State Plan for Independent Living. Platform interpreters are provided. Materials will be available in alternate format. Public comments will be received from 7 to 9 p.m.

**Contact:** Lisa Grubb, Executive Director, Statewide Independent Living Council, 11655 Explorer Dr., Richmond, VA 23229, telephone (804) 897-7228, FAX (804) 897-1080, toll-free (800) 552-5019, (800) 464-9950/TTY ☎, email virginiasilc@comcast.net.

### STATE BOARD OF JUVENILE JUSTICE

**January 10, 2007 - 9 a.m.** -- Open Meeting  
Hanover Juvenile Correctional Center, 7093 Broad Neck Road, Hanover, Virginia.

The Secure Services Committee and Nonsecure Services Committee meet at 9 a.m. to receive certification audit reports of several residential and nonresidential programs. The full board will meet at 10 a.m. to take action on the certification reports and hear other such business as comes before the board. Public comment will be received and will be limited to 30 minutes at the beginning of the meeting with additional time allotted at the end of the meeting for individuals who have not had a chance to be heard. Speakers will be limited to 10 minutes each with shorter timeframes provided at the chairman's discretion to accommodate large numbers of speakers. Those wishing to speak should contact Deborah Hayes at 804-371-0704 three or more business days prior to the meeting. Persons not registered prior to the day of the board meeting will speak after those who have preregistered. Normally, speakers will be scheduled in the order that their requests are received.

Where issues involving a variety of views are presented before the board, the board reserves the right to allocate the time available so as to ensure that the board hears from different points of view on any particular issue. Groups wishing to address a single subject are urged to designate a spokesperson. Speakers are urged to confine their comments to topics relevant to the board's purview. In order to make the limited time available most effective, speakers are urged to provide multiple written copies of their comments or other material amplifying their views. Please provide at least 15 written copies if you are able to do so. Public comments will be heard regarding proposed Regulations Governing Juvenile Work Release Programs (6 VAC 35-190) and Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles (6 VAC 35-180).

**Contact:** Deborah C. Hayes, Administrative Assistant, Department of Juvenile Justice, 700 Centre, 700 E. Franklin St., 4th Floor, Richmond, VA 23219, telephone (804) 371-0704, FAX (804) 371-0725.

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**January 29, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Juvenile Justice intends to adopt regulations entitled **6 VAC 35-180, Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles**. The purpose of the proposed action is to ensure continuity of necessary treatment and services for juveniles being released from incarceration.

Statutory Authority: §§ 16.1-293.1 and 66-10 of the Code of Virginia

**Contact:** Deron M. Phipps, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin St., P. O. Box 1110, Richmond, VA 23218-1110, telephone (804) 786-6407, FAX (804) 371-0773, or email deron.phipps@djj.virginia.gov.

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**January 29, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Board of Juvenile Justice intends to adopt regulations entitled **6 VAC 35-190, Regulations Governing Juvenile Work Release Programs**. The purpose of the proposed action is to set forth the rules and criteria by which the Department may operate work release programs whereby committed juveniles (i) may be employed by private individuals, corporations, or state agencies at places of business; or (ii) may 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.

Statutory Authority: §§ 66-10 and 66-25.1:3 of the Code of Virginia

**Contact:** Deron M. Phipps, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin St., P. O. Box 1110, Richmond, VA 23218-1110, telephone (804) 786-6407, FAX (804) 371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

## STATE LIBRARY BOARD

**January 19, 2007 - 10:30 a.m.** -- Open Meeting

† **March 19, 2007 - 9 a.m.** - Open Meeting

The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ☎

A meeting to discuss matters pertaining to the Library of Virginia and the Library Board.

**Contact:** Jean H. Taylor, Executive Secretary Senior, The Library of Virginia, 800 E. Broad St., Richmond, VA 23219-8000, telephone (804) 692-3525, FAX (804) 692-3594, (804) 692-3976/TTY ☎, email [jtaylor@lva.lib.va.us](mailto:jtaylor@lva.lib.va.us).

## COMMISSION ON LOCAL GOVERNMENT

† **January 16, 2007 - 10 a.m.** -- Open Meeting

Department of Housing and Community Development, 501 North 2nd Street, Richmond, Virginia. ☎

A regular business meeting.

**Contact:** Ted McCormack, Commission on Local Government, 501 N. 2nd St. Richmond, VA 23219, telephone (804) 786-6508, FAX (804) 371-7090, email [ted.mccormack@dhcd.virginia.gov](mailto:ted.mccormack@dhcd.virginia.gov)

## BOARD OF LONG-TERM CARE ADMINISTRATORS

**January 9, 2007 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A meeting to discuss business matters. There will be a public comment period at the beginning of the meeting.

**Contact:** Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9930, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

**January 9, 2007 - 1 p.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia. ☎

A meeting of the Credentials Committee to hold informal conferences. There will not be a public comment period.

**Contact:** Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9930, FAX (804) 662-9943, (804) 662-7197/TTY ☎, email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**February 9, 2007** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to increase reimbursement for certain physician types.

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

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

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**February 9, 2007** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled **12 VAC 30-120, Waivered Services.** The purpose of the proposed action is to establish a new waiver program to provide additional services to residents of assisted living facilities who receive an auxiliary grant, who meet nursing facility criteria, and who have a diagnosis of Alzheimer's or a related dementia.

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 email [teja.stokes@dmas.virginia.gov](mailto:teja.stokes@dmas.virginia.gov).

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# Calendar of Events


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## BOARD OF MEDICINE


† **January 5, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. 


A meeting of the Ad Hoc Committee on Opioids and Pain Management to review the board's past and current guidance documents on the use of opioids for the treatment of chronic, nonmalignant pain and a proposed draft of regulations for the treatment of pain and the use of opioids. Recommendations will be made for the draft regulations. Further meetings may be necessary. Public comment will be received at the beginning of the meeting.


**Contact:** Colanthisa Morton Opher, Operations Manager, 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 , email coco.morton@dhp.virginia.gov

† **January 10, 2007 - 9:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Richmond, Virginia. 


A panel will conduct formal hearings to inquire into allegations that a certain practitioner may have violated certain laws and regulations governing the practice of medicine and other healing arts. Further, the board may review cases with staff for case disposition, including consideration of consent orders for settlement of matters pending before the board. The board will meet in open and closed sessions pursuant to § 2.2-3711 A 7, 15, and/or 28 of the Code of Virginia. Public comment will not be received.


**Contact:** Renee S. Dixon, Discipline Case Manager, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY , email renee.dixon@dhp.virginia.gov

**January 18, 2007 - 9:30 a.m.** -- Open Meeting  
Holiday Inn, 3315 Ordway Drive, Roanoke, Virginia. 


**January 23, 2007 - 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. Dixon, Discipline Case Manager, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 662-7009, FAX (804) 662-9517, (804) 662-7197/TTY , email renee.dixon@dhp.virginia.gov


**January 26, 2007 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. 


The Legislative Committee will consider regulatory matters as may be presented on the agenda. Public comment on agenda items will be received at the beginning of the meeting.

**Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, Alcoa Bldg., 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9908, FAX (804) 662-9943, (804) 662-7197/TTY , email william.harp@dhp.virginia.gov


**January 26, 2007 - 1:30 p.m.** -- Open Meeting  
**February 22, 2007 - 1:30 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. 

The Credentials Committee will meet to consider applicants for licensure and other matters of the board. 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 , email william.harp@dhp.virginia.gov

**February 22, 2007 - 8:30 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 2, Richmond, Virginia. 

The board will consider regulatory and disciplinary matters as may be presented on the agenda. Public comment will be received on agenda items 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 , email william.harp@dhp.virginia.gov

## Advisory Board on Athletic Training

**February 8, 2007 - 9 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street,  
5th Floor, Board Room 4, Richmond, Virginia. 

The advisory board will 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 ☎, email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Midwifery

**January 19, 2007 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

The advisory board will 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 ☎, email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Occupational Therapy

**February 6, 2007 - 10 a.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

The advisory board will consider issues related to the regulations 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 ☎, email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Physician Assistants

**February 8, 2007 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

The advisory board will 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 ☎, email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Radiological Technology

**NOTE: CHANGE IN MEETING TIME**  
**February 7, 2007 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

The advisory board will consider issues related to the regulations of radiologic technologists and radiologic technologists-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 ☎, email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## Advisory Board on Respiratory Care

**February 6, 2007 - 1 p.m.** -- Open Meeting  
Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

The advisory board will 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 ☎, email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

## MOTOR VEHICLE DEALER BOARD

**† January 8, 2007 - 8:30 a.m.** -- Open Meeting  
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Committees will meet as follows:

Dealer Practices Committee - 8:30 a.m.  
Licensing Committee - Immediately following Dealer Practices meeting  
Advertising Committee - 9:30 a.m. or immediately after Licensing meeting, whichever is later  
Transaction Recovery Fund Committee - Immediately following Advertising meeting  
Franchise Law Committee - To be scheduled as needed.  
Full board meeting - 10 a.m. or five to 45 minutes following Transaction Recovery Fund meeting

**NOTE:** Meetings may begin later, but not earlier than scheduled. Meeting end times are approximate. Any person who needs any accommodation in order to participate in the meeting should contact the board at least 10 days before the meeting so that suitable arrangements can be made.

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## Calendar of Events

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**Contact:** Alice R. Weedon, Administrative Assistant, Motor Vehicle Dealer Board, 2201 W. Broad St., Suite 104, Richmond, VA 23220, telephone (804) 367-1100, FAX (804) 367-1053, toll-free (877) 270-0203, email [dboard@mvdv.virginia.gov](mailto:dboard@mvdv.virginia.gov).

### VIRGINIA MUSEUM OF FINE ARTS


**January 2, 2007 - 8 a.m.** -- Open Meeting

**February 6, 2007 - 8 a.m.** -- Open Meeting


**March 6, 2007 - 8 a.m.** -- Open Meeting

Virginia Museum of Fine Arts, The Pauley Center, 200 North Boulevard, Dining Room, Richmond, Virginia. 

A meeting for staff to update the Executive Committee. Public comment will not be received.

**Contact:** Suzanne Broyles, Secretary of the Museum, Virginia Museum of Fine Arts, 200 N. Boulevard, Richmond, VA 23220, telephone (804) 340-1503, FAX (804) 340-1502, (804) 340-1401/TTY , email [suzanne.broyles@vmfa.museum](mailto:suzanne.broyles@vmfa.museum).

**January 17, 2007 - 2:30 p.m.** -- Open Meeting

Virginia Museum of Fine Arts, 201 North Boulevard, Conference Room, Richmond, Virginia. 


A meeting of the Partnership for Virginia Task Force 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, email [suzanne.broyles@vmfa.museum](mailto:suzanne.broyles@vmfa.museum).


### BOARD OF NURSING

**January 22, 2007 - 9 a.m.** -- Open Meeting

† **March 19, 2007 - 9 a.m.** -- Open Meeting


Department of Health Professions, 6603 West Broad Street, 5th Floor, Board Room 2, Richmond, Virginia. 

A panel will conduct informal conferences with licensees and/or certificate holders. Public comment will not be received.

**Contact:** Jay P. Douglas, RN, MSM, CSAS, 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 , email [nursebd.@dhp.virginia.gov](mailto:nursebd.@dhp.virginia.gov).


**January 23, 2007 - 9 a.m.** -- Open Meeting

† **March 20, 2007 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 2 Richmond, Virginia. 

A general business meeting to include receipt of 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) 662-9949, FAX (804) 662-9512, (804) 662-7197/TTY , email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

**January 24, 2007 - 9 a.m.** -- Open Meeting


**January 25, 2007 - 9 a.m.** -- Open Meeting

† **March 21, 2007 - 9 a.m.** -- Open Meeting


† **March 22, 2007 - 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 of Nursing will conduct formal hearings with licensees and/or certificate holders. Public comment will not be received.

**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) 662-9949, FAX (804) 662-9512, (804) 662-7197/TTY , email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

**February 21, 2007 - 9 a.m.** -- Open Meeting

Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 1, Richmond, Virginia. 


A meeting of the Committee of the Joint Boards of Nursing and Medicine to conduct general business.

**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) 662-9949, FAX (804) 662-9512, (804) 662-7197/TTY , email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

### OLD DOMINION UNIVERSITY

**February 19, 2007 - Noon** -- Open Meeting

† **March 19, 2007 - Noon** -- Open Meeting

Old Dominion University, Webb University Center, Norfolk, Virginia. 

A regular meeting of the executive committee of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president. Public comment will not be received by the board.

**Contact:** Donna Meeks, Executive Secretary to the Board of Visitors, Old Dominion University, 204 Koch Hall, Norfolk, VA 23529, telephone (757) 683-3072, FAX (757) 683-5679, email [dmeeks@odu.edu](mailto:dmeeks@odu.edu).



† **March 19, 2007 - Noon** -- Open Meeting  
Webb University Center, Old Dominion University, Norfolk, Virginia. ♿

A quarterly meeting of the governing board of the institution to discuss business of the board and the institution as determined by the rector and the president. Public comment will not be received 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, email [dmeeks@odu.edu](mailto:dmeeks@odu.edu).

## VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

† **March 15, 2007 - 11 a.m.** -- Open Meeting  
Wyndham Hotel, 4700 South Laburnum Avenue, Richmond, Virginia. ♿

A meeting of the Executive Committee.

**Contact:** Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-9368, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY ☎, email [sandra.smalls@vbpd.virginia.gov](mailto:sandra.smalls@vbpd.virginia.gov).

† **March 16, 2007 - 8:30 a.m.** -- Open Meeting  
Wyndham Hotel, 4700 South Laburnum Avenue, Richmond, Virginia. ♿

A quarterly board meeting.

**Contact:** Sandra Smalls, Executive Assistant, Virginia Board for People with Disabilities, 202 N. 9th St., 9th Floor, Richmond, VA 23219, telephone (804) 786-9368, FAX (804) 786-1118, toll-free (800) 846-4464, (804) 786-0016/TTY ☎, email [sandra.smalls@vbpd.virginia.gov](mailto:sandra.smalls@vbpd.virginia.gov).

## PESTICIDE CONTROL BOARD

† **January 18, 2007 - 9 a.m.** -- Open Meeting  
Oliver Hill Building, 102 Governor Street, 2nd Floor, Board Room, Room 220, Richmond, Virginia. ♿

A meeting to discuss general business matters requiring board action. However, portions of the meeting may be held in closed session, pursuant to § 2.2-3711 of the Code of Virginia. The board will entertain public comment at the beginning of the meeting on 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 Dr. W. Wayne Surles at least five days before the meeting date so that suitable arrangements can be made.

**Contact:** Dr. W. Wayne Surles, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, Oliver Hill Bldg., 102 Governor St., 1st Floor

Richmond, VA 23219, telephone (804) 371-6559, FAX (804) 786-9149, email [Wayne.Surles@vdacs.virginia.gov](mailto:Wayne.Surles@vdacs.virginia.gov).

## POLYGRAPH EXAMINERS ADVISORY BOARD

**January 11, 2007 - 9 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♿

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Kevin Hoefl, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2785, FAX (804) 367-0674, (804) 367-9753/TTY ☎, email [kevin.hoefl@dpor.virginia.gov](mailto:kevin.hoefl@dpor.virginia.gov).

## BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

**March 5, 2007 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A regular board meeting.

**Contact:** Mark N. Courtney, Executive Director, Board for Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-2475, email [mark.courtney@dpor.virginia.gov](mailto:mark.courtney@dpor.virginia.gov).

## VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

**January 25, 2007 - 10 a.m.** -- Open Meeting  
† **March 22, 2007 - 10 a.m.** -- Open Meeting  
Department for the Aging, 1610 Forest Avenue, Suite 100, Richmond, Virginia. ♿

An Executive Committee meeting.


**Contact:** Faye D. Cates, MSSW, Human Services Program Coordinator, Virginia Public Guardian and Conservator Advisory Board, Department for the Aging, 1610 Forest Ave., Suite 100, Richmond, VA 23229, telephone (804) 662-9310, FAX (804) 662-9354, toll-free (800) 552-3402, (804) 662-9333/TTY ☎, email [faye.cates@vda.virginia.gov](mailto:faye.cates@vda.virginia.gov).

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# Calendar of Events

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## REAL ESTATE APPRAISER BOARD

† **February 15, 2007 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. 


An informal fact-finding conference.

**Contact:** Christine Martine, Executive Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552, FAX (804) 367-6946, (804) 367-9753/TTY , email reboard@dpor.virginia.gov.

## DEPARTMENT OF REHABILITATIVE SERVICES

**January 26, 2007 - 1 p.m.** -- Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Conference Rooms 103/105, Richmond, Virginia.   
(Interpreter for the deaf provided upon request)

A quarterly meeting of the Virginia Brain Injury Council. Materials can be provided in alternate format upon request. Public comments will begin at approximately 1:15 p.m.

**Contact:** Kristie Chamberlain, Policy and Planning Director, Department of Rehabilitative Services, 8004 Franklin Farms Dr., P.O. Box K-300, Richmond, VA 23229, telephone (804) 662-7154, FAX (804) 662-7663, toll-free (800) 552-5019, (800) 464-9950/TTY , email kristie.chamberlain@drs.virginia.gov.

## VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

† **March 20, 2007 - 1 p.m.** -- Open Meeting  
Northern Virginia

A quarterly meeting. Specific time and location to be determined.

**Contact:** Nancy Vorona, VP Research Investment, CIT, Virginia Research and Technology Advisory Commission, 2214 Rock Hill Rd., Suite 600, Herndon, VA 20170, telephone (703) 689-3043, FAX (703) 464-1720, email nvorona@cit.org.

## STATE BOARD OF SOCIAL SERVICES

**January 12, 2007** - Public comments may be submitted until this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled:

- 22 VAC 40-200, Foster Care -- Guiding Principles
- 22 VAC 40-210, Foster Care -- Assessing the Client's Service Needs
- 22 VAC 40-240, Nonagency Placement for Adoption -- Consent

22 VAC 40-250, Agency Placement Adoptions -- AREVA

22 VAC 40-260, Agency Placement Adoptions -- Subsidy

22 VAC 40-280, Nonagency Placements for Adoption -- Adoptive Home Study


22 VAC 40-800, Family Based Social Services

and adopt regulations entitled **22 VAC 40-201, Permanency Services - Prevention, Foster Care, Adoption and Independent Living**. The purpose of the proposed action is to repeal seven existing regulations and replace them with one new comprehensive regulation. The new regulation will incorporate all aspects of permanency - Foster Care Prevention, Foster Care, Independent Living, Agency Placement Adoptions - AREVA, Agency Placement Adoptions - Subsidy, and Nonagency Adoption Placement. It will also mandate new procedures integral to Virginia's compliance with federal regulations and in keeping with the federal Child and Family Services program outcome goals.


Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

**Contact:** Lynette Isbell, Acting Director, Division of Family Services, Department of Social Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7082, FAX (804) 726-7895 or email lynette.idbell@dss.virginia.gov.

## BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

**January 30, 2007 - 10 a.m.** -- Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, 4th Floor, Richmond, Virginia. 

A meeting to conduct board business. The meeting is open to the public; however, a portion of the board's business may be discussed in closed session. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

**Contact:** Mark N. Courtney, Executive Director, Board for Professional Soil Scientists and Wetland Professionals, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, FAX (804) 367-0795, (804) 367-9753/TTY , email soilscientist@dpor.virginia.gov.

## DEPARTMENT OF TAXATION

† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends

to amend regulations entitled **23 VAC 10-20, General Provisions Applicable to All Taxes Administered by the Department of Taxation**. The purpose of the proposed action is to repeal unnecessary general provisions applicable to all taxes administered by the Department of Taxation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-55, Virginia Corn Excise Tax**. The purpose of the proposed action is to repeal unnecessary sections of the Virginia Corn Excise Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-60, Virginia Egg Excise Tax**. The purpose of the proposed action is to repeal unnecessary egg excise tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-65, Virginia Peanut Excise Tax**. The purpose of the proposed action is to repeal unnecessary peanut excise tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-65, Virginia Peanut Excise Tax**. The purpose of the proposed action is to repeal an obsolete section (23 VAC 10-65-20) of the Virginia Peanut Excise Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled **23 VAC 10-70, Virginia Slaughter Hog and Feeder Pig Excise Tax Regulations**. The purpose of the proposed action is to repeal the regulation that has become obsolete due to statutory changes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-75, Virginia Soybean Excise Tax Regulations**. The purpose of the proposed action is to repeal an obsolete section (23 VAC 10-75-10) of the Virginia Soybean Excise Tax Regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA

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# Calendar of Events

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23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-75, Virginia Soybean Excise Tax Regulations**. The purpose of the proposed action is to repeal certain sections of the Virginia Soybean Excise Tax Regulations that provide no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-110, Individual Income Tax**. The purpose of the proposed action is to repeal 10 individual income tax sections that have been made obsolete by changes in state law.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-110, Individual Income Tax**. The purpose of the proposed action is to repeal unnecessary sections of the Individual Income Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-112, Declaration of Estimated Income Tax by Individuals**. The purpose of the proposed action is to repeal certain sections of the Declaration of Estimated Income Tax by Individuals tax regulations that provide no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-115, Fiduciary Income Tax**. The purpose of the proposed action is to repeal certain sections of the Fiduciary Income Tax regulations that provide no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-120, Corporation Income Tax**. The purpose of the proposed action is to repeal obsolete sections of the Corporation Income Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-120, Corporation Income Tax**. The purpose of the proposed action is to repeal unnecessary sections of the Corporation Income Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled **23 VAC 10-130, Taxation of Partnerships Regulations**. The purpose of the proposed action is to repeal the chapter on partnership tax regulations, which has become obsolete.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-140, Income Tax Withholding**. The purpose of the proposed action is to repeal certain sections of the Income Tax Withholding regulations that provide no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to repeal unnecessary sections of the Virginia Retail Sales and Use Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to repeal certain sections of the Virginia Retail Sales and Use Tax regulations because they are obsolete.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-220, Aircraft Sales and Use Tax Regulations**. The purpose of the proposed action is to repeal certain sections of the Aircraft Sales and Use Tax Regulations that provides no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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# Calendar of Events

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-230, Watercraft Sales and Use Tax**. The purpose of the proposed action is to repeal one Water Sales and Use Tax regulation that is obsolete due to a statutory change.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-230, Watercraft Sales and Use Tax**. The purpose of the proposed action is to repeal unnecessary sections of the Watercraft Sales and Use Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled **23 VAC 10-250, Tire Tax Regulations**. The purpose of the proposed action is to repeal the chapter on Tire Tax Regulations because it is obsolete due to statutory changes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-300, Estate Tax**. The purpose of the proposed action is to repeal unnecessary sections of the Estate Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-310, Tax on Wills and Administration**. The purpose of the proposed action is to repeal certain sections of the Tax on Wills and Administration regulations that provide no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-330, Bank Franchise Tax**. The purpose of the proposed action is to repeal unnecessary sections of the Bank Franchise Tax regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-340, Intangible Personal Property Tax Regulations**. The purpose of the proposed action is to repeal unnecessary sections of the Intangible Personal Property Tax Regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-350, Forest Products Tax Regulations**. The purpose of the proposed action is to repeal unnecessary sections of the Forest Products Tax Regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-350, Forest Products Tax Regulations**. The purpose of the proposed action is to repeal certain sections of the Forest Products Tax Regulations that are obsolete due to statutory changes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled **23 VAC 10-360, Litter Tax Regulations**. The purpose of the proposed action is to repeal the Litter Tax Regulations, which provide no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-370, Cigarette Tax Regulations**. The purpose of the proposed action is to repeal certain sections of the Cigarette Tax Regulations that are obsolete due to statutory changes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-370, Cigarette Tax Regulations**. The purpose of the proposed action is to repeal unnecessary sections of the Cigarette Tax Regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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# Calendar of Events

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† **February 23, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled **23 VAC 10-380, Set-Off Debt Collection Act Regulations**. The purpose of the proposed action is to repeal the chapter on Set-Off Debt Collection Act Regulations.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355 or email mark.haskins@tax.virginia.gov.

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**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled **23 VAC 10-390, Virginia Soft Drink Excise Tax Regulations**. The purpose of the proposed action is to repeal the Virginia Soft Drink Excise Tax Regulations that provide no additional guidance to clear and unambiguous statutes.

Statutory Authority: § 58.1-203 of the Code of Virginia.

**Contact:** Mark C. Haskins, Director of Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

## DEPARTMENT OF VETERANS SERVICES

### Board of Veterans Services

**January 8, 2007 - 1 p.m.** -- Open Meeting  
American Legion Department of Virginia, 1708  
Commonwealth Avenue, Richmond, Virginia.

A regular meeting.

**Contact:** Rhonda Earman, Special Assistant to the Commissioner, Department of Veterans Services, 900 E. Main St., Richmond, VA 23219, telephone (804) 786-0286, email rhonda.earman@dvs.virginia.gov.

## VIRGINIA WASTE MANAGEMENT BOARD

† **January 8, 2007 - 10 a.m.** -- Open Meeting  
Department of Game and Inland Fisheries, 4010 West Broad  
Street, Board Room, Richmond, Virginia. ♿

A regular meeting.

**Contact:** Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, email cberndt@deq.virginia.gov.

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**January 9, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled **9 VAC 20-130, Solid Waste Planning and Recycling Regulations**. The purpose of the proposed action is to revise the calculation of the mandatory recycling rate for localities and region revise the procedures for formation and dissolution of planning regions, clearly specify qualifications for variances, revise the requirements for plan approval, and eliminate duplicative language on the waste information and assessment program.

The board is seeking comments from the general public about whether to retain a provision for converting volumes to weight in tons as a method for expressing amounts in the recycling rate formula (proposed 9 VAC 20-130-125 B 2). This provision has been used in the past by small businesses that do not maintain weight scales at the solid waste management facility. Also, the board is seeking comments from the general public about whether to retain a provision allowing estimation of tonnage of recycling rate amounts on the basis of survey data on a case-by-case basis (existing 9 VAC 20-130-120 C 1 c).

In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the regulation on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Allen R. Brockman, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804) 698-4468, FAX (804) 698-4327 and arbrockman@deq.virginia.gov; comments must include the name and address of the commenter. In order to be considered comments must be received by 5 p.m. on the date established as the close of the comment period. Both oral and written comments may be submitted at the public hearing.



Statutory Authority: § 10.1-1411 of the Code of Virginia

**Contact:** Allen Brockman, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4468, FAX (804) 698-4327, or email [arbrockman@deq.virginia.gov](mailto:arbrockman@deq.virginia.gov).

## STATE WATER CONTROL BOARD


**January 4, 2007 - 1 p.m.** -- Public Hearing  
Regional Library Headquarters, 1201 Caroline Street, Fredericksburg, Virginia.

**January 26, 2007** - Public comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 2.2-4007 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled **9 VAC 25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to amend the City of Fredericksburg nitrogen and phosphorus allocation in the water quality management planning regulation.


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

**Contact:** John M. Kennedy, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4312 or email: [jmkennedy@deq.virginia.gov](mailto:jmkennedy@deq.virginia.gov).

**January 4, 2007 - 7 p.m.** -- Open Meeting  
Germanna Community College, 2130 Germanna Highway, The Lecture Hall, Room 114, Locust Grove, Virginia. 

A meeting to receive public comment on a draft permit that will allow the release of treated wastewater from the Locust Grove Town Center sewage treatment plant into a water body in Orange County. The public comment period closes on January 22, 2007.


**Contact:** Anna T. Westernik, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3837, FAX (703) 583-3841, email [atwesternik@deq.virginia.gov](mailto:atwesternik@deq.virginia.gov).

**February 21, 2007 - 10 a.m.** -- Open Meeting  
**† March 21, 2007 - 10 a.m.** -- Open Meeting  
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia. 


A meeting of the advisory committee to be established to assist in the development of amendments to the water quality standards for the triennial review. The notice of intent appeared in the Virginia Register of Regulations on September 18, 2006.

**Contact:** Eleanore M. Daub, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4111, FAX (804) 698-4116, email [emdaub@deq.virginia.gov](mailto:emdaub@deq.virginia.gov).

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS


**March 7, 2007 - 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. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.


**Contact:** David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595, (804) 367-9753/TTY , email [waterwasteoper@dpor.virginia.gov](mailto:waterwasteoper@dpor.virginia.gov).

## INDEPENDENT


### VIRGINIA OFFICE FOR PROTECTION AND ADVOCACY

**January 30, 2007 - 9 a.m.** -- Open Meeting  
VOPA Office, 1910 Byrd Avenue, Suite 5, Richmond, Virginia  (Interpreter for the deaf provided upon request)

A meeting of the Governing Board. Public comment is welcomed by the board and will be received beginning at 9 a.m. on January 30, 2007. Public comment will also be accepted by telephone. If you wish to provide public comment via telephone, you must call Lisa Shehi, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or via email at [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov) no later than January 16, 2007. Ms. Shehi will take your name and phone number and you will be telephoned during the public comment period. For further information, please contact Ms. Shehi. If interpreter services or other accommodations are required, please contact Ms. Shehi no later than January 16, 2007.

**Contact:** Lisa Shehi, Executive 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 , email [lisa.shehi@vopa.virginia.gov](mailto:lisa.shehi@vopa.virginia.gov).

### Disability Advisory Council

**† March 21, 2007 - 10 a.m.** -- Open Meeting  
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 shortly after 10 a.m. Public comment will also be

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## Calendar of Events

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accepted by telephone. If you wish to provide public comment via telephone call Tracy Manley, Administrative Assistant at 1-800-552-3962 (Voice/TTY) or via email at [tracy.manley@vopa.virginia.gov](mailto:tracy.manley@vopa.virginia.gov) no later than March 7, 2007. Ms. Manley will take your name and phone number and you will be telephoned during the public comment period. For further information, directions to the meeting, or interpreter services or other accommodations, please contact Ms. Manley no later than March 7, 2007.

**Contact:** Tracy Manley, Administrative Assistant, Virginia Office for Protection and Advocacy, 1910 Byrd Ave., Richmond, VA 23230, telephone (804) 225-2042, FAX (804) 662-7431, toll-free (800) 552-3962, (804) 225-2042/TTY ☎, email [tracy.manley@vopa.virginia.gov](mailto:tracy.manley@vopa.virginia.gov).

### VIRGINIA RETIREMENT SYSTEM

**February 14, 2007 - 10 a.m.** -- Open Meeting  
Virginia Retirement System, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Investment Advisory Committee. No public comment will be received at the meeting.

**Contact:** Linda Ritchey, Executive Assistant, Virginia Retirement System, 1111 E. Main St., Richmond, VA 23219, telephone (804) 697-6673, FAX (804) 786-1541, toll-free (888) 827-3847, (804) 344-3190/TTY ☎, email [lritchey@varetire.org](mailto:lritchey@varetire.org).

**February 15, 2007 - 1 p.m.** -- Open Meeting  
Virginia Retirement System, 1111 East Main Street, 3rd Floor Conference Room, Richmond, Virginia. ♿

A regular meeting of the Board of Trustees. No public comment will be received at the meeting.

**Contact:** LaShaunda King, Executive Assistant, Virginia Retirement System, 1200 E. Main St., Richmond, VA 23219, telephone (804) 344-3119, FAX (804) 786-1541, (804) 344-3190/TTY ☎, email [lking@varetire.org](mailto:lking@varetire.org).

## LEGISLATIVE

### COAL AND ENERGY COMMISSION

**† January 11, 2007 - 9 a.m.** - Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room D, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, please contact Frank Munyan, Division of Legislative Services at (804) 786-3591.

**Contact:** William L. Owen, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

### HOUSE COUNTIES, CITIES AND TOWNS AD HOC SUBCOMMITTEE

**† January 9, 2007 - 3 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, please contact Jeff Sharp, Division of Legislative Services at (804) 786-3591.

**Contact:** Pam Burnham, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

### HOUSE EDUCATION COMMITTEE

**† January 10, 2007 - 9 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, House Room C, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, please contact Nikki Seeds, Division of Legislative Services at (804) 786-3591.

**Contact:** Barbara L. Teague, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

### MANUFACTURING DEVELOPMENT COMMISSION

**† January 9, 2007 - 1:30 p.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, Senate Room B, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, please contact Frank Munyan, Division of Legislative Services at (804) 786-3591.

**Contact:** Hobie Lehman, Senate Committee Operations, General Assembly Bldg., 910 Capitol St., Richmond, VA 23219, telephone (804) 698-7410.

### VIRGINIA SESQUICENTENNIAL OF THE AMERICAN CIVIL WAR COMMISSION

**† January 9, 2007 - 10 a.m.** -- Open Meeting  
General Assembly Building, 9th and Broad Streets, 6th Floor Speaker's Conference Room, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting agenda, please contact Brenda Edwards or Cheryl Jackson, Division of Legislative Services at (804) 786-3591.

**Contact:** Pam Burnham, House Committee Operations, 910 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

**STATE WATER COMMISSION**

† **January 9, 2007 - 1 p.m.** -- Open Meeting  
 General Assembly Building, 9th and Broad Streets, 6th Floor,  
 Speaker's Conference Room, Richmond, Virginia. ♿

A regular meeting. For questions regarding the meeting  
 agenda, please contact Marty Farber, Division of  
 Legislative Services at (804) 786-3591.

**Contact:** Lois Johnson, House Committee Operations, 910  
 Capitol St., Richmond, VA 23219, telephone (804) 698-1540.

**CHRONOLOGICAL LIST**

**OPEN MEETINGS**

**December 29**

Counseling, Board of

**January 2, 2007**

Museum of Fine Arts, Virginia

**January 3**

† Competition Council, Commonwealth  
 Geology, Board for

**January 4**

Water Control Board, State

**January 5**

† Accountancy, Board of  
 Dentistry, Board of  
 Governor's Health Reform Commission  
 † Health, Department of  
 - State Emergency Medical Services Advisory Board  
 † Medicine, Board of

**January 8**

† Accountancy, Board of  
 † Higher Education for Virginia, State Council of  
 † Motor Vehicle Dealer Board  
 Veterans Services, Department of  
 - Board of Veterans Services  
 † Waste Management Board, Virginia

**January 9**

† Compensation Board  
 † Contractors, Board for  
 † Counties, Cities and Towns Ad Hoc Subcommittee  
 † Higher Education for Virginia, State Council of  
 Long-Term Care Administrators, Board of  
 † Manufacturing Development Commission  
 † Sesquicentennial of the American Civil War  
 Commission, Virginia  
 † Water Commission, State

**January 10**

Education, Board of  
 † Education Committee, House  
 Juvenile Justice, State Board of  
 † Medicine, Board of

**January 11**

† Coal and Energy Commission

Education, Board of  
 Polygraph Examiners Advisory Board

**January 12**

Education, Board of

**January 16**

† Air Pollution Control Board, State  
 Corrections, Board of  
 † Local Government, Commission on

**January 17**

Community Colleges, State Board for  
 Corrections, Board of  
 † Housing and Community Development Authority,  
 Virginia  
 † Independent Living Council, Statewide  
 Museum of Fine Arts, Virginia

**January 18**

Auctioneers Board  
 Community Colleges, State Board for  
 † Contractors, Board for  
 † Health Professions, Board of  
 Medicine, Board of  
 † Pesticide Control Board

**January 19**

Dentistry, Board of  
 Library Board, State  
 Medicine, Board of  
 - Advisory Board on Midwifery

**January 22**

Education, Board of  
 Nursing, Board of

**January 23**

† Contractors, Board for  
 Medicine, Board of  
 Nursing, Board of

**January 24**

Nursing, Board of

**January 25**

† Contractors, Board for  
 Nursing, Board of  
 Public Guardian and Conservator Advisory Board, Virginia

**January 26**

† Accountancy, Board of  
 Medicine, Board of  
 Rehabilitative Services, Department of

**January 30**

† Contractors, Board for  
 Protection and Advocacy, Virginia Office for  
 Soil Scientists and Wetland Professionals, Board for  
 Professional

**January 31**

Architects, Professional Engineers, Land Surveyors,  
 Certified Interior Designers and Landscape Architects,  
 Board for  
 George Mason University

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# Calendar of Events

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**February 1**

Asbestos, Lead, and Home Inspectors, Virginia Board for  
Branch Pilots, Board for

**February 2**

Agriculture and Consumer Services, Department of  
- Virginia Horse Industry Board  
Branch Pilots, Board for  
Dentistry, Board of

**February 6**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Medicine, Board of  
- Advisory Board on Occupational Therapy  
- Advisory Board on Respiratory Care  
Museum of Fine Arts, Virginia

**February 7**

Medicine, Board of  
- Advisory Board on Radiological Technology

**February 8**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
Medicine, Board of  
- Advisory Board on Athletic Training  
- Advisory Board on Physician Assistants

**February 9**

Dentistry, Board of

**February 13**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† Chesapeake Bay Local Assistance Board

**February 14**

Retirement System, Virginia

**February 15**

Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† Real Estate Appraiser Board  
Retirement System, Virginia

**February 19**

Old Dominion University

**February 21**

Nursing, Board of  
Water Control Board, State

**February 22**

Medicine, Board of

**February 23**

Dentistry, Board of

**February 26**

† Governor's Health Reform Commission

**February 27**

† Contractors, Board for  
† Governor's Health Reform Commission

**February 28**

Education, Board of

**March 2**

Governor's Health Reform Commission

**March 5**

Professional and Occupational Regulation, Board for

**March 6**

Museum of Fine Arts, Virginia

**March 7**

Waterworks and Wastewater Works Operators, Board for

**March 8**

† Criminal Justice Services Board  
Dentistry, Board of

**March 9**

Dentistry, Board of

**March 15**

† Architects, Professional Engineers, Land Surveyors,  
Certified Interior Designers and Landscape Architects,  
Board for  
† People with Disabilities, Virginia Board for

**March 16**

† People with Disabilities, Virginia Board for

**March 19**

† Education, Board of  
† Library Board, State  
† Nursing, Board of  
† Old Dominion University

**March 20**

† Corrections, Board of  
† Environmental Quality, Department of  
† Nursing, Board of  
† Research and Technology Advisory Commission,  
Virginia

**March 21**

† Corrections, Board of  
† Nursing, Board of  
† Protection and Advocacy, Virginia Office for  
- Disability Advisory Council  
† Water Control Board, State

**March 22**

† Community Colleges, State Board for  
† Nursing, Board of  
Public Guardian and Conservator Advisory Board, Virginia

**March 23**

† Dentistry, Board of

**PUBLIC HEARINGS****January 4**

Water Control Board, State

**January 10**

Education, Board of

**March 8**

Criminal Justice Services Board